

<b>Tab 1</b>	<b>CS/SB 918</b> by <b>EP, Dean (CO-INTRODUCERS) Margolis;</b> (Compare to CS/CS/CS/H 0653) Environmental Resources						
322890	D	S	RCS	AGG, Dean	Delete everything after	04/08 04:37 PM	
901608	AA	S	RCS	AGG, Hays	btw L.446 - 447:	04/08 04:37 PM	
152138	AA	S	RCS	AGG, Hays	btw L.2438 - 2439:	04/08 04:37 PM	
129140	AA	S	RCS	AGG, Hays	Delete L.2537 - 2643:	04/08 04:37 PM	
229130	AA	S	RCS	AGG, Margolis	Delete L.2583:	04/08 04:37 PM	
869652	AA	S	WD	AGG, Braynon	btw L.3404 - 3405:	04/08 04:37 PM	
<b>Tab 2</b>	<b>CS/SB 314</b> by <b>EP, Simpson;</b> (Compare to CS/H 0733) Petroleum Restoration Program						
497664	D	S	L RCS	AGG, Simpson	Delete everything after	04/08 04:37 PM	
956250	AA	S	L RCS	AGG, Simpson	Delete L.45 - 52:	04/08 04:37 PM	
873724	AA	S	L RCS	AGG, Simpson	Delete L.132 - 135.	04/08 04:37 PM	
<b>Tab 3</b>	<b>SB 718</b> by <b>Lee;</b> (Similar to CS/CS/CS/1ST ENG/H 0435) Administrative Procedures						
<b>Tab 4</b>	<b>CS/SB 798</b> by <b>CM, Lee;</b> (Similar to CS/CS/H 0765) Household Moving Services						
949376	A	S	RS	AGG, Lee	Delete L.82 - 456:	04/08 04:37 PM	
419526	SA	S	RCS	AGG, Lee	Delete L.82 - 567:	04/08 04:37 PM	
<b>Tab 5</b>	<b>CS/SB 1006</b> by <b>BI, Flores (CO-INTRODUCERS) Margolis;</b> (Similar to CS/CS/1ST ENG/H 1087) Depopulation of Citizens Property Insurance Corporation						
527578	A	S	RCS	AGG, Hays	Delete L.177 - 569:	04/08 04:37 PM	
977198	AA	S	RCS	AGG, Hays	Delete L.300 - 303:	04/08 04:37 PM	
<b>Tab 6</b>	<b>CS/SB 1032</b> by <b>RI, Richter (CO-INTRODUCERS) Diaz de la Portilla, Braynon;</b> (Similar to H 0763) Point-of-sale Terminals						
<b>Tab 7</b>	<b>CS/SB 1126</b> by <b>BI, Altman;</b> (Similar to CS/H 0749) Continuing Care Communities						
557990	A	S	RCS	AGG, Altman	Delete L.177:	04/08 04:37 PM	
764090	A	S	RCS	AGG, Altman	Delete L.257:	04/08 04:37 PM	
<b>Tab 8</b>	<b>SB 1138</b> by <b>Brandes;</b> (Similar to H 0887) Unclaimed Property						
<b>Tab 9</b>	<b>CS/SB 1190</b> by <b>BI, Lee;</b> (Similar to H 1085) Insurer Solvency						
<b>Tab 10</b>	<b>CS/SB 1284</b> by <b>GO, Soto;</b> (Similar to CS/H 0985) Maintenance of Agency Final Orders						
<b>Tab 11</b>	<b>CS/SB 1402</b> by <b>BI, Lee;</b> (Similar to H 0987) Organization of the Department of Financial Services						
504836	A	S	RCS	AGG, Lee	Delete L.135 - 374:	04/08 04:37 PM	

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**APPROPRIATIONS SUBCOMMITTEE ON GENERAL**  
**GOVERNMENT**  
**Senator Hays, Chair**  
**Senator Braynon, Vice Chair**

**MEETING DATE:** Wednesday, April 8, 2015  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

**MEMBERS:** Senator Hays, Chair; Senator Braynon, Vice Chair; Senators Altman, Dean, Lee, Margolis, and Simpson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 918</b> Environmental Preservation and Conservation / Dean (Compare CS/CS/H 653, H 5003, CS/H 7003, CS/S 1186, S 1408, CS/S 1554, S 7054)	Environmental Resources; Requiring the Department of Environmental Protection to publish, update, and maintain a database of conservation lands; creating the Florida Shared-Use Nonmotorized Trail Network; requiring the Department of Environmental Protection or the governing board of a water management district to establish a minimum flow or minimum water level for an Outstanding Florida Spring; specifying authority of the South Florida Water Management District to allocate quantities of, and assign priorities for the use of, water within its jurisdiction; prohibiting water management districts from modifying permitted allocation amounts under certain circumstances, etc.  EP 03/04/2015 Workshop-Discussed EP 03/24/2015 Fav/CS AGG 04/08/2015 Fav/CS AP	Fav/CS Yeas 7 Nays 0
2	<b>CS/SB 314</b> Environmental Preservation and Conservation / Simpson (Compare CS/H 733)	Petroleum Restoration Program; Removing the requirement that applications for the Abandoned Tank Restoration Program must have been submitted to the Department of Environmental Protection by a certain time; prohibiting the department from incorporating risk-based corrective actions principles not approved by the property owner; authorizing site owners and operators to select agency term contractors from which the department must select from under certain circumstances; revising the number of sites for certain advanced cleanup applications, etc.  EP 03/11/2015 Fav/CS AGG 04/08/2015 Fav/CS AP	Fav/CS Yeas 7 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on General Government  
 Wednesday, April 8, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 718</b> Lee (Similar CS/CS/H 435)	Administrative Procedures; Providing conditions under which a proceeding is not substantially justified for purposes of attorney fees and costs; requiring agencies to set a time for workshops for certain unadopted rules; conforming proceedings based on invalid or unadopted rules to proceedings used for challenging existing rules; providing criteria for establishing whether a nonprevailing party participated in a proceeding for an improper purpose; revising provisions providing for the award of attorney fees and costs by the appellate court or administrative law judge, etc.  JU 03/17/2015 JU 03/24/2015 Favorable AGG 04/02/2015 Not Considered AGG 04/08/2015 Favorable AP	Favorable Yeas 7 Nays 0
4	<b>CS/SB 798</b> Commerce and Tourism / Lee (Compare H 765)	Household Moving Services; Removing a prohibition that a mover may not limit its liability for the loss or damage of household goods to a specified valuation rate; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper; requiring a mover to tender household goods for delivery on the agreed upon delivery date or within a specified period unless waived by the shipper, etc.  CM 03/23/2015 Fav/CS AGG 04/02/2015 Not Considered AGG 04/08/2015 Fav/CS AP	Fav/CS Yeas 7 Nays 0
5	<b>CS/SB 1006</b> Banking and Insurance / Flores (Compare CS/CS/H 1087)	Depopulation of Citizens Property Insurance Corporation; Requiring takeout agreements to be approved by the Office of Insurance Regulation; requiring an insurer to provide certain information to a policyholder regarding a takeout agreement; excluding corporation policyholders from future takeout offers for 6 months under certain circumstances; allowing specified applicants for corporation coverage to be considered renewal policyholders, etc.  BI 03/23/2015 Fav/CS AGG 04/08/2015 Fav/CS AP	Fav/CS Yeas 7 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**Appropriations Subcommittee on General Government  
Wednesday, April 8, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	<b>CS/SB 1032</b> Regulated Industries / Richter (Similar H 763, Compare S 120)	Point-of-sale Terminals; Authorizing the Department of the Lottery to create a program that authorizes certain persons to purchase a ticket or game at a point-of-sale terminal; authorizing the department, a retailer operating from one or more locations, or a vendor approved by the department to use a point-of-sale terminal to sell a lottery ticket or game; prohibiting a point-of-sale terminal from being used to redeem a winning ticket; providing that revenue generated by a point-of-sale-terminal shall be used to enhance instructional technology resources for students and teachers in this state, etc.  RI 03/24/2015 Fav/CS AGG 04/08/2015 Favorable FP	Favorable Yeas 5 Nays 1
7	<b>CS/SB 1126</b> Banking and Insurance / Altman (Similar CS/H 749)	Continuing Care Communities; Revising authority of the Office of Insurance Regulation to waive requirements for accredited facilities; providing that continuing care and continuing care at-home contracts are preferred claims in the event of bankruptcy proceedings against a provider; requiring an agent of a provider to provide a copy of an examination report and corrective action plan under certain conditions; requiring a residents' council to provide a forum for certain purposes; revising provisions relating to quarterly meetings between residents and the governing body of the provider, etc.  BI 03/10/2015 Fav/CS AGG 04/08/2015 Fav/CS FP	Fav/CS Yeas 7 Nays 0
8	<b>SB 1138</b> Brandes (Similar H 887)	Unclaimed Property; Providing for escheatment to the state of unclaimed United States savings bonds; providing that a person claiming a United States savings bond may file a claim with the Department of Financial Services, etc.  BI 03/31/2015 Favorable AGG 04/08/2015 Favorable AP	Favorable Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Appropriations Subcommittee on General Government  
 Wednesday, April 8, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>CS/SB 1190</b> Banking and Insurance / Lee (Similar H 1085, Compare H 635)	Insurer Solvency; Revising the amount of surplus which must be possessed by insurers applying for an original certificate of authority and to retain a certificate of authority; providing that a health maintenance organization is considered an insurer for purposes of specified provisions of law relating to insolvent insurers, requirements for the directors of domestic insurers, the payment of dividends and distributions of other property by domestic stock insurers, penalties for domestic and mutual stock insurers that illegally pay dividends, and certain restrictions on premiums written, etc.  BI 03/17/2015 Fav/CS AGG 04/02/2015 Not Considered AGG 04/08/2015 Temporarily Postponed FP	Temporarily Postponed
10	<b>CS/SB 1284</b> Governmental Oversight and Accountability / Soto (Similar CS/H 985)	Maintenance of Agency Final Orders; Requiring agencies to electronically transmit certain agency final orders to a centralized electronic database maintained by the Division of Administrative Hearings; authorizing agencies to maintain subject matter indexes of final orders issued before a specified date or to electronically transmit such orders to the database; requiring the Department of State to provide standards and guidelines for the certification and electronic transmittal and the secure transmittal and maintenance of agency final orders, etc.  GO 03/17/2015 Fav/CS AGG 04/08/2015 Favorable AP	Favorable Yeas 7 Nays 0
11	<b>CS/SB 1402</b> Banking and Insurance / Lee (Similar H 987)	Organization of the Department of Financial Services; Revising the divisions and functions of the department; authorizing the Chief Financial Officer to establish divisions, bureaus, or offices of the department; providing funding from certain probate petition service charges to the Florida Clerks of Court Operations Corporation for clerk education provided by the corporation; providing powers and duties of the department's Division of Consumer Services; requiring that certain service of process fees be deposited into the Administrative Trust Fund, etc.  BI 03/17/2015 Fav/CS AGG 04/08/2015 Fav/CS AP	Fav/CS Yeas 7 Nays 0

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: PCS/CS/SB 918 (279658)

INTRODUCER: Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee and Senator Dean

SUBJECT: Environmental Resources

DATE: April 10, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 918 provides for the protection of springs and other water resources in Florida, creates a council to provide recommendations for funding water projects throughout the state, provides transparency for the process by which projects are submitted and selected, and provides for statewide consistency in data collection and analysis.

The bill directs the Department of Environmental Protection (DEP) to promote access to conservation lands using an online database and mobile application. The bill requires the DEP to submit a yearly report to the Governor, the President of the Senate, and the Speaker of the House of Representatives describing the percentage of public lands open to the public that were acquired under s. 259.032, F.S., and efforts taken by the DEP to increase public access to such lands.

The bill creates the Shared-Use Nonmotorized Trail (SunTrail) network and directs the Florida Department of Transportation (FDOT) to create a SunTrail plan and include the SunTrail in the FDOT work program. The bill also provides for sponsorship of the SunTrail network.

The bill codifies the Central Florida Water Initiative (CFWI), which is a collaborative process designed to plan for future water needs in central Florida.

The bill makes extensive revisions to the Northern Everglades and Estuaries Protection Program (NEEPP).

Specifically, the bill:

- Specifies additional information to be included in the Consolidated Water Management District Annual Report;
- Provides for the application of minimum flows and levels (MFLs) in other water management districts when withdrawals in those other districts affect an MFL outside of those districts;
- Creates a pilot program for alternative water supply development projects in restricted allocation areas and directs certain water management districts (WMDs) to develop projects for the program;
- Creates the Florida Springs and Aquifer Protection Act;
- Provides findings, intent, and definitions;
- Directs the DEP to adopt a uniform definition for the term “harmful to the water resources” for Outstanding Florida Springs (OFSs);
- Directs the DEP, in coordination with the water management districts (WMDs), to delineate priority focus areas for impaired OFSs and provides considerations;
- Provides requirements for the DEP or a WMD to establish MFLs or adopt MFLs and recovery or prevention strategies, as necessary, and provides deadlines;
- Provides the DEP and WMDs with emergency rulemaking authority to adopt MFLs and recovery or prevention strategies for OFSs;
- Provides requirements for revising MFLs under certain circumstances and provides deadlines;
- Provides minimum requirements for recovery or prevention strategies for OFSs;
- Provides for extensions for local government projects included in a recovery or prevention strategy;
- Directs the DEP to assess OFSs for impairment and provides requirements and deadlines;
- Provides for the adoption of basin management action plans (BMAPs), includes requirements for BMAPs for OFSs;
- Provides for the enforcement of BMAPs;
- Requires the adoption of fertilizer use ordinances by local governments under certain circumstances;
- Provides for the identification and assessment of onsite sewage treatment and disposal systems (OSTDSs) in OFSs and directs the development of OSTDS remediation plans as necessary;
- Directs the DEP to adopt rules to fund pilot projects that address nutrient pollution or flows in Florida springs and provides deadlines;
- Directs the DEP to adopt rules to evaluate, select, and rank projects for environmental improvement, and provides considerations and deadlines;
- Prohibits certain activities within priority focus areas;
- Directs the DEP to adopt rules to improve water quantity and quality to administer the Florida Springs and Aquifer Protection Act;
- Codifies the Central Florida Water Initiative in statute;

- Provides considerations related to preferred water supply sources for entities applying for a water use permit;
- Removes references to the Works of the District program in the NEEPP;
- Amends provisions related to the NEEPP;
- Directs the South Florida Water Management District (SFWMD) to revise Rule 40E-61, F.A.C., to be consistent with the NEEPP and s. 403.067, F.S., concerning Total Maximum Daily Loads (TMDLs);
- Provides for changes to the Caloosahatchee and St. Lucie River Watershed Protection Programs;
- Provides requirements for the Lake Okeechobee, Caloosahatchee River, and St. Lucie River BMAPs;
- Provides considerations and funding for water supply development and alternative water supply projects;
- Provides requirements for regional water supply planning;
- Provides for the study and reevaluation of best management practices (BMPs) that reduce pollution;
- Provides requirements for new or revised BMAPs;
- Provides for the enforcement of BMAPs;
- Provides for the verification of the implementation of BMPs;
- Requires the DEP, in conjunction with the WMDs, to report on the status of TMDLs, BMAPs, MFLs, and recovery and prevention strategies adopted pursuant to s. 403.067, F.S., and under Parts I and VIII of ch. 373, F.S., and provides requirements;
- Requires the DEP to create a consolidated water resources work plan that covers all water resource projects in the state and provides requirements for the information provided;
- Directs the DEP to create a web-based, interactive map that provides information to the public on water projects being performed throughout the state, and provides requirements for the information to be provided;
- Creates the Florida Water Resources Advisory Council within the DEP to evaluate and rank water resource projects and provide recommendations to the Legislature for funding projects. The bill provides considerations for ranking projects and rulemaking authority to the DEP to implement the program;
- Requires the DEP to establish statewide standards for the collection of water quantity, water quality, and related data to ensure quality, reliability, and validity of the data and testing results;
- Requires the DEP to adopt rules concerning the reclassification of surface waters used for potable water supply; and
- Requires the DEP to adopt rules concerning projects focused on innovative nutrient and sediment reduction and conservation pilot projects; and
- Revises membership requirements for the Harris Chain of Lakes Restoration Council.

The bill requires a number of activities that will result in significant long-term costs for several government entities, including the DEP, the Department of Agriculture and Consumer Services (DACS), and the Water Management Districts (WMDs). The total fiscal impact is indeterminate; however, Senate Bill 2500, the Senate's General Appropriations Bill for Fiscal Year 2015-2016, provides the following: \$50 million for Florida's Springs, \$50 million for Water Resources, and \$25 million for the SunTrail. In addition, SB 2500 provides operational funding support to the



Northwest Florida Water Management District (NFWFMD) for implementation of MFLs of \$1.5 million, and nine positions and \$1.73 million to the DEP and the DACS.

The bill requires the South Florida Water Management District, the Southwest Florida Water Management District, and the St. Johns Water Management District to designate and implement alternative water supply projects which will have an indeterminate negative fiscal impact. The bill gives the WMDs the authority to issue revenue bonds to pay the costs and expenses related to these projects.

The bill is effective on July 1, 2015.

## **II. Present Situation:**

### **State Lands Database**

Section 253.0325, F.S., was created in 1990 to require the Department of Environmental Protection (DEP) to establish a computerized system for state lands records. The DEP contracted with a company to create the mainframe-based land record system for documents related to lands where title is vested in the Board of Trustees of the Internal Improvement Trust Fund. In 1999, the system was updated to include new technologies and integration components and referred to as the Board of Trustees Land Document System (BTLDS). The law requires the program to include, at a minimum, a document management component, a lands and records management component, an evaluation component, and a mapping component. The DEP is responsible for ensuring the information system is compatible within the DEP and other state, local, and regional government agencies.

In 2008, s. 253.0325, F.S., was amended to require the DEP to include all lands purchased with Preservation 2000 funds and Florida Forever funds. To comply with the requirement, the DEP contracted with an outside vendor to conduct a BTLDS Feasibility Study. The study determined the DEP Division of State Lands would be the clearinghouse for all of the state lands data and solely responsible for maintaining the database.

In 2010, s. 216.0153, F.S., directed the DEP to create, administer, operate, and maintain a comprehensive system and automated inventory of all state lands and real property leased, owned, rented, occupied, or maintained by a state agency, judicial branch, or water management district (WMD). In order to meet the requirement, the DEP created the Florida State Owned Lands and Records Information System (FL-SOLARIS). The database includes all state owned lands in which the state has a fee interest, including a conservation easement acquired through a formal acquisition process for conservation.

The FL-SOLARIS system has been implemented by the DEP and the Department of Management Services (DMS) to include two main components. The Facility Information Tracking System includes 332 users and 65 different agencies, and the Lands Information Tracking System includes 140 users and 50 different agencies.<sup>1</sup>

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<sup>1</sup> State of Florida Lands and Facilities Inventory Search, <http://webapps.dep.state.fl.us/DslPi/splash?Create=new> (last visited Mar. 6, 2015).

## Trail Development

The development of Florida's bicycle and pedestrian infrastructure did not begin in earnest until the late 20<sup>th</sup> century. The American railroad industry was deregulated by the Staggers Rail Act of 1980, providing Florida with an immediate abundance of abandoned rail corridors.<sup>2</sup>

Organizations such as The Rails-to-Trails Conservancy and The Trust for Public Land, the Florida Department of Transportation (FDOT), and the DEP coordinated to develop numerous abandoned rail corridors as shared-use "rail-trails" for nonmotorized transportation and recreation. Many of Florida's premier nonmotorized trails, including the Pinellas Trail, the Tallahassee-St. Marks Trail, and the West Orange Trail, are a result of rail-trail conversions.

The second major initiative in trail development came in 1991 when Congress shifted surface transportation policy through passage of the Intermodal Surface Transportation Efficiency Act.<sup>3</sup> For the first time, pedestrian and bicycle facilities were identified as components of the nation's transportation infrastructure, and a dedicated funding source was created for multiuse trails and paths with local governments serving as project sponsors.<sup>4</sup> Many of the resulting projects are community-centric, short-distance trails, initiated by local governments and other governmental entities not traditionally associated with transportation development, such as water management districts and school districts.

## Trail Connectivity

While many locales have benefited from federal trail funding, an unintended consequence of trail development being initiated by numerous state entities and local governments is a collection of random trails rather than a statewide system. As a result, many trails lack connectivity with other trails and often serve no meaningful origins and destinations. Trail users are often required to use roads, sidewalks, and highways to connect trails or to complete a trip. Many trail trips are "out-and-back" trips in which the origin and destination are the same location. Such trips serve little to no transportation function and do not realize the full economic potential of a trail network.

In 1995, the Legislature recognized the benefits of an expanded greenways and trails network and created the Florida Greenways Coordinating Council (FGCC).<sup>5</sup> The Legislature tasked the FGCC with promoting the creation of a statewide greenways and trails system and designated the DEP as the lead agency of the system.<sup>6</sup> The FGCC published the Connecting Florida Communities with Greenways and Trails Plan in 1998. The plan contains a multiuse recreational Opportunity Trail Map and is considered the first visioning document for connecting Florida's greenways and trails. The plan provides a comprehensive approach to the Florida Greenways and Trails System (FGTS) by providing a review of existing greenways and trails and recommendations to complete the system. The plan recommends:

- The DEP establish a process to prioritize greenways and trails for ecological, recreational, and cultural significance;

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<sup>2</sup> Pub. Law No. 96-448, H.R. 72365, 96th Cong. (Oct. 14, 1980).

<sup>3</sup> Pub. Law No. 102-240, H.R. 2950, 102nd Cong. (Dec. 18, 1991).

<sup>4</sup> Joe Maher, *Federal Funding for Conservation and Recreation Trails*, 1 (Feb. 2009), available at [http://www.rff.org/RFF/Documents/RFF-BCK-ORRG\\_DOT.pdf](http://www.rff.org/RFF/Documents/RFF-BCK-ORRG_DOT.pdf) (last visited Mar. 11, 2015).

<sup>5</sup> Chapter 95-260, Laws of Fla.

<sup>6</sup> *Id.*

- The DEP identify the critical linkages in the statewide greenways and trails system;
- The FGCC evaluate and prioritize greenways and trails proposed by the DEP based on:
  - Willingness of the landowner;
  - Ecological, recreational, and cultural significance;
  - Acquisition considerations;
  - Management considerations;
  - Community support; and
  - Identification of critical linkages.
- The DEP develop a process for designating lands for the statewide greenways and trails system;
- The FGCC promote awareness and generate support of the greenways and trails system;
- Encouraging landowners to voluntarily sell or donate conservation easements or fee simple title to land;
- Coordinating with owners to acquire linear facilities;
- Encouraging developers to include trails in residential areas and to link residential trails with the statewide system;
- Identifying a funding mechanism for the creation and maintenance of trail systems;
- The Legislature create the Florida Greenways and Trails Council; and
- Measuring the success of the statewide trails system by:
  - Tracking the current trail system and new land designations in a database;
  - Maintaining natural areas so they may be considered for designation or remain designated;
  - Creating a system that provides public access to a trail within 15 minutes of every Floridian; and
  - Ensuring a 95 percent satisfaction rate for visitors to greenways and trails facilities.<sup>7</sup>

In 1999, the Legislature created the Florida Greenways and Trails Council as recommended by the 1998 Connecting Communities with Greenways and Trails Plan. Section 260.0142(4), F.S., directs the council to:

- Facilitate a statewide system of interconnected landscape linkages, conservation corridors, greenbelts, recreational corridors and trails, scenic corridors, utilitarian corridors, reserves, regional parks and preserves, ecological sites, and cultural/historic/recreational sites using land-based trails that connect, urban, suburban, and rural areas of the state;
- Recommend priorities for critical links in the FGTS;
- Review recommendations for acquisition funding;
- Review designation proposals to be include in the FGTS;
- Encourage public-private partnerships;
- Review the established benchmarks and make recommendations for appropriate action;
- Recommend updates to the implementation plan for the FGTS;
- Promote greenways and trails support organizations; and

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<sup>7</sup> DEP, Florida Greenways Coordinating Council, *Connecting Florida's Communities with Greenways and Trails*, 11-35 (1998), available at [http://www.dep.state.fl.us/gwt/FGTS\\_Plan/PDF/1998FGTSPlanConnectingFlorida'sCommunities.pdf](http://www.dep.state.fl.us/gwt/FGTS_Plan/PDF/1998FGTSPlanConnectingFlorida'sCommunities.pdf) (last visited Mar. 5, 2015).

- Support the FGTS through intergovernmental coordination, budget recommendations, and any other appropriate way.

In 2008, Florida was recognized as a leader in greenways and trails and awarded the Best Trails State Award by American Trail. Although the statewide system of trails had expanded to include thousands of miles of paved, unpaved, and paddling trails to accommodate hikers, bikers, equestrians, and paddlers, many gaps to the trail system remain.<sup>8</sup>

In 2013, the DEP published the 2013-2017 Florida Greenways and Trails System Plan. The 2013-2017 plan was the first update to the FGTS since the Connecting Florida Communities with Greenways and Trails Plan was published in 1998. The updated plan provides goals for the FGTS to advance Florida's economy, tourism, health, transportation, recreation, conservation, and quality of life. Specifically, the plan:

- Establishes priorities for coordinating, directing, and focusing resources;
- Provides a new framework for systematically closing the gaps in trails and connecting priority corridors within the FGTS to establish a fully connected and integrated statewide trail network; and
- Provides linkages between additional state planning efforts and the FGTS. The additional state planning efforts include:
  - The Florida Five-year Strategic Plan for Economic Development;
  - The VISIT FLORIDA Marketing Plan;
  - The Florida State Health Improvement Plan;
  - The Florida Transportation Plan 2060;
  - The Florida Statewide Comprehensive Outdoor Recreation Plan; and
  - The Cooperative Conservation Blueprint and Wildlife Action Plan.<sup>9</sup>

The Coast-to-Coast Connector (C2C) is an essential component of the 2013-2017 FGTS plan and the Florida Greenways and Trails Foundation "Close the Gaps" campaign.<sup>10</sup> The C2C is an approximately 275-mile system of local, regional, state, and federal trails crossing nine counties from Titusville to St. Petersburg. Approximately 200 miles of the corridor are developed or funded for completion. The remaining portion of the C2C will cost an estimated \$42 million to complete.<sup>11</sup>

Once complete, the C2C will link communities and provide a year-round ecotourism engine throughout the region. The C2C includes two of the state's most popular trails, the Pinellas Trail and the West Orange Trail, each of which have served approximately 1 million users per year and fueled the economic transformation of trail communities, particularly Dunedin and Winter

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<sup>8</sup> DEP, *Coast to Coast Connector, Status Report: July 1, 2014 to December 31, 2014*, 3 (2014), available at [http://www.dep.state.fl.us/gwt/FGTS\\_Plan/Long%20Distance%20Corridors/1st%20Edition%20Jan%202015.pdf](http://www.dep.state.fl.us/gwt/FGTS_Plan/Long%20Distance%20Corridors/1st%20Edition%20Jan%202015.pdf) (last visited Mar. 5, 2015).

<sup>9</sup> DEP, *Florida Greenways & Trails System Plan, 2013-2017*, 1 (2013), available at [http://www.dep.state.fl.us/gwt/FGTS\\_Plan/PDF/FGTS\\_Plan\\_2013-17\\_publication.pdf](http://www.dep.state.fl.us/gwt/FGTS_Plan/PDF/FGTS_Plan_2013-17_publication.pdf) (last visited Mar. 19, 2015).

<sup>10</sup> The Florida Greenways and Trails Foundation is a non-profit organization that supports the mission and programs of the DEP Office of Greenways and Trails.

<sup>11</sup> DEP, *The Coast to Coast Connector*, [http://www.dep.state.fl.us/gwt/FGTS\\_Plan/Long%20Distance%20Corridors/Coast\\_to\\_Coast\\_Connector.htm](http://www.dep.state.fl.us/gwt/FGTS_Plan/Long%20Distance%20Corridors/Coast_to_Coast_Connector.htm) (last visited Mar. 19, 2015).

Garden.<sup>12</sup> Components of the C2C will also serve other planned trails including multi-day loop trails such as the 250-mile Heart of Florida Greenway<sup>13</sup> and the 300-mile St. Johns River-to-Sea Loop.<sup>14</sup>

### ***Interagency Coordination***

The FDOT created the Florida Bicycle and Pedestrian Partnership Council in 2010, which includes representatives from the FDOT, state agencies, local governments, and non-profit organizations. The council provides policy recommendations for the state's walking, biking, and trail facilities to the FDOT and its partners. The primary focus of the council is to implement bicycle and pedestrian connections, promote bicycle and pedestrian safety, promote the use of design discretion to accommodate bicycle and pedestrian needs, and to promote the State Health Improvement Plan.<sup>15</sup>

The council has directed the FDOT to partner with the DEP to pursue opportunities that contribute to the full implementation of the FGTS Priority Network including:

- Considering additional right of ways for separate shared-use paths during all transportation corridor planning;
- Expanding the limited access pilot-projects;
- Developing an interagency Memoranda of Agreements to promote cooperation; and
- Working with metropolitan planning organizations and other regional entities.<sup>16</sup>

Although both the DEP and the FDOT are tasked with creating a network of connected trails and to coordinate efforts to accomplish each agency's goals, there is no legislation requiring interagency coordination to create a statewide system of shared-use transportation trails.

### **Trail Benefits**

In addition to the intrinsic value nonmotorized travel brings to community mobility, sustainable transportation, and personal health, trails provide access to conservation lands and create wildlife corridors. Trails also produce numerous quantifiable economic benefits, including increasing the value of nearby properties, increasing spending at local businesses, influencing business location and relocation decisions, revitalizing depressed areas, providing sustainable tourism opportunities, and creating jobs.

### ***Property Values***

Based on an analysis of comparable trails from across the country, the construction of Miami-Dade County's Ludlam Trail will increase property values within a half mile of the trail 0.32 to 0.73 percent faster than other properties throughout the county. This translates into a total

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<sup>12</sup> *Id.*

<sup>13</sup> The Florida Greenways and Trails Foundation, *Close the Gaps: Heart of Florida Greenway Map* (May 29, 2012), available at <http://fgtf.org/maps/hof/overview.pdf> (last visited Mar. 11, 2015).

<sup>14</sup> See ETM, *St. Johns River-to-Sea Loop Trail Status Update* (Sept. 2011), available at [http://www.etmnc.com/SJR2C/sg\\_userfiles/SJR2C\\_Summary\\_Report\\_09-19-11.pdf](http://www.etmnc.com/SJR2C/sg_userfiles/SJR2C_Summary_Report_09-19-11.pdf) (last visited Mar. 11, 2015).

<sup>15</sup> DOT, *The Florida Bicycle and Pedestrian Partnership Council: 2012/2013 Annual Progress Report*, iii (Oct. 2013), available at <http://www.dot.state.fl.us/planning/policy/bikeped/Annualrpt2012-13.pdf> (last visited Mar. 11, 2015).

<sup>16</sup> *Id.* at 7

property value increase over a 25-year period of \$121 million to \$282 million.<sup>17</sup> A study of property values near trails in Delaware found that properties within 50 meters of the bike paths sell for \$8,800 more than similar homes.<sup>18</sup> A survey co-sponsored by the National Association of Home Builders and the National Association of Realtors found that proximity to nonmotorized trails came in second only to highway access when recent home buyers were asked about the "importance of community amenities."<sup>19</sup>

### ***Local Businesses and Economic Development***

An economic impact analysis of trails in Orange County, Florida, found in 2010 average spending per trail user was \$20 per visit, representing food and beverages, transportation, books and maps, bike maintenance, rentals, and more. The West Orange Trail supports 61 jobs and represents an estimated economic impact of \$5 million for downtown Winter Garden. Longer destination trails increase spending and benefit hotels, bed and breakfasts, and outdoor outfitters.<sup>20</sup> A study of the Great Allegheny Passage, a 132-mile corridor in Pennsylvania, found that users reporting longer average travel distances to the trail were more likely to spend successive days on or near the trail. Those who reported an overnight stay in conjunction with their trips averaged spending \$203 per person.<sup>21</sup> A survey on the Greenbrier River Trail, an 81-mile corridor in West Virginia, found an overwhelming majority of trail users were highly educated professionals with high income levels, two-thirds were from outside of West Virginia, 93 percent were staying in the area from one to four days, 58 percent spent between \$100 and \$500 in the area, and 93 percent indicated that they were highly likely to plan a return trip.<sup>22</sup>

### ***Revitalization of Depressed Areas***

Companies often choose locations in communities that offer a high level of amenities to employees as a means of attracting and retaining top-level workers. Trails can make communities attractive to businesses looking to expand or relocate both because of the amenities they offer to employees and the opportunities they offer to trail visitors.<sup>23</sup>

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<sup>17</sup> Miami-Dade County, Park and Recreation Department, *Miami-Dade County Trail Benefits Study: Ludlam Trail Case Study*, 57 (Jan. 2011), available at <http://atfiles.org/files/pdf/Miami-Dade-Ludlam-Trail-Benefits.pdf> (last visited Mar. 11, 2015).

<sup>18</sup> David P. Racca and Amardeep Dhanju, *Project Report for Property Value/Desirability Effects of Bike Paths Adjacent to Residential Areas*, 30 (Nov. 2006), available at <http://128.175.63.72/projects/DOCUMENTS/bikepathfinal.pdf> (last visited Mar. 19, 2015).

<sup>19</sup> National Trails Training Partnership, *Benefits of Trails and Greenways*, <http://www.americantrails.org/resources/benefits/homebuyers02.html> (last visited Mar. 11, 2015).

<sup>20</sup> East Central Florida Regional Planning Council, *Economic Impact Analysis of Orange County Trails*, ii (2011), available at [http://www.dep.state.fl.us/gwt/economic/PDF/Orange\\_County\\_Trail\\_Report\\_final\\_May2011.pdf](http://www.dep.state.fl.us/gwt/economic/PDF/Orange_County_Trail_Report_final_May2011.pdf) (last visited Mar. 11, 2015).

<sup>21</sup> Compos, Inc., *The Great Allegheny Passage Economic Impact Study (2007-2008)*, 91 (2009), available at <http://www.atatrail.org/docs/GAPEconomicImpactStudy200809.pdf> (last visited Mar. 11, 2015).

<sup>22</sup> ATI, *Maximizing Economic Benefits from a Rails-to-Trails Project in Southern West Virginia – A Case Study of the Greenbrier River Trail*, 11 (May 2001), available at <http://atfiles.org/files/pdf/greenbrierecon.pdf> (last visited Mar. 11, 2015).

<sup>23</sup> See NPS, *Economic Impacts of Protecting Rivers, Trails, and Greenway Corridors: Corporate Relocation and Retention. Rivers, Trails and Conservation Assistance Program* (1995), available at [http://www.nps.gov/pwro/rtca/econ\\_all.pdf](http://www.nps.gov/pwro/rtca/econ_all.pdf) (last visited Mar. 11, 2015).

In Dunedin, Florida, after the abandoned CSX railroad was transformed into the Pinellas Trail, the downtown area went from 70 percent storefront occupancy to 95 percent occupancy.<sup>24</sup>

### ***Tourism Opportunities***

The Outer Banks of North Carolina generates \$60 million in economic activity through bicycle tourism. The one-time investment of \$6.7 million on bicycle infrastructure has resulted in an annual nine-to-one return. Analysis of Outer Banks trail amenities shows bicycle tourists tend to be affluent and educated. More than half of survey respondents said bicycling had a strong influence on their decision to return to the area. Two-thirds of respondents said that riding on bike facilities made them feel safer and three-quarters said that more paths, shoulders, and lanes should be built.<sup>25</sup>

A widely accepted tenet in trail development holds that the longer a given trail is, the greater its propensity for becoming a “destination trail,” and the greater distance users will travel to use the trail. Users traveling farther stay in the area longer and, consequently, increase spending in the area. Users of the Great Allegheny Passage/C&O Canal Towpath, a 335-mile system of biking and hiking trails that connects Pittsburgh to Washington, DC, travel an average of 131 miles to the trailhead. Those that traveled 50 miles or more had daily expenditures approximately two times that of users that traveled less.<sup>26</sup>

### ***Trail Development Creates More Jobs than Road Development***

A national comparison of the number of jobs created per \$1 million spent on various types of transportation projects found that for every \$1 million spent on the development of multiuse trails, 9.57 jobs were created while road-only development yields 7.75 jobs.<sup>27</sup>

### **Sponsorship of Trails and Related Facilities**

Section 335.065(3), F.S., authorizes the FDOT to enter into a concession agreement for commercial sponsorship displays, subject to the Highway Beautification Act of 1965 and all federal laws and agreements, on multiuse trails and related facilities with a not-for-profit entity or private sector business or entity. The revenues from the concession agreements may be used for trail maintenance.

In 2012, the Legislature created s. 260.0144, F.S., to authorize the DEP to enter into concession agreements for naming rights for the display of commercial sponsorship on certain state-owned greenway and trail facilities or properties. The DEP may establish the cost for entering into a concession agreement. The law specifies the commercial display contemplated by the concession agreement is for public relations or advertising purposes for the concessionaires and is not to be

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<sup>24</sup> DEP, *The Impact of Trails on Communities*, 34 (2010), available at <http://www.opportunityflorida.com/pdf/Jim%20Wood%20-%20Trails%20and%20Economic%20Impact%20-%20Rural%20Summit.pdf> (last visited Mar. 11, 2015).

<sup>25</sup> NCDOT, *Pathways to Prosperity: The Economic Impact of Investments in Bicycling Facilities*, vi-viii (July 2004), available at [http://www.ncdot.gov/bikeped/download/bikeped\\_research\\_eiafulltechreport.pdf](http://www.ncdot.gov/bikeped/download/bikeped_research_eiafulltechreport.pdf) (last visited Mar. 5, 2015).

<sup>26</sup> *Supra* note 21, at 70.

<sup>27</sup> PERI, *Pedestrian and Bicycle Infrastructure: A National Study of Employment Impacts*, 11 (June 2011), available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.362.5819&rep=rep1&type=pdf> (last visited Mar. 11, 2015).

construed as having a relationship with the DEP other than what is set forth in the terms of the concession agreement. The law also does not grant a proprietary or compensable interest in any sign, or display site or location.

Section 260.0144, F.S., requires 85 percent of the proceeds from the concession agreement with the DEP to be distributed to the appropriate trust fund within the DEP to be used for management and operation of state greenway or trail facilities and properties. The remaining 15 percent goes to the State Transportation Trust Fund.

The signage and display requirements for ss. 335.065(3) and 260.0144, F.S., are as follows:

- The placement of signage or displays is limited to the provisions of s. 337.407, F.S., and ch. 479, F.S., and limited to trailheads, parking areas, or public access points;
- The size of the signage or display is limited to 16 square feet at trailheads and parking areas and four square feet at public access points;
- The FDOT or the DEP must approve the name or display before installation;
- The FDOT or the DEP must ensure:
  - The size, color, materials, construction, and location of the signs are consistent with the management plan of the property and the standards of the FDOT or the DEP;
  - The signs do not intrude on natural and historic settings; and
  - The signs only contain the logo selected by the sponsor and the wording: “(Name of the sponsor)...proudly sponsors the costs of maintaining the...(Name of the greenway or trail)”;
- All costs associated with the signage must be the responsibility of the concessionaire;
- The concession agreement is limited to one year unless extended by a multiyear agreement; and
- The FDOT or the DEP may terminate the agreement for just cause with 60 days advance notice to the concessionaire.

### **Florida’s Springs**

Florida’s springs are unique and beautiful resources. The historically crystal clear waters provide not only a variety of recreational opportunities and habitats, but also great economic value for recreation and tourism. Springs are major sources of stream flow in a number of rivers such as the Rainbow, Chassahowitzka, Homosassa, and Ichetucknee.<sup>28</sup> Additionally, Florida’s springs provide a “window” into the Floridan aquifer system, which provides most of the state’s drinking water.

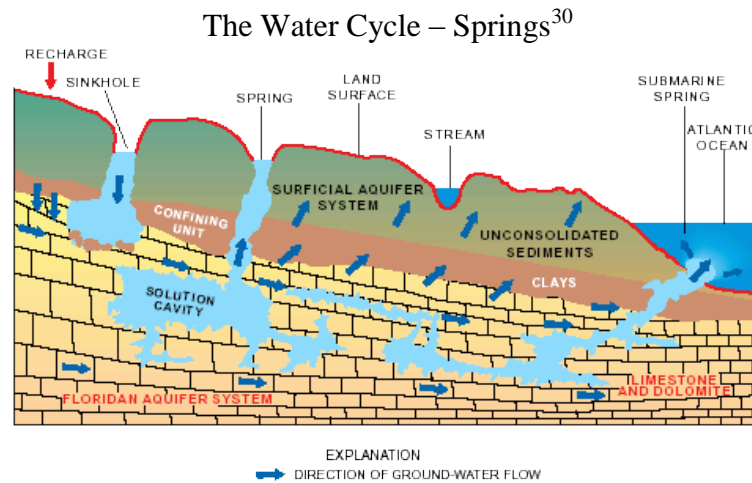
The Floridan aquifer system is a limestone aquifer that has enormous freshwater storage and transmission capacity. The upper portion of the aquifer consists of thick carbonate rocks that have been heavily eroded and covered with unconsolidated sand and clay. The surficial aquifer is located within the sand deposits and forms the land surface that is present today. In portions of Florida, the surficial aquifer lies on top of deep layers of clay sediments that prevent the

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<sup>28</sup> Department of Community Affairs, *Protecting Florida’s Springs: An Implementation Guidebook*, 3-1 (Feb. 2008), available at <http://www.dep.state.fl.us/springs/reports/files/springsimplementguide.pdf> (last visited Mar. 5, 2015).



downward movement of water. Springs form when groundwater is forced out through natural openings in the ground.<sup>29</sup>



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. Spring discharges, primarily from the Floridan aquifer, are used to determine ground water quality and the degree of human impact on a 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.<sup>31</sup>

The springshed is the area within the groundwater and surface water basins that contributes to the discharge of the spring. The spring recharge basin consists of all areas where water can be shown to contribute to groundwater flow discharging from the spring.

Spring protection zones are sub-areas of the groundwater and surface water basins of each spring or spring system that supply water to the spring and within which human activities, such as waste disposal or water use, are most likely to have negative impacts on the water discharging from the spring. When adverse conditions occur within a spring protection zone, the conditions can be minimized by:

- Land-use management and zoning by county or municipal government;
- Adoption of best management practices (BMPs);
- Educating the public concerning environmental sensitivity; and
- Regulatory action, if necessary.<sup>32</sup>

<sup>29</sup> *Id.* at 3-1 to 3-2.

<sup>30</sup> U.S. Environmental Protection Agency, *The Water Cycle: Springs*, <http://water.usgs.gov/edu/watercyclesprings.html> (last visited Mar. 5, 2015).

<sup>31</sup> Florida Geological Survey, *Springs of Florida Bulletin No. 66*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Mar. 5, 2015).

<sup>32</sup> Upchurch, S.B. and Champion, K.M., *Delineation of Spring Protection Areas at Five, First-Magnitude Springs in North-Central Florida (Draft)*, 1 (Apr. 28, 2004), available at [www.waterinstitute.ufl.edu/suwannee-hydro-observ/pdf/delineation-of-spring-protection-zones.pdf](http://www.waterinstitute.ufl.edu/suwannee-hydro-observ/pdf/delineation-of-spring-protection-zones.pdf) (last visited Mar. 5, 2015).

## **Nutrients**

Phosphorus and nitrogen are essential nutrients for plants and animals and are the limiting nutrients in aquatic environments. The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems. Typically, nitrogen is the limiting nutrient in spring systems. Therefore, even modest increases in nitrogen above optimum levels can accelerate algae growth, plant growth, and deplete oxygen levels.

Phosphorus and nitrogen are derived from natural and anthropogenic sources. Natural inputs include the atmosphere, soils, and the decay of plants and animals. Anthropogenic sources include sewage disposal systems (wastewater treatment facilities and septic tanks), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.

Excessive nutrients may result in harmful algal blooms, nuisance aquatic weeds, and alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and generally impair the aesthetics and tastes of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities. Increased algae production, as a result of increased nutrients, can alter plant communities and affect natural systems.

In pristine conditions, spring water is high quality and lacks contaminants. It can be used directly for public water supplies or for irrigation. When pollutants are introduced to the land surface, some will be retained, but some will travel into the aquifer and later appear in spring flow. Often, nutrients introduced close to a spring will quickly reach the spring, especially in unconfined areas of the aquifer. While springs are valuable recreational and tourist attractions, they are also an indicator of reduced quality of the water in the aquifer.<sup>33</sup>

### ***Urban Fertilizer Usage and Florida's Model Ordinance***

Application of fertilizer in urban areas impacts springsheds when it runs off lawns and impervious surfaces into stormwater collection systems or directly into the surface water. The DEP has provided guidelines to minimize the impact of urban fertilizer use and adopted the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. The model ordinance provides counties and municipalities with a range of options to help minimize fertilizer inputs from urban applications. Some of the suggestions contained in the model ordinance are:

- Restricting the times fertilizer may be applied, such as restricting its application during the rainy season;
- Creating fertilizer free zones around sensitive waterbodies such as ponds, streams, watercourses, lakes, canals, or wetlands;
- Controlling application practices by, for example, restricting fertilizer application on impervious surfaces and requiring prompt cleanup of any fertilizer that is spilled on impervious surfaces; and

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<sup>33</sup> *Supra* note 28, at 3-4.

- Managing grass clipping and vegetative matter by disposing of such materials properly rather than simply blowing them into the street, ditches, stormwater drains, or waterbodies.<sup>34</sup>

## Water Pollution Control Programs

### *Total Maximum Daily Loads (TMDLs) and Water Quality Standards*

Under s. 303 of the federal Clean Water Act (CWA), states are incentivized to adopt water quality standards (WQSs) for their navigable waters and must review and update those standards at least once every three years. These standards include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, and navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative standards, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.<sup>35</sup>

In 1999, the Legislature passed the Florida Watershed Restoration Act,<sup>36</sup> which codified the establishment of TMDLs for pollutants of waterbodies as required by the CWA.<sup>37</sup> Each TMDL, which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by the waterbody while still meeting WQSs. Waterbodies that do not meet the established WQSs are deemed impaired and, pursuant to the CWA, the DEP establishes a TMDL for the waterbody or section of the waterbody that is impaired.<sup>38</sup> A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background. Waste load allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources such as the runoff from farms, forests, and urban areas.<sup>39</sup>

The U.S. Environmental Protection Agency (EPA) and the DEP enforce WQSs through the implementation and enforcement of the National Pollutant Discharge Elimination System (NPDES) permitting program. Every point source that discharges a pollutant into waters of the United States must obtain an NPDES permit establishing the amount of a particular pollutant that an individual point source can discharge into a specific waterbody. The amount of the pollutant that a point source can discharge under a NPDES permit is determined through the establishment of a technology-based effluent limitation. If a waterbody fails to meet the applicable WQS

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<sup>34</sup> DEP, *Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes*, 6-9 (2010), available at <http://www.dep.state.fl.us/water/nonpoint/docs/nonpoint/dep-fert-modelord.pdf> (last visited Mar. 5, 2015).

<sup>35</sup> 33 U.S.C. s. 1313(c)(2)(A) (2014); 40 C.F.R. ss. 131.6 and 131.10-131.12.

<sup>36</sup> Chapter 99-223, Laws of Fla.

<sup>37</sup> Section 403.067, F.S.

<sup>38</sup> *Id.*

<sup>39</sup> Fla. Admin. Code R. 62-620.200(37) (2006). Point source means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are essentially sources of pollution that are not point sources. They can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

through the application of a technology-based effluent limitation, a more stringent pollution control program called the water quality based effluent limitation is applied.

### ***Basin Management Action Plans (BMAPs)***

The DEP is the lead agency in coordinating the implementation of TMDLs and BMAPs through existing water quality protection programs. Such programs include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Non-regulatory and incentive-based programs, including BMPs, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(21), F.S., and public education;<sup>40</sup>
- Public works, including capital facilities; and
- Land acquisition.<sup>41</sup>

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific water body. First, the BMAP equitably allocates pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources.<sup>42</sup> Then the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP process has the flexibility to allow for adaptive changes if necessary. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the general public to collectively determine and share water quality clean-up responsibilities. The DEP works with stakeholders to develop effective BMAPs.<sup>43</sup>

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the plan must be made as appropriate.<sup>44</sup>

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.<sup>45</sup> A nonpoint source discharger may be subject to enforcement action by the DEP or a WMD based upon a failure to implement these requirements.<sup>46</sup>

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<sup>40</sup> Section 403.061, F.S., grants the DEP the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows the DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

<sup>41</sup> Section 403.067(7)(b), F.S.

<sup>42</sup> Section 403.067(7), F.S.

<sup>43</sup> DEP, *Basin Management Action Plans (BMAPs)*, <http://www.dep.state.fl.us/central/Home/Watershed/BMAP.htm> (last visited Mar. 5, 2015).

<sup>44</sup> Section 403.067(7)(a)5., F.S.

<sup>45</sup> BMPs for agriculture, for example, include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

<sup>46</sup> Section 403.067(7)(b)1.h., F.S.

Provisions of a BMAP must be included in subsequent NPDES permits. The DEP is prohibited from imposing limits or conditions associated with an adopted TMDL in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.<sup>47</sup>

NPDES permits issued between the time a TMDL is established and a BMAP is adopted contain a compliance schedule allowing time for the BMAP to be developed. Once the BMAP is developed, a permit will be reopened and individual allocations consistent with the BMAP will be established in the permit. The timeframe for this to occur cannot exceed five years. NPDES permittees may request an individual allocation during the interim, and the DEP may include an individual allocation in the permit.<sup>48</sup>

For an individual point source, reducing pollutant loads established under the TMDL and water quality based effluent limitation regulatory programs can be difficult to accomplish. It may require investment in expensive technology or other costly measures to reduce pollutant loads.<sup>49</sup>

### ***Agricultural Operations***

Only lands that are used primarily for bona fide agricultural purposes are classified as agricultural in Florida.<sup>50</sup> The term “bona fide agricultural purposes” means good faith commercial agricultural use of the land. Certain factors may be taken into account in determining whether an agricultural operation is bona fide:

- The length of time the land has been used for agriculture;
- Whether the use has been continuous;
- The purchase price paid;
- Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment;
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices;
- Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease; and
- Other factors as may be applicable.<sup>51</sup>

### ***Industrial Wastewater Program***

In Florida, all wastewater that is not defined as domestic wastewater is considered industrial wastewater. The DEP’s Industrial Wastewater Program issues permits to facilities for activities that discharge to surface waters and ground waters of the state.<sup>52</sup> Industrial wastewater that

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<sup>47</sup> Florida Senate Committee on Environmental Preservation and Conservation, *CS/SB 754 Analysis* (Mar. 14, 2013), available at <http://flsenate.gov/Session/Bill/2013/0754/Analyses/2013s0754.pre.ep.PDF> (last visited Mar. 5, 2015).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Section 193.461(3)(b), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> DEP, *Wastewater Program: Industrial Wastewater*, <http://www.dep.state.fl.us/Water/wastewater/iw/index.htm> (last visited Mar. 5, 2015). Other operations that are considered sources of industrial wastewater include manufacturing, commercial

discharges to domestic wastewater treatment facilities, however, is regulated under a different program. The DEP is authorized by the EPA to issue permits for discharge to surface waters under the National Pollutant Discharge Elimination System (NPDES). Permits for discharge to ground waters are issued by the DEP under state statutes and rules. Industrial wastewater permits are issued by the district offices.

Two exceptions to the permits issued by the district offices are:

- NPDES permits for steam electric power plants, which are issued by the Industrial Wastewater Section in the Tallahassee office; and
- Industrial wastewater permitting for the phosphate industry, which is handled by the Phosphogypsum Management Section located in Tampa.<sup>53</sup>

### ***Best Management Practices on Agricultural Lands***

Agricultural BMPs are guidelines advising producers how to manage the water, nutrients, and pesticides they use to minimize agricultural impacts on Florida's natural resources. Agricultural activity is dependent on the application of fertilizer and pesticides and is linked to the contamination of watersheds with nutrients such as nitrogen and phosphorus. BMPs tend to cover four major areas, which overlap: nutrient management, or how producers use fertilizers; pest management, or how they use pesticides; water management, or how they use and discard water; and sediment management, or how they affect the sediments on and around their properties.<sup>54</sup>

BMPs reduce the amount of nutrients, sediments, and pesticides that enter the water system and help reduce water use. Because much of the state is built on limestone, which allows water to return relatively unfiltered to the aquifer, pollutants can enter the water supply quickly, endangering humans and ecosystems.<sup>55</sup>

The Department of Agriculture and Consumer Services (DACS) Office of Agricultural Water Policy is actively involved in developing BMPs. The DACS works cooperatively with agricultural producers, industry groups, the DEP, the state university system, the WMDs, and other interested parties to develop and implement BMP programs that are economically and technically feasible.<sup>56</sup>

### **Onsite Sewage Treatment and Disposal Systems (OSTDs)**

In Florida, septic systems are referred to as onsite sewage treatment and disposal systems. An OSTDS can contain any one of the following components: a septic tank; a subsurface drainfield; an aerobic treatment unit (ATU); a graywater tank; a laundry wastewater tank; a grease interceptor; a pump tank; a waterless, incinerating or organic waste-composting toilet; and a

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businesses, mining, agricultural production and processing, and wastewater from cleanup of petroleum and chemical contaminated sites.

<sup>53</sup> *Id.*

<sup>54</sup> University of Florida Institute of Food and Agricultural Sciences, *Best Management Practices*, [http://solutionsforyourlife.ufl.edu/hot\\_topics/agriculture/bmps.shtml](http://solutionsforyourlife.ufl.edu/hot_topics/agriculture/bmps.shtml) (last visited Mar. 5, 2015).

<sup>55</sup> *Id.*

<sup>56</sup> DACS, Office of Agricultural Water Policy, *Home Page* (Jan. 8, 2014), <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Water-Policy> (last visited Mar. 5, 2015).

sanitary pit privy.<sup>57</sup> Septic systems are located underground and treat sewage without the presence of oxygen. Sewage flows from a home or business through a pipe into the first chamber, where solids settle out. The liquid then flows into the second chamber where anaerobic bacteria in the sewage break down the organic matter, allowing cleaner water to flow out of the second chamber into a drainfield.<sup>58</sup> Engineers licensed in Florida may specially design OSTDSs to meet the needs of individual property owners. Engineer-designed OSTDS plans are subject to review by the local county health department and must be certified by the engineer as complying with all requirements pertaining to such system.<sup>59</sup>

The Department of Health (DOH) administers onsite sewage programs, develops statewide rules, and provide training and standardization for county health department employees responsible for issuing permits for the installation and repair of OSTDSs within the state.<sup>60</sup> The Bureau also licenses over 700 septic tank contractors and oversees 2.6 million onsite wastewater systems in Florida.<sup>61</sup>

The EPA concluded in its 1997 Report to Congress that “adequately managed decentralized wastewater systems are a cost-effective and long-term option for meeting public health and water quality goals, particularly in less densely populated areas.”<sup>62</sup> In Florida, development is dependent on OSTDSs due to the cost and time it takes to install central sewer systems. In rural areas and low-density developments, central sewer is not cost effective. Less than one percent of Florida systems are actively managed. The remainder are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.<sup>63</sup>

### ***Land Spreading of Septage***

Septage is defined as a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an OSTDS.<sup>64</sup> Approximately 100,000 septic tanks are pumped each year, generating 100 million gallons of septage requiring treatment and disposal.<sup>65</sup> The septage is treated and disposed of at a number of septage treatment facilities regulated by the DOH. When used for land application, the septage is stabilized by raising the pH to 12 for at least two hours

<sup>57</sup> DEP, *Wastewater: Septic Systems*, <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm> (last visited Mar. 5, 2015).

<sup>58</sup> EPA, *Primer for Municipal Wastewater Treatment Systems*, 22 (2004), available at [http://water.epa.gov/aboutow/owm/upload/2005\\_08\\_19\\_primer.pdf](http://water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf) (last visited Mar. 5, 2015).

<sup>59</sup> See Fla. Admin. Code R. 64E-6.003 (2013) and R. 64E-6.004 (2010).

<sup>60</sup> The DOH does not permit the use of onsite sewage treatment and disposal systems where the estimated domestic sewage flow from the establishment is over 10,000 gallons per day (gpd) or the commercial sewage flow is over 5,000 gpd; where there is a likelihood that the system will receive toxic, hazardous or industrial wastes; where a sewer system is available; or of any system or flow from the establishment is currently regulated by the DEP. The DEP issues the permits for systems that discharge more than 10,000 gpd.

<sup>61</sup> Hall, P. and Clancy, S.J., *Statewide Inventory of Onsite Sewage Treatment and Disposal Systems in Florida, Final Report*, 6 (June 29, 2009), available at <http://www.floridahealth.gov/healthy-environments/onsite-sewage/research/documents/research-reports/documents/inventory-report.pdf> (last visited Mar. 5, 2015).

<sup>62</sup> EPA, *Handbook for Managing Onsite and Clustered (Decentralized) Wastewater Treatment Systems*, 1 (Dec. 2005), available at [http://water.epa.gov/infrastructure/septic/upload/onsite\\_handbook.pdf](http://water.epa.gov/infrastructure/septic/upload/onsite_handbook.pdf) (last visited Mar. 26, 2015).

<sup>63</sup> DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, 1 (Oct. 2008) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>64</sup> Section 381.0065(2)(n), F.S.

<sup>65</sup> DOH, *Report on Alternative Methods for the Treatment and Disposal of Septage*, 1 (Feb. 2011), available at [http://pk.b5z.net/i/u/6019781/f/FINAL\\_REPORT\\_ON\\_ALTERNATIVE\\_METHODS\\_FOR\\_THE\\_TREATMENT\\_AND\\_DISPOSAL\\_OF\\_SEPTAGE\\_03282011\\_2\\_.pdf](http://pk.b5z.net/i/u/6019781/f/FINAL_REPORT_ON_ALTERNATIVE_METHODS_FOR_THE_TREATMENT_AND_DISPOSAL_OF_SEPTAGE_03282011_2_.pdf) (last visited Mar. 5, 2015).

or to a pH of 12.5 for 30 minutes.<sup>66</sup> The treated septage is then spread over land at DOH-regulated land application sites.<sup>67</sup> In addition to septage, onsite systems serving restaurants include tanks that separate grease from the sewage stream. The grease is collected, hauled, treated, and land applied similarly to septage. In 2011, there were 92 DOH-regulated land application sites that receive treated septage from 108 DOH-regulated septage treatment facilities. Approximately 40 percent of septage removed from septic tanks is treated at septage treatment facilities and then land applied.<sup>68</sup>

In 2010, the Legislature enacted ch. 2010-205, Laws of Florida., which prohibited the land application of septage from septic tanks effective January 1, 2016. In addition, the law required the DOH, in consultation with the DEP, to provide a report to the Governor and the Legislature recommending alternative methods to establish enhanced treatment levels for the land application of septage by February 1, 2011. The report provided several alternatives to the land application of septage as it is currently performed.<sup>69</sup>

#### Treatment of septage at domestic wastewater treatment facilities

Treating septage takes advantage of available wastewater treatment facilities' capacity while at the same time centralizing waste treatment operations. However, not all wastewater treatment facilities accept septage because it is a high strength waste, which has the potential to upset facilities' processes and may result in increased operation and maintenance requirements and costs. Furthermore, the distance between central facilities with available treatment capacity and the locations where septage is collected in rural areas can make transport to such facilities cost prohibitive.<sup>70</sup>

#### Disposal of septage at landfills

Acceptance of septage at Class I landfills has positive impacts because it increases microbial activity within the landfills and results in increased waste decomposition and more rapid waste stabilization. However, landfill instability may result due to disposal of the wet waste stream. Increased difficulty in operating compaction equipment may result due to creation of a slick working surface. Many landfills choose not to accept loads of septage, making land application sites one of the only available options for the disposal of septage.<sup>71</sup>

#### ***Advanced Treatment***

While most of Florida's OSTDSs are conventional OSTDSs, or passive septic systems, there are other advanced systems capable of providing additional or advanced treatment of wastewater prior to disposal in the drainfield. Advanced OSTDSs can utilize various approaches to improve treatment before discharge to a drainfield, or the drainfield itself can be modified. On occasion,

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<sup>66</sup> Fla. Admin. Code R. 64E-6.010(7)(a) (2013).

<sup>67</sup> See Fla. Admin. Code R. 64E-6.010 (2013).

<sup>68</sup> *Supra* note 65, at 2.

<sup>69</sup> *Supra* note 65, at 2.

<sup>70</sup> *Supra* note 65, at 2.

<sup>71</sup> *Supra* note 65, at 3.



engineers have included the drainfield as part of the treatment process, usually as a means to achieve fecal coliform reduction.<sup>72</sup>

Advanced systems differ in three respects from conventional treatment systems that consist of a septic tank with a drainfield. First, the design of advanced systems is more variable than the approach for conventional systems. Second, they need more frequent checkups and maintenance, which is the reason they require operating permits. Third, the performance expectations are more specific, while failures for advanced systems are less defined.<sup>73</sup> Advanced systems are significantly more expensive to purchase, install, and operate.

ATUs offer advanced treatment for wastewater. ATUs force compressed air through the liquid effluent in the tank to create a highly oxygenated (aerobic) environment for bacteria. Bacteria that thrive in oxygen-rich environments work to break down and digest the wastewater inside the ATU. Aerobic units come in a variety of sizes and shapes and can be made of concrete, fiberglass or polyurethane. They are designed to collect and treat all the water from a home, including water from toilets, showers, bathtubs, sinks, and laundry. There are as many as three stages that ATUs take wastewater through before the effluent is dispersed into the drainfield.<sup>74</sup>

## **Water Pollution Management**

### ***Urban Stormwater Management***

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface waters and groundwater. Factors that exacerbate unmanaged runoff include:

- Compaction of soil;
- Impervious surfaces such as roads and parking lots;
- Alteration of natural landscape features such as natural depression areas that hold water, floodplains, and wetlands;
- Construction of highly efficient drainage systems that alter the ability of the land to assimilate precipitation; and
- Pollutant loading of receiving water bodies from stormwater discharge.<sup>75</sup>

Urbanization within a watershed decreases the amount of rainwater that seeps into the soil. Rainwater is critical for recharging aquifers, maintaining water levels in lakes and wetlands, and maintaining spring and stream flows. The increased volume, speed, and pollutant loading in

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<sup>72</sup> DOH, Assessment of Water Quality Protection, *Advanced Onsite Sewage Treatment and Disposal Systems: Performance, Management, Monitoring, Draft Final Report*, 14 (August 19, 2013), available at <http://www.floridahealth.gov/healthy-environments/onsite-sewage/research/advancedostdsfinalreportdraft.pdf> (last visited Mar. 5, 2015).

<sup>73</sup> Prepared for DEP by DOH, Bureau of Onsite Sewage Programs, *Revised Quality Assurance Project Plan Assessment of Water Quality Protection by Advanced Onsite Sewage Treatment and Disposal Systems (OSTDS): Performance, Management, Monitoring*, 8 (Aug. 22, 2011) available at <http://www.floridahealth.gov/healthy-environments/onsite-sewage/research/ documents/final319qapp.pdf> (last visited Mar. 5, 2015).

<sup>74</sup> Florida Health, Lee County, *Aerobic Treatment Unit Homeowner Education*, <http://lee.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/permits/aerobic-treatment-units.html> (last visited Mar. 5, 2015).

<sup>75</sup> DEP, *State Stormwater Treatment Rule Development Background*, <http://www.dep.state.fl.us/water/wetlands/erp/rules/stormwater/background.htm> (last visited Mar. 5, 2015).

stormwater discharged from developed areas leads to flooding, water quality problems, and loss of habitat.<sup>76</sup>

In 1982, to manage urban stormwater and minimize impacts to natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for new development. The rule included a performance standard for the minimum level of treatment and design criteria for BMPs to achieve the performance standard. It also included a rebuttable presumption that discharges from a stormwater management system would meet WQSs when designed in accordance with the BMP design criteria.<sup>77</sup> The performance standard was to reduce post-development stormwater pollutant loading of total suspended solids<sup>78</sup> by 80 percent, or by 95 percent for Outstanding Florida Waters.<sup>79</sup>

In 1990, the DEP developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).<sup>80</sup> This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of the DEP, the WMDs, and local governments. One of the primary goals of the program is to maintain the predevelopment stormwater characteristics of a site. The rule sets a minimum performance standard for stormwater treatment systems to remove 80 percent of the post-development stormwater pollutants "that cause or contribute to violations of WQSs."<sup>81</sup>

The DEP and the WMDs jointly administer the Environmental Resource Permitting (ERP) program for activities that alter surface water flows.<sup>82</sup> Alteration or construction of new stormwater management systems in urban redevelopment areas is regulated by the ERP program pursuant to s. 373.413, F.S., and must comply with all other relevant sections of Part IV of ch. 373, F.S.

### ***Wastewater Treatment Plants***

Wastewater treatment is one of the most common forms of pollution control in the United States. Sewerage system components include collection sewers, pumping stations, and treatment plants. Sewage is collected and sent to a treatment plant to remove solids and biological contaminants. Once sewage has been treated, it is typically discharged into streams and other receiving waters, or reused.<sup>83</sup>

The basic function of wastewater treatment is to speed up natural processes by which water is purified. Typically, sewage is treated by primary and secondary processes. In the primary stage,

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Total Suspended Solids is listed as a conventional pollutant under s. 304(a)(4) of the CWA. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

<sup>79</sup> Fla. Admin. Code R. 62-302.700 (2006), provides that an Outstanding Florida Water is a designated water body worthy of special protection because of its natural attributes. This special designation is applied to certain water bodies, and is intended to protect and preserve their existing states.

<sup>80</sup> *Supra* note 75. *See generally* Fla. Admin. Code R. 62-40.

<sup>81</sup> *Supra* note 75.

<sup>82</sup> Chapter 373, Part IV, F.S. *See also* DEP, *Environmental Resource Permitting (ERP) Program*, <http://www.dep.state.fl.us/water/wetlands/erp/index.htm> (last visited Mar. 5, 2015).

<sup>83</sup> U.S. Environmental Protection Agency, Office of Water, *How Wastewater Treatment Works: The Basics*, Report no. 833-F-98-002, 1 (May 1998), available at <http://www.epa.gov/npdes/pubs/bastre.pdf> (last visited Mar. 5, 2015).

solids are allowed to settle and are removed from the wastewater. The secondary stage uses biological processes to further purify wastewater.<sup>84</sup>

Limits in Florida for effluent to surface water from wastewater treatment plants are required to contain no more than 20 mg/L carbonaceous biochemical oxygen demand (CBOD5)<sup>85</sup> and 20 mg/L total suspended solids (TSS)<sup>86</sup>, or 90 percent removal of each from the wastewater influent, whichever is more stringent.<sup>87</sup> There are other limits depending on where the effluent is being discharged.

### ***Advanced Wastewater Treatment***

Advanced wastewater treatment (AWT) systems perform additional treatment beyond secondary treatment. AWT can remove more than 99 percent of all impurities from sewage, producing an effluent that may be drinking-water quality. The related technology can be expensive, requiring a high level of technical expertise and well trained treatment plant operators, a steady energy supply, chemicals, and specific equipment that may not be readily available. An example of an AWT process is the modification of a conventional secondary treatment plant to remove additional phosphorus and nitrogen. The effluent standards for AWT on an annual average basis are:

- CBOD5 – 5 mg/L;
- Suspended solids – 5 mg/L;
- Total nitrogen – 3 mg/L;
- Total phosphorus – 1 mg/L; and
- High levels of disinfection.<sup>88</sup>

### ***Biosolids***

Biosolids are the solid, semisolid, or liquid residue generated during the biological wastewater treatment process. Florida generates approximately 320,000 dry tons of biosolids annually. Biosolids are normally high in organic content and contain moderate amounts of nutrients such as nitrogen and phosphorus, making them valuable as a fertilizer or soil amendment.<sup>89</sup> They may be used beneficially or disposed of in landfills.<sup>90</sup>

Biosolids are classified as AA, A, or B. AA biosolids are considered the highest quality biosolids. They must be treated to a level that essentially eliminates pathogens and meets strict concentration limits for heavy metals. They may be used as fertilizer through commercial distribution and marketing.<sup>91</sup> Class A biosolids are biosolids that meet the same pathogen reduction requirements as Class AA biosolids, meet the same vector attraction (meaning the attraction of disease spreading animals) requirements as Class B biosolids, and meet a series of

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<sup>84</sup> *Id.*

<sup>85</sup> For more information on CBOD5, see Fla. Admin. Code R. 62-601.200(5) (1996).

<sup>86</sup> For more information on TSS, see Fla. Admin. Code R. 62-601.200(54) (1996).

<sup>87</sup> Fla. Admin. Code R. 62-600.420 (1993).

<sup>88</sup> Section 403.086(4), F.S.

<sup>89</sup> DEP, *Biosolids in Florida: 2012 Summary*, 1 (Dec. 2013), available at <http://www.dep.state.fl.us/water/wastewater/dom/docs/BiosolidsFlorida-2012-Summary.pdf> (last accessed Mar. 5, 2015).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

concentration limits for nine different elements.<sup>92</sup> Class B biosolids must be treated to significantly reduce pathogens and must meet certain concentration limits for heavy metals. Application rates are limited to crop nutrient needs. They are subject to site application restrictions and restrictions on harvesting, grazing, and public access. Also, cumulative heavy metals must be tracked for Class A and B biosolids; however, in Florida, land applied biosolids are almost exclusively Class B. In 2012, approximately 108,272 dry tons of Class B biosolids were land applied.<sup>93</sup>

### **Minimum Flows and Levels (MFLs)**

MFLs are established for water bodies in order to prevent significant harm to the water resources or ecology of an area as a result of water withdrawals. MFLs are typically determined based on evaluations of topography, soils, and vegetation data collected within plant communities and other pertinent information associated with the water resource. MFLs take into account the ability of wetlands and aquatic communities to adjust to changes in hydrologic conditions and allow for an acceptable level of hydrologic change to occur. When uses of water resources shift the hydrologic conditions below levels defined by MFLs, significant ecological harm can occur.<sup>94</sup> The goal of establishing an MFL is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource.<sup>95</sup> Consumptive uses of water draw down water levels and reduce pressure in the aquifer.<sup>96</sup> By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating a new consumptive use permit (CUP) application.<sup>97</sup>

Section 373.042, F.S., requires the DEP or WMDs to establish MFLs for priority water bodies to prevent significant harm from water withdrawals. While the DEP has the authority to adopt MFLs under ch. 373, F.S., the WMDs have the primary responsibility for MFL adoption. The WMDs submit annual MFL priority lists and schedules to the DEP for review and approval. MFLs are considered rules by the WMDs and are subject to ch. 120, F.S., challenges. MFLs are established using the best available data and are subject to independent scientific peer review at the election of the WMD, or, if requested, by a third party.<sup>98</sup>

MFLs apply to decisions affecting permit applications, declarations of water shortages, and assessments of water supply sources. Computer water budget models for surface waters and groundwater are used to evaluate the effects of existing and/or proposed consumptive uses and the likelihood they might cause significant harm. The WMD governing boards are required to develop recovery or prevention strategies in those cases where a water body or watercourse

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<sup>92</sup> Fla. Admin. Code R. 62-640.200(9) (2010).

<sup>93</sup> *Supra* note 89.

<sup>94</sup> SJRWMD, *Water Supply: An Overview of Minimum Flows and Levels*, <http://www.sjrwmd.com/minimumflowsandlevels/> (last visited Mar. 5, 2015).

<sup>95</sup> DEP, *Minimum Flows and Levels*, <http://www.dep.state.fl.us/water/waterpolicy/mfl.htm> (last visited Mar. 5, 2015).

<sup>96</sup> *Supra* note 28, at 3-5.

<sup>97</sup> Florida Senate Committee on Environmental Preservation and Conservation, *SB 244 Analysis*, 2 (Feb. 22, 2013), available at <http://flsenate.gov/Session/Bill/2013/0244/Analyses/2013s0244.ep.PDF> (last visited Mar. 5, 2015).

<sup>98</sup> *Id.*

currently does not or is anticipated to not meet an established MFL. Water uses cannot be permitted that cause any MFL to be violated.<sup>99</sup>

Prior to the passage of the Water Resources Act in 1972,<sup>100</sup> MFLs were defined in statute:

- Average minimum flow - the average of the five lowest monthly mean discharge for each month, January through December, occurring during the past twenty years of natural flow. The determination was based on available flow data or in the absence of such data, it was established by reasonable calculations; and
- Average minimum level - the average of the minimum thirty days lake water level occurring during each of the five years of lowest levels in the period of the preceding twenty consecutive years. The determination was based upon available lake level data, supplemented when available by reasonable calculations.<sup>101</sup>

The Water Resources Act of 1972 changed the way minimum flows and minimum levels were defined:

- The minimum flow for a given watercourse is the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area; and
- The minimum water level is the level of ground water in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.<sup>102</sup>

The ecology of groundwater resources was thought to be non-existent at the time of the 1972 act.

### **Consumptive Use Permits (CUP)**

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

- Be a “reasonable-beneficial use” as defined in s. 373.019(16), F.S.;
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.

### **Consolidated Water Management District Annual Reports**

Each WMD must prepare and submit to the DEP, the Governor, the President of the Senate, and the Speaker of the House of Representatives a consolidated water management district annual report on the management of water resources. Copies of the report are available to the public.<sup>103</sup>

The report must contain:

<sup>99</sup> *Supra* note 94.

<sup>100</sup> Chapter 72-299, Laws of Fla.

<sup>101</sup> Section 373.081, F.S. (1971).

<sup>102</sup> *Supra* note 100.

<sup>103</sup> Section 373.036(7)(a), F.S.

- A district water management plan annual report. Alternatively, it may contain the annual work plan report,<sup>104</sup> which details the implementation of the strategic plan for the previous fiscal year, addressing success indicators, deliverables, and milestones;<sup>105</sup>
- The DEP approved MFLs annual priority list and schedule;
- The annual five-year capital improvements plan;
- The alternative water supplies annual report;
- The final annual five-year water resource development work program;
- The Florida Forever Water Management District Work Plan annual report;
- The mitigation donation annual report; and
- Any additional information the WMD deems appropriate.

Additionally, the South Florida WMD must include the:

- Lake Okeechobee Protection Program annual progress report;
- Everglades annual progress reports;
- Everglades restoration annual report; and
- Everglades Trust Fund annual expenditure report.<sup>106</sup>

### **Rural Areas of Opportunity**

Rural areas of opportunity are rural communities and regions composed of rural communities designated by the Governor that have been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster, or that presents a unique economic development opportunity of regional impact.<sup>107</sup>

Rural communities are defined as:

- Counties with a population of 75,000 or fewer;
- Counties with a population of 125,000 or fewer that are contiguous to a county with a population of 75,000 or fewer;
- Designated municipalities within a county that meet the thresholds of the two previous criteria; or
- An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or less and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified below:<sup>108</sup>
  - Low per capita income;
  - Low per capita taxable values;
  - High unemployment;
  - High underemployment;
  - Low weekly earned wages compared to the state average;
  - Low housing values compared to the state average;
  - High percentages of the population receiving public assistance;

<sup>104</sup> Section 373.036(7)(b)1., F.S.

<sup>105</sup> Section 373.036(2)(e)4., F.S.

<sup>106</sup> Section 373.036(7), F.S.

<sup>107</sup> Section 288.0656(2)(d), F.S.

<sup>108</sup> Section 288.0656(2)(e), F.S.

- High poverty levels compared to the state average; and
- A lack of year-round stable employment opportunities.<sup>109</sup>

### **Northern Everglades and Estuaries Protection Program**

In 2000, the Legislature passed the Lake Okeechobee Protection Act (LOPA), which established a restoration and protection program for the lake. In 2007, the Legislature amended the LOPA,<sup>110</sup> which is now known as the Northern Everglades and Estuaries Protection Program (NEEPP). The NEEPP promotes a comprehensive, interconnected watershed approach to protect Lake Okeechobee and the Caloosahatchee and St. Lucie Rivers. It includes the Lake Okeechobee, Caloosahatchee River, and the St. Lucie River Watershed Protection Programs.<sup>111</sup>

The plans developed under the NEEPP for each of the three Northern Everglades watersheds identify actions to help achieve water quality and water quantity objectives for the watersheds and to restore habitat. Water quality objectives are based on TMDLs developed by the DEP. The TMDL for Lake Okeechobee is 140 metric tons of total phosphorus per year, of which 105 metric tons can come from the watershed tributaries and 35 metric tons can come from atmospheric deposition.<sup>112</sup>

The South Florida Water Management District (SFWMD), in cooperation with the DACS and the DEP, collectively known as the coordinating agencies, developed the Lake Okeechobee Watershed Protection Plan (LOWPP), which is reevaluated every three years pursuant to NEEPP. The LOWPP's three main components are the:

- Lake Okeechobee Watershed Construction Project, which includes the Phase I and Phase II Technical Plans;
- Lake Okeechobee Watershed Phosphorus Control Program; and
- Lake Okeechobee Watershed Research and Water Quality Monitoring Program.

It also includes the Lake Okeechobee Exotic Species Control Program and the Lake Okeechobee Internal Phosphorus Management Program.<sup>113</sup>

Section 373.4595, F.S., describes the purposes of the five programs. The Lake Okeechobee Watershed Construction Project improves the hydrology and water quality of Lake Okeechobee and downstream receiving waters, including the Caloosahatchee and St. Lucie Rivers and Estuaries. The Lake Okeechobee Phosphorus Control Program is designed to be a multifaceted approach to reducing phosphorus loads by improving the management of phosphorus sources within the Lake Okeechobee watershed. The Lake Okeechobee Watershed Research and Water Quality Monitoring Program assesses sources of phosphorus, evaluates the feasibility of alternative nutrient reduction technologies, and evaluates water quality data. The Lake

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<sup>109</sup> Section 288.0656(2)(c), F.S.

<sup>110</sup> Chapter 2007-253, LAWS of Fla.

<sup>111</sup> SFWMD, *2014 South Florida Environmental Report: Lake Okeechobee Watershed Protection Program Annual and Three-Year Update*, 8-2 (2014), available at [http://my.sfwmd.gov/portal/page/portal/pg\\_grp\\_sfwmd\\_sfer/portlet\\_prevreport/2014\\_sfer/v1/chapters/v1\\_ch8.pdf](http://my.sfwmd.gov/portal/page/portal/pg_grp_sfwmd_sfer/portlet_prevreport/2014_sfer/v1/chapters/v1_ch8.pdf) (last visited Mar. 26, 2015).

<sup>112</sup> *Id.* at 8-10.

<sup>113</sup> *Id.* at 8-10.

Okeechobee Internal Phosphorus Management Program addresses phosphorus removal. Lastly, the Lake Okeechobee Watershed Research and Water Quality Monitoring Program assesses sources of phosphorus, evaluates the feasibility of alternative nutrient reduction technologies, and evaluates water quality data.

### **Lake Okeechobee Basin Management Action Plan**

The Lake Okeechobee BMAP was adopted in December 2014. For the first phase of the BMAP, the DEP is focusing on project implementation in the following six sub-watersheds north of the lake:

- The Upper Kissimmee;
- The Lower Kissimmee;
- Taylor Creek/Nubbin Slough;
- Lake Istokpoga;
- Indian Prairie; and
- Fisheating Creek.<sup>114</sup>

The anticipated outcomes of the BMAP's implementation are:

- Improvements in water quality trends in the Lake Okeechobee Watershed;
- Decreased loading of total phosphorus and total nitrogen;
- Decreased loading of total phosphorus and total nitrogen to the St. Lucie and Caloosahatchee Estuaries;
- Increased coordination between state and local governments to achieve surface water quality restoration;
- Determination of effective projects through the stakeholder decision-making and priority-setting processes;
- Enhanced public awareness of stormwater runoff, pollutant sources, pollutant impacts on water quality, and corresponding corrective actions; and
- Enhanced understanding of basin hydrology, water quality, pollutant sources, and legacy loads.

The DEP states the plan will reduce total phosphorus entering the lake by 33 percent over the next 10 years.<sup>115</sup>

### **The Caloosahatchee and St. Lucie River Watershed Protection Programs**

The Caloosahatchee and St. Lucie River Watershed Protection programs are designed to protect and restore surface water resources by addressing the reduction of pollutant loadings, restoration of natural hydrology, and compliance with applicable state water quality standards through a phased program. The program objective is to reduce pollutant loads based upon adopted TMDLs.

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<sup>114</sup> DEP, *Basin Management Action Plan for the Implementation of Total Maximum Daily Loads for Total Phosphorus*, xii (Dec. 2014), available at <http://www.dep.state.fl.us/water/watersheds/docs/bmap/LakeOkeechobeeBMAP.pdf> (last accessed Mar. 26, 2015).

<sup>115</sup> DEP, *DEP Adopts Restoration Plan for Lake Okeechobee*, (Dec. 16, 2014), <https://depnewsroom.wordpress.com/2014/12/24/dep-adopts-restoration-plan-for-lake-okeechobee/> (last visited Mar. 16, 2015).



Both the Caloosahatchee and St. Lucie River Watershed Protection Plans consist of a river watershed construction project, a watershed pollutant control program, and watershed research and water quality monitoring program.<sup>116</sup> To address nutrient pollution in the Caloosahatchee and St. Lucie Watersheds, the DEP adopted the Caloosahatchee Estuary BMAP in November 2012, and the St. Lucie River and Estuary BMAP in May 2013. The BMAP for the upper Caloosahatchee River watershed is under development.

### **Central Florida Water Initiative (CFWI)**

The areas encompassed by the CFWI Planning Area, which consists of all of Orange, Osceola, Seminole, and Polk counties and southern Lake County, have traditionally relied on groundwater from the Floridan aquifer system as the primary source of water. The three WMDs serving the area are the SFWMD, the Southwest Florida Water Management District (SWFWMD), and the St. Johns River Water Management District (SJRWMD).<sup>117</sup>

In the past, the three WMDs worked independently to resolve water resource issues, but the decisions of one district can affect the water resources of another. Currently, the WMDs are working collaboratively with other agencies and stakeholders to implement consistent water resource planning, development, and management through the CFWI. However, each WMD currently relies on its own existing criteria to review CUP applications, which leads to inconsistencies and confusion as it relates to permit applications for projects that overlap multiple WMD boundaries.<sup>118</sup>

In 2006, the three WMDs agreed to a Central Florida Coordination Area Action Plan to address the near-term and long-term development of water supplies in the central Florida region.<sup>119</sup> Phase I of the action plan created a framework to deal with the short-term water resource issues and concluded with interim water use regulations limiting groundwater withdrawals to projected 2013 demands and required development of alternative water supplies for future needs. The interim Central Florida Coordination Area rules expired on December 31, 2013, and additional rules specific to the Central Florida Coordination Area have not been promulgated.<sup>120</sup>

Phase II of the action plan began in 2009. The initial objective was to establish new rules prior to the December 31, 2013, sunset date and to implement a long-term approach to water resource management in central Florida. Phase II of the action plan involved coordinated activities on a variety of issues including:

- Regional water supply planning;
- Investigations and development of traditional and alternative water supply projects;

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<sup>116</sup> SFWMD, *2014 South Florida Environmental Report: Lake Okeechobee Watershed Protection Program Annual and Three-Year Update*, App. 10-2-3 (2012), available at [http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd\\_repository\\_pdf/crwpp\\_2012update\\_sfer\\_voli\\_app10\\_2.pdf](http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/crwpp_2012update_sfer_voli_app10_2.pdf) (last visited Mar. 26, 2015).

<sup>117</sup> Central Florida Water Initiative, *An Overview*, [http://cfwiwater.com/pdfs/2012/06-28/CFWI\\_Overview\\_fact\\_sheet.pdf](http://cfwiwater.com/pdfs/2012/06-28/CFWI_Overview_fact_sheet.pdf) (last accessed Mar. 16, 2015).

<sup>118</sup> *Id.*

<sup>119</sup> Central Florida Water Initiative, *Central Florida Water Initiative Guiding Document*, 2 (Jan. 30, 2015), available at [http://cfwiwater.com/pdfs/CFWI\\_Guiding\\_Document\\_2015-01-30.pdf](http://cfwiwater.com/pdfs/CFWI_Guiding_Document_2015-01-30.pdf) (last visited Mar. 26, 2015).

<sup>120</sup> *Id.*

- Assessment of environmental impacts and groundwater sustainability; and
- Development of water use rules and permitting criteria.<sup>121</sup>

The main planning tool for the Phase II process was the development and calibration of the necessary hydrologic models to determine the sustainability of the groundwater supplies. The Phase II process was suspended, however, because of the complexity of the effort and the desire for consensus among stakeholders. Because of those problems, the Phase II effort did not meet the rulemaking deadlines prior to expiration of the interim rule. Additionally, because of the economic downturn in central Florida, the need for and use of permitted water demands in 2013 was lower than expected.<sup>122</sup>

To address the limitations of the 2006 Central Florida Coordination Area Action Plan schedule and still fulfill the overarching objectives outlined in that plan, the CFWI was created in 2011. The CFWI builds on the work of the Central Florida Coordination Area. Both efforts focus on an area that includes all of Orange, Osceola, Seminole, and Polk counties, and southern Lake County. The three affected WMDs, along with the DEP, the DACS, regional public water supply utilities, and other stakeholders are collaborating to develop a unified process to address central Florida's current and long-term water supply needs.<sup>123</sup> It is led by a steering committee comprised of:

- A public water supply utility representative;
- One designated governing board member from each of the WMDs;
- A representative from the DEP; and
- A representative from the DACS.<sup>124</sup>

The guiding principles of the CFWI are:

- Identify the sustainable quantities of traditional groundwater sources available for water supply that can be used without causing unacceptable harm to the water resources and associated natural systems;
- Develop strategies to meet water demands that are in excess of the sustainable yield of existing traditional groundwater sources, implement demand management, and identify alternative water supplies that can be permitted and will be implemented as demands approach the sustainable yield of existing sources; and
- Establish consistent rules and regulations for the three WMDs that meet the goals of the CFWI.<sup>125</sup>

The goals of the CFWI are:

- One hydrologic model;
- A uniform definition of harm;
- One reference condition;
- A process for permit reviews;
- A consistent process, where appropriate, to set MFLs and reservations; and

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 3.

<sup>123</sup> *Id.* at 3.

<sup>124</sup> *Id.* at 5.

<sup>125</sup> *Id.* at 5

- A coordinated regional water supply plan, including any needed recovery and prevention strategies.<sup>126</sup>

### **Works of the District Permits**

The Works of the District rule<sup>127</sup> was implemented in 1989. The scope of the original rule was to implement the Surface Water Improvement and Management Plan for Lake Okeechobee, which was designed to reduce loading to Lake Okeechobee to 397 tons of phosphorus per year. In 2000, the passage of the Lake Okeechobee Protection Act required landowners in the Lake Okeechobee watershed to either implement BMPs or monitor to demonstrate compliance with the Works of the District program.

In Lake Okeechobee, a Works of the District permit is required if an entity owns a parcel of land half an acre or greater within a Lake Okeechobee Drainage Basin that connects to or makes use of the Works of the District within the Lake Okeechobee Drainage Basin. The land areas and uses subject to the permits are described in Rules 40E-61.041 and 40E-61.042, F.A.C., both of which relate to permits required in the Lake Okeechobee Drainage Basin. Works of the District Permits are also required for activities in the Everglades Agricultural Area and the C-139 Basin. Rules concerning permits in the Everglades Agricultural Area may be found in Rule 40E-63, F.A.C.

### **The Harris Chain of Lakes Restoration Council**

The Harris Chain of Lakes is located north and west of the Orlando metropolitan area and is in Lake and Orange counties.<sup>128</sup> It contains tens of thousands of acres of lakes and wetlands and is at the headwaters of the Ocklawaha River.<sup>129</sup>

The council was created by the Legislature in 2001 and consists of nine voting members. The members are:

- A representative of waterfront property owners;
- A representative of the sport fishing industry;
- An environmental engineer;
- A person with training in biology or another scientific discipline;
- A person with training as an attorney;
- A physician;
- A person with training as an engineer; and
- Two residents of Lake County appointed by the Lake County legislative delegation who do not meet any of the other qualifications for membership on the council.<sup>130</sup>

The council's duties are to:

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<sup>126</sup> *Id.* at 5

<sup>127</sup> Fla. Admin. Code R. 40E-61.

<sup>128</sup> Harris Chain of Lakes Restoration Council, *Where is the Harris Chain of Lakes and What Does the Restoration Council Do?*, <http://harrischainoflakescouncil.com/> (last visited Apr. 8, 2015).

<sup>129</sup> *Id.*

<sup>130</sup> Section 373.467, F.S.

- Review audits and all data related to lake restoration techniques and sport fish population recovery strategies;
- Evaluate whether additional studies are needed;
- Explore all possible sources of funding to conduct the restoration activities; and
- Report to the President of the Senate and the Speaker of the House of Representatives yearly before November 25 on the progress of the Harris Chain of Lakes restoration program and provide any recommendations for the next fiscal year.<sup>131</sup>

The council works with an advisory group composed of one representative from:

- The St. Johns River Water Management District, which also provides staff for the council;
- The DEP;
- The Department of Transportation;
- The Fish and Wildlife Conservation Commission;
- The Lake County Water Authority;
- The U.S. Army Corps of Engineers; and
- The University of Florida.<sup>132</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 259.032, F.S., to require the Department of Environmental Protection (DEP) to develop, publish, update, and maintain a database of state conservation and recreation lands that allow public access. The bill requires the database to be available online by July 1, 2016.

The database must include, at a minimum:

- The location of the lands;
- The types of allowable recreational opportunities;
- The points of public access;
- Facilities or other amenities; and
- Land use restrictions.

The DEP is to include any additional information that is appropriate to increase the public awareness of recreational opportunities on conservation lands. The database must be electronically accessible, searchable, and downloadable in a generally acceptable format.

The bill directs the DEP, through its own efforts or in partnership with a third party, to create a downloadable mobile application to locate state lands available for public access using the user's current location or activity of interest. The database and application must include information for all publicly accessible state conservation lands that serve a recreational purpose.

The bill requires that beginning January 1, 2018, to the greatest extent practicable, the database must include similar information for recreational lands with public access that are owned by the federal and local governments.

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

The bill requires the DEP to submit a report by January 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives, describing the percentage of public lands with public access acquired under s. 259.032, F.S., and efforts taken by the DEP to increase public access to such lands.

**Section 2** amends s. 260.0144 F.S., to specify the Shared-Use Nonmotorized Trail (SunTrail) Network is not included in the sponsorship provisions of state greenways and trails under s. 260.0144, F.S.

The bill removes the Florida Keys Overseas Heritage Trail, the Blackwater Heritage Trail, the Tallahassee-St. Marks Historic Railroad State Trail, the Nature Coast State Trail, the Withlacoochee State Trail, the General James A. Van Fleet State Trail, and the Palatka-Lake Butler State Trail trails from the sponsorship provisions under s. 260.0144, F. S. They are addressed in section 6 of the bill.

**Section 3** amends s. 335.065, F.S., to remove the Florida Department of Transportation's (FDOT) authority to enter contracts for commercial sponsorship of multiuse trails. The authority to enter into contracts for commercial sponsorship of multiuse trails is addressed in section 6 of the bill.

**Section 4** creates s. 339.81, F.S., to establish the SunTrail as a component of the Florida Greenways and Trails System (FGTS) established in ch. 260, F.S. The network consists of multiuse trails or shared use paths that are independent of motor vehicle traffic.

The bill provides legislative findings:

- Increasing demands continue to be placed on the state's transportation system;
- Significant challenges exist in providing additional capacity to the conventional transportation system and require alternative travel modes; and
- Improving bicyclist and pedestrian safety for both residents and visitors remains a high priority.

Provides the legislative declaration that the development of a nonmotorized trail network will increase mobility and recreational alternatives that enrich quality of life, enhance safety, and that reflect responsible environmental stewardship.

Provides the legislative intent, that the FDOT should make use of its expertise to develop the SunTrail network to access a variety of origins and destinations with limited exposure to motorized vehicles.

The bill specifies that SunTrails are constructed with asphalt, concrete, or another hard surface, and by the virtue of the design, location, extent of connectivity or potential connectivity, and allowable uses, provide nonmotorized transportation opportunities for bicyclists and pedestrians between and within many points of origin and destinations including, but not limited to, communities, conservation areas, state parks, beaches, and other natural or cultural attractions for a variety of trip purposes including work, school, shopping, social, recreational, and personal fitness purposes.

The SunTrail components do not include sidewalks, nature trails, or loop trails in a single park or natural area, or on-road facilities, other than:

- On-road facilities that are no greater than one-half mile in length connecting two or more nonmotorized trails, if the provision of the non-road facility is unfeasible and if the on-road facility is signed and marked for nonmotorized use; and
- On-road components of the Florida Keys Overseas Heritage Trail.

The bill requires the FDOT to include SunTrail projects within the five-year work program. The FDOT and other agencies and units of government are authorized to expend funds and accept gifts and grants of funds, property, and property rights for the development of the SunTrail network. The FDOT is required to allocate \$50 million per year to fund and maintain projects within the network. The FDOT is authorized to enter into memoranda of agreement with other governmental entities and may contract with private entities to provide maintenance services on individual components of the network. The FDOT is authorized to adopt rules to assist in developing and maintaining the network.

**Section 5** creates s. 339.82, F.S., to direct the FDOT to develop the SunTrail Network Plan in coordination with the DEP, metropolitan planning organizations, local governments, other public agencies, and the Florida Greenways and Trails Council. The plan must be consistent with the FGTS plan developed under s. 260.014, F.S., and be updated at least once every five years. The SunTrail plan must include:

- A needs assessment, including a comprehensive inventory of existing facilities;
- A process that prioritizes projects that:
  - Are identified by the Florida Greenways and Trails Council as priority projects under ch. 260, F.S.;
  - Connect components by closing gaps in the network; and
  - Maximize use of federal, local, and private funds.
- A map showing existing and planned facilities;
- A finance plan in five and 10-year cost-feasible increments;
- Performance measures focusing on trail access and connectivity;
- A timeline for completion of the base network; and
- A marketing plan prepared in conjunction with the Florida Tourism Industry Marketing Corporation.

**Section 6** creates s. 339.83, F.S., to provide for sponsorship of SunTrail components by not-for-profit or private sector entities. The bill provides guidance on sponsor signs, pavement markings, and exhibits on nonmotorized trails and related facilities constructed as part of the SunTrail network.

The bill authorizes concession agreements to provide for recognition of trail sponsors in any brochure, map, or website providing trail information. The bill also allows trail websites to provide links to sponsors. Revenue from the agreements may be used for the maintenance of the nonmotorized trails and the related facilities.

The bill requires the concession agreements to be administered the FDOT. The signage, pavement markings, or exhibits must comply with s. 337.407, F.S., and ch. 479, F.S., and are limited as follows:

- A large sign, pavement marking, or exhibit may not be greater than 16 square feet in area and may be located at the trailhead or parking area;
- A small sign, pavement marking, or exhibit may not be greater than four square feet in area and may be located at the designated trail access point where parking is not provided;
- The pavement markings denoting specified distances must be located at least one mile apart;
- Prior to installation, the sign, pavement marking, or exhibit must be approved by the FDOT;
- The FDOT must ensure:
  - The size, color, materials, construction, and location of the signs are consistent with the management plan of the property and the standards of the DEP or the FDOT;
  - The signs do not intrude on natural and historic settings; and
  - The signs only contain the logo selected by the sponsor and the wording: “(Name of the sponsor)...proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)”;
- Exhibits may provide additional information and materials including, but not limited to, maps and brochures for trail user services related to or in the vicinity of the trail;
- Pavement markings may display mile marker information; and
- All costs associated with a sign, pavement marking, or exhibit must be the responsibility of the concessionaire.

The bill limits the concession agreement to one year unless extended by a multiyear agreement and the FDOT may terminate the agreement for just cause with 60 days advance notice to the concessionaire.

The bill authorizes the FDOT to contract for the provision of services related to the trail sponsorship program including recruitment and qualifications of businesses, review of applications, permit issuance, and fabrication, installation, and maintenance of signs, pavement markings, and exhibits. The FDOT is authorized to reject proposals and to seek other requests for proposals or otherwise perform the work. The contract may allow the contractor to retain a portion of the annual fees as compensation for services.

The bill does not create a proprietary or compensable interest in any sponsorship site and the FDOT may terminate permits or change locations of sponsorship sites as it deems necessary.

The FDOT is authorized to adopt rules to establish the requirements for qualification of businesses, qualification and location of sponsorship sites, permit application and processing, and any rules necessary to implement the criteria of the section.

The bill allows the FDOT to provide variances when necessary to serve the interest of the public or when required to ensure equitable treatment of program participants.

**Section 7** amends s. 373.019, F.S., to amend the definition of “water resource development” to add “self-suppliers” to the list of entities that may receive technical assistance as long as such assistance is consistent with the declaration of policy in s. 373.016, F.S.

**Section 8** amends s. 373.036, F.S., to provide additional information to be included in the Consolidated Water Management District Annual Report. The information required is related to all water quality or water quantity projects as part of a five-year work program. The following must be included:

- All projects identified to implement a Basin Management Action Plan (BMAP) or recovery or prevention strategy;
- Priority ranking of each listed project, for which state funding through the water resources work program is requested, which must be available for public comment at least 30 days before submission of the consolidated annual report;
- Estimated cost of each project;
- Estimated completion date for each project;
- Source and amount of financial assistance that will be made available by the DEP, a water management district (WMD), or some other entity for each project; and
- A quantitative estimate of each project's benefit to the watershed, water body, or water segment in which it is located.
- A grade for each watershed, water body, or water segment where a project is located representing the level of impairment and violations of adopted or interim minimum flow or minimum water level. The system must reflect the severity of the impairment.

**Section 9** creates s. 373.037, F.S., to provide for a pilot program for alternative water supply development in restricted allocation areas.

The bill provides definitions for:

- Central Florida Water Initiative Area;
- Lower East Coast Regional Water Supply Planning Authority;
- Restricted Allocation Area;
- Southern Water Use Caution Area; and
- Upper East Coast Regional Water Supply Planning Area.

The bill provides legislative findings:

- There are significant challenges to securing funds for implementing large-scale alternative water supply projects in certain restricted allocation areas;
- These challenges have resulted in the failure to:
  - Achieve minimum flows and levels (MFLs);
  - Mitigate and avoid harm to the water resources and related natural systems;
  - Provide adequate water supply for all existing and projected reasonable-beneficial uses; and
  - Sustain the water resources and related natural systems within certain restricted allocation areas;
- These factors make it necessary for the South Florida Water Management District (SFWMD), the Southwest Florida Water Management District (SWFWMD), and the St. Johns River Water Management District (SJRWMD) to each take the lead in developing and implementing one alternative water supply project within a restricted allocation area as a pilot alternative water supply development project;



- The traditional role of local governments, regional water supply authorities, and government-owned and privately owned water utilities will be maintained by requiring the WMDs to turn over ownership and control of a pilot project to the project participants if they can secure the funds to implement the pilot project and resolve any governance issues over the development, implementation, and operation of the pilot project;
- The development and implementation of one alternative water supply project each by the SFWMD, SWFWMD, and the SJRWMD within restricted allocation areas as pilot projects is for the benefit of the public health, safety, and welfare and is in the public interest.
- The pilot projects must provide water supply and environmental benefits; and
- Consideration shall be given to projects that provide reductions in damaging discharges to tide or are part of a recovery or prevention strategy for MFLs.

The bill requires the SFWMD, SWFWMD, and the SJRWMD to each designate and implement an existing alternative water supply project, or amend its regional water supply plan, to add a new alternative water supply project as its one pilot project.

The bill provides a deadline of July 1, 2016, to designate a pilot project and provides that it is not subject to rulemaking requirements under ch. 120, F.S., or subject to legal challenge pursuant to ss. 120.569 and 120.57, F.S.

The bill provides that once designated, the pilot project will be considered a use resulting in an enhancement of the water resources of the area and entitled to a preference over other uses in the event of competing applications pursuant to s. 373.036(5), F.S., which concerns the preference of certain uses in the event of competing applications for permits for water under ch. 373, F.S.

The bill allows a WMD to designate an alternative water supply project located in another WMD if the project is located in a restricted allocation area designated by the other WMD and a substantial quantity of water provided by the alternative water supply project will be used within the designating WMD's boundaries.

The bill details powers and restrictions for the SFWMD, SWFWMD, and SJRWMD in implementing their respective pilot projects under this section:

- The WMDs may establish, design, construct, operate, and maintain water production, treatment and transmission, or other related facilities for the purpose of supplying water to counties, municipalities, special districts, publicly owned and privately owned water utilities, multijurisdictional water supply entities, other large water users, or regional water supply authorities;
- The WMDs may not engage in local water supply distribution;
- The WMDs may supply water at a cost not to exceed expenses directly related to the planning, design, development, implementation, operation, and maintenance of the pilot project. The cost of such water will be established by the governing board only after a public hearing at which pilot project customers have an opportunity to be heard concerning the proposed cost;
- The WMDs must provide credit toward the pro rata cost of the water to be supplied from the pilot project to a customer equal to any expenses incurred by the customer toward the

implementation of the pilot project before the WMD's designation and implementation of the pilot project;

- The WMDs are given the power to issue revenue bonds to pay the costs and expenses incurred by carrying out the purposes of this section or refunding obligations of the WMD issued under this section. The bill provides that the provisions of s. 373.584, F.S., relating to issuing revenue bonds, which are consistent with this section, apply to the issuance of revenue bonds pursuant to this section. The bill also provides that the WMDs may also issue bond anticipation notes in accordance with s. 373.584, F.S.
- For the purpose of carrying out their powers, the WMDs to join with:
  - One or more WMDs;
  - Counties;
  - Municipalities;
  - Special districts;
  - Publicly owned or privately owned water utilities;
  - Multijurisdictional water supply entities;
  - Regional water supply authorities;
  - Self-suppliers; or
  - Other entities
- The WMDs may also contract with any of those entities to finance or otherwise implement acquisitions, construction, and operation and maintenance, if the contracts are consistent with the public interest and based upon independent cost estimates, including comparisons with other alternative water supply projects. The contracts may provide for contributions to be made by each party to the contract for the division and apportionment of resulting costs, including capital, operation and maintenance, benefits, services, and products. The contracts may contain other covenants and agreements necessary and appropriate to accomplish their purposes.

The bill allows the WMDs to provide up to 50 percent funding assistance for the pilot projects. If the pilot project selected by a WMD is the subject of a cooperative funding agreement, the WMD may not reduce the level of funding assistance previously committed to the project.

The bill prohibits a WMD from proceeding with implementation and development of a selected pilot project if the pilot project customers form a multijurisdictional water supply entity to implement and develop the selected pilot project by July 1, 2017, and take substantive steps to develop and implement the project. Examples of substantive steps to develop and implement a project are:

- Entering into water supply contracts;
- Issuing revenue bonds or bond anticipation notes to finance the project; or
- Awarding construction contracts to construct the project in whole or in part.

The WMD may designate a new pilot project within one year after the creation of the multijurisdictional entity, and the completion of at least one substantive step by the multijurisdictional entity to implement the project.

If the pilot project customers form a multijurisdictional water supply entity to take over construction, operation, maintenance, and control of the pilot project at any time during the life of the pilot project, the WMD must transfer ownership and control of the pilot project to the pilot

project customers. It may do so upon the repayment of any revenue bonds or other obligations issued by the WMD to develop and implement the pilot project and any outstanding expenses incurred by the WMD in constructing, operating, and maintaining the pilot project.

The bill provides that pilot project customers are not responsible for repayment of any cooperative funding provided by a WMD for the pilot projects. If that happens, the WMD may develop and implement another pilot project within a restricted allocation area.

The bill provides that no later than three years following designation of the pilot project, the SFWMD, SWFWMD, and the SJRWMD must submit a report to the Governor, the President of the Senate, and the Speaker of the House or Representatives on the effectiveness of its pilot project, including the following information:

- A description of the alternative water supply project selected as a pilot project by the respective WMDs, including the quantity of water the project has produced or is expected to produce and the consumptive users who are expected to use the water produced by the pilot project to meet their existing and projected reasonable-beneficial need;
- Progress made in developing and implementing the pilot project in comparison to development and implementation of other alternative water supply projects in the restricted allocation area;
- The capital and operation costs to be expended by the WMD in implementing the pilot project in comparison to other alternative water supply projects being developed and implemented in the restricted allocation area;
- The source of funds used or to be used by the WMD in developing and implementing the pilot project;
- The unit cost of water produced from the pilot project in comparison to the unit cost of water from other alternative water supply projects being developed in the restricted allocation area;
- The benefits to the water resources and natural systems from implementation of the pilot project; and
- A recommendation as to whether the traditional role of WMDs regarding the development and implementation of alternative water supply projects should be revised and, if so, identification of the statutory changes necessary to expand the scope of the pilot program.

**Section 10** amends s. 373.042, F.S., to provide that if an MFL has been established for an OFS, a WMD or the DEP will use emergency rulemaking authority to adopt an MFL no later than July 1, 2016, except for the Northwest Florida Water Management District (NFWFMD), which must expeditiously adopt MFLs for Outstanding Florida Springs (OFSs) no later than July 1, 2026.

For OFSs identified on a WMD's priority list developed pursuant to (3) of this section, which have the potential to be affected by withdrawals in an adjacent district, the adjacent WMD or WMDs and the DEP will collaboratively develop and implement a recovery or prevention strategy for an OFS not meeting an adopted MFL. Subsection (3) provides priority lists and schedules for the establishment of MFLs prepared by the respective WMDs and submitted to the DEP for review and approval,

The bill specifies that the Legislature finds the failure to adopt MFLs or recovery or prevention strategies for OFSs has resulted in an immediate danger to public health, safety, and welfare and immediate action must be taken.

The bill directs the WMDs or the DEP to use emergency rulemaking provisions to adopt MFLs under this subsection and recovery or prevention strategies adopted concurrently with a MFL pursuant to 373.805(2), F.S., which is created by this bill and regards the adoption or modification of a recovery or prevention strategy if an OFS is below or is projected within 20 years to fall below its MFL.

The bill provides that rules adopted pursuant to s. 373.042, F.S., are not subject to s. 120.541(3), F.S., regarding legislative ratification of rules under certain circumstances.

**Section 11** amends s. 373.0421, F.S., to provide that a recovery or prevention strategy must be adopted and implemented concurrent with the adoption of an MFL and that a recovery or prevention strategy may not depend solely on water shortage restrictions.

The bill requires applicable regional water supply plans developed by the WMDs to be amended to include any water supply and resource development projects identified in a recovery or prevention strategy. The amendment must be approved concurrently with the relevant portions of the recovery or prevention strategy.

The bill requires a WMD to notify the DEP if an application for a water use permit is denied based upon the impact that the use will have on an adopted MFL. If notified, the DEP, in cooperation with the WMD, must conduct a review of the regional water supply plan to determine the plan's adequacy to provide sufficient water for all current and future users and natural systems and to avoid competition. If needed, the WMD must immediately initiate an update of the plan.

**Section 12** creates s. 373.0465, F.S., to codify the Central Florida Water Initiative (CFWI) in statute. It provides the following legislative findings:

- The Floridan aquifer has historically supplied the majority of the water used in the Central Florida Coordination Area;
- It has been determined that water supplies within the Central Florida Coordination Area is locally approaching the sustainable limits of use and the need to develop sources of water to meet long-term water needs of the area and are being explored by the DEP and the South Florida Water Management District (SFWMD), the Southwest Florida Water Management District (SWFWMD), and the St. Johns Water Management District (SJRWMD);
- The CFWI has developed an initial framework for a unified process to address the current and long-term water supply needs of central Florida without causing harm to the water resources and associated natural systems; and
- Developing water sources as an alternative to continued reliance on the Floridan aquifer will benefit existing and future water users and natural systems beyond the boundaries of the CFWI.

The bill defines the “Central Florida Water Initiative Area” as all of Orange, Osceola, Polk, and Seminole Counties, and southern Lake County, as designated by the CFWI Guiding Document of January 30, 2015.

It directs the DEP, the SFWMD, the SWFWMD, the SJRWMD, and the Department of Agriculture and Consumer Services (DACS) to:

- Provide for the continuation of the collaborative process in the CFWI area among the state agencies, affected WMDs, regional public water supply utilities, and other stakeholders;
- Build on the guiding principles and goals in the CFWI Guiding Document of January 30, 2015, and the work that has already been accomplished by the CFWI participants;
- Develop and implement a single multidistrict regional water supply plan, including any needed recovery or prevention strategies and a list of water resource or supply development projects; and
- Provide for a single hydrologic planning model to assess the availability of groundwater in the CFWI area.

The bill specifies that the water supply planning program must:

- Consider limitations on groundwater use together with opportunities for new, increased, or redistributed groundwater uses based on conditions established under s. 373.223, F.S.;
- Establish a coordinated process for identification of water resources requiring new or revised conditions established under s. 373.223, F.S.;
- Consider existing recovery or prevention strategies;
- Include a list of water supply options sufficient to meet the water needs of all existing and future reasonable-beneficial uses which meet conditions established under s. 373.223, F.S.; and
- Identify, as necessary, which of the water supply sources are preferred water supply sources pursuant to s. 373.2234, F.S.

The bill directs the DEP, in consultation with the SFWMD, the SWFWMD, the SJRWMD, and the DACS to adopt uniform rules for the CFWI Area that include:

- A single, uniform definition of “harmful to the water resources” consistent with its usage in s. 373.219, F.S.;
- A single method for calculating residential per capita water use;
- A single process for permit reviews;
- A single, consistent process, as appropriate, to set MFLs and water reservations;
- A goal for residential per capita water use for each consumptive use permit; and
- An annual conservation goal for each Consumptive Use Permit (CUP) consistent with the regional water supply plan.

It further provides that the uniform rules must include existing recovery strategies within the CFWI Area adopted before July 1, 2015, and that the DEP may grant variances to the uniform rules if there are unique circumstances or hydrogeological factors that make application of the uniform rules unrealistic or impractical.

The DEP is required to initiate rulemaking for the uniform rules by December 31, 2015. Those rules must be applied by the WMDs only in the CFWI Area. The rules must be implemented by the WMDs without further rulemaking and will be considered WMD rules.

The planning programs developed under this section of the bill may not serve to modify planning programs in areas of the affected WMDs that are not within the CFWI Area, but may include interregional projects located outside the CFWI Area if they are consistent with the planning and regulatory programs in the area they are located.

**Section 13** amends s. 373.1501, F.S., to provide that the SFWMD will exercise the authority of the state to allocate water within its jurisdiction, including water supply in relation to the Central and Southern Florida (C&SF) Project, and be responsible for allocating water and assigning priorities among the other water uses served by the project.

The bill requires the SFWMD to provide recommendations to the U.S. Army Corps of Engineers when developing or implementing water control plans or regulation schedules required for the operation of the C&SF Project.

**Section 14** amends s. 373.219, F.S., to require the DEP to adopt by rule a uniform definition of the term “harmful to the water resources” for OFSs to provide WMDs with minimum standards necessary to be consistent with the overall water policy of the state. The bill provides that this does not prohibit a WMD from adopting a definition that is more protective of the water resources consistent with local or regional conditions or objectives.

**Section 15** amends s. 373.223, F.S., to require a new, renewal of, or modification to a CUP authorizing withdrawal of 100,000 gallons or more per day, and authorizing the use of a well or wells with an inside diameter of eight inches or more must be monitored and the results must be reported to the applicable WMD at least annually.

**Section 16** amends s. 373.2234, F.S., to direct the governing boards of the WMDs to consider the identification of preferred water supply sources for water users for whom access to or development of new water supplies is not technically or financially feasible. The identification of preferred water supply sources for such water users must be consistent with s. 373.016, F.S., which concerns the policy of Florida with respect to water resources.

**Section 17** amends s. 373.227, F.S., to prevent modifying a CUP in areas not included in a regional water supply plan and in areas not included in a declaration of water shortage or emergency during the term of the permit when actual water use is less than permitted water use due to documented implementation of water conservation measures. WMDs are required to adopt rules to provide water conservation incentives, which may include limited permit extensions.

The bill also prevents modifying a permit if actual water use is less than the amount permitted due to:

- Weather events;
- Crop diseases;
- Nursery stock availability;

- Market conditions; or
- Changes in crop type.

**Section 18** amends s. 373.233, F.S., to require a WMD or the DEP to give preference to the use closest to the preferred water source when deciding between two new applications that qualify equally.

**Section 19** amends s. 373.4591, F.S., to provide that public-private partnerships may be entered into for groundwater recharge on private agricultural lands. It also provides that priority consideration will be given to public-private partnerships for such lands that:

- Store or treat water on private lands for purposes of enhancing hydrologic improvement, improving water quality, or assisting in water supply;
- Provide critical groundwater recharge; or
- Provide for changes in land use to activities that minimize nutrient loads and maximize water conservation.

**Section 20** amends s. 373.4595, F.S., to make changes to the Northern Everglades and Estuaries Protection Program.

- The bill provides legislative intent that the Lake Okeechobee, the Caloosahatchee River, and the St. Lucie River Watershed Protection Programs should be expeditiously implemented.
- The bill defines the terms “biosolids” and “soil amendment” and removes the definitions of “District’s Works of the District Program” and the “Lake Okeechobee Watershed Phosphorous Control Program,” as all references to those programs are removed throughout this section of the bill.
- The definition of “Lake Okeechobee Watershed Protection Plan” (LOWPP) is amended to conform to other changes in the bill. The bill amends the definition to specify that the term means the Lake Okeechobee Watershed Construction Project and the Lake Okeechobee Watershed Research and Water Quality Monitoring Program.

The bill provides that the LOWPP consists of the:

- Lake Okeechobee Watershed Protection Plan;
- Lake Okeechobee Basin Management Action Plan;
- Lake Okeechobee Exotic Species Control Program; and
- Lake Okeechobee Internal Phosphorous Management Program.

The bill stipulates that the Lake Okeechobee BMAP is the component of the LOWPP that achieves phosphorus load reductions for the lake.

The bill provides the following requirements for the Lake Okeechobee, Caloosahatchee River, and St. Lucie River BMAPs in three parts of this section of the bill:

- The BMAPs must include milestones for implementation and water quality improvement and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time;

- The bill requires the DEP to develop a schedule to establish five, ten, and 15-year milestones and a target for achieving water quality improvement. The schedule is to be used to provide guidance for planning and funding purposes and is not subject to rulemaking;
- An assessment of progress toward the milestones must be conducted every five years and revisions to the plan will be made, as appropriate, as a result of each five-year review;
- The bill requires the assessment to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives;
- Upon the first five-year review, a schedule, measureable milestones, and a target for achieving water quality improvement shall be adopted into the BMAP;
- The DEP will make revisions to the BMAP in cooperation with basin stakeholders; and
- Revisions to the management strategies must follow the procedures of s. 403.067(7)(c)4., F.S., and the revised BMAPs must be adopted pursuant to s. 403.067(7)(a)4., F.S.

The bill amends s. 373.4595(3)(a), F.S., relating to the LOWPP, to:

- Require the SFWMD, beginning March 1, 2020, and every five years after, to update the LOWPP to ensure it is consistent with the Lake Okeechobee BMAP;
- Specify that the Lake Okeechobee Watershed Protection Plan includes the Lake Okeechobee Watershed Construction Project and the Lake Okeechobee Watershed Research and Water Quality Monitoring Program;
- Specify that the SFWMD is to cooperate with the other coordinating agencies when designing and constructing the Lake Okeechobee Watershed Construction Project;
- Specify that the Phase II technical plan of the Lake Okeechobee Watershed Construction Project provides the basis for the Lake Okeechobee BMAP and removes a requirement that it be ratified by the Legislature. According to the DEP, it was submitted for ratification on February 1, 2008;
- Direct the DEP, within five years after adoption of the Lake Okeechobee BMAP, and every five years thereafter, to evaluate the Lake Okeechobee Watershed Construction Project to identify any further load reductions needed to achieve compliance with the Lake Okeechobee Total Maximum Daily Load (TMDL). Any modification to the Lake Okeechobee Watershed Construction Project resulting from the evaluation must be incorporated into the Lake Okeechobee BMAP;
- Require the coordinating agencies to implement the Lake Okeechobee Watershed Research and Water Quality Monitoring Program and provide requirements for the program, and for the DEP to use the results, in cooperation with the coordinating agencies, to modify the Lake Okeechobee BMAP, as appropriate. In order to accomplish this, the program shall:
  - Evaluate all available existing water quality data concerning total phosphorus in the Lake Okeechobee watershed, develop a water quality baseline to represent existing conditions for total phosphorus, monitor long-term ecological changes, and measure compliance with Water Quality Standards (WQSs) for total phosphorus;
  - Require the DEP, beginning March 1, 2020, and every five years thereafter, to reevaluate water quality and quantity data to ensure the appropriate projects are being designated and incorporated into the Lake Okeechobee BMAP;
  - Require the SFWMD to implement a total phosphorus monitoring program at appropriate structures owned or operated by it within the Lake Okeechobee watershed;



- Develop a Lake Okeechobee water quality model that reasonably represents the phosphorus dynamics of Lake Okeechobee and incorporate an uncertainty analysis associated with model predictions;
- Determine the relative contribution of phosphorus from all identifiable sources and all primary and secondary land uses;
- Conduct an assessment of the sources of phosphorus from the Upper Kissimmee Chain-of-Lakes and Lake Istokpoga, and their relative contributions to water quality in Lake Okeechobee. The results must be used as part of the Lake Okeechobee BMAP to develop interim measures, best management practices (BMPs), or regulations, as applicable;
- Assess current water management practices within the Lake Okeechobee watershed and develop recommendations for structural and operational improvements, which must balance water supply, flood control, estuarine salinity, maintenance of a healthy lake littoral zone, and water quality considerations;
- Evaluate the feasibility of alternative nutrient reduction technologies and include those technologies determined to be feasible in the Lake Okeechobee BMAP; and
- Conduct an assessment of the water volumes and timing from the Lake Okeechobee watershed and their relative contribution to the water level changes in Lake Okeechobee and to the timing and volume of water delivered to the estuaries.

The bill amends s. 373.4595(3)(b), F.S., to specify that the Lake Okeechobee BMAP is the watershed phosphorus control component for Lake Okeechobee. The bill provides that the Lake Okeechobee BMAP will be a multifaceted approach designed to achieve the TMDL.

The bill provides the following requirements for the Lake Okeechobee:

- It must contain an implementation schedule for pollutant load reductions consistent with the adopted TMDL;
- The DEP must develop a schedule to establish 5, 10, and 15-year milestones and a target to achieve the adopted total maximum daily load no more than 20 years after adoption of the plan;
- The schedule will be used to provide guidance for planning and funding purposes and is exempt from rulemaking;
- If achieving the adopted TMDL within 20 years is not practicable, the schedule will contain an explanation of the constraints that prevent achieving the TMDL within 20 years and an estimate of the time needed to achieve the TMDL and additional 5-year measurable milestones, as necessary.

The bill requires that the coordinating agencies must develop an interagency agreement. The bill assigns responsibilities to the DEP, the SFWMD, and the DACS. The interagency agreement must specify how BMPs for nonagricultural nonpoint sources are developed and how all BMPs are implemented and verified and must address measures to be taken by the coordinating agencies during any BMP reevaluation. The DEP is required to use best professional judgment in making the initial determination of a BMP's effectiveness. The coordinating agencies are authorized to develop an intergovernmental agreement with local governments to implement nonagricultural nonpoint source BMPs within their respective geographic boundaries.

The bill also:

- States that agricultural nonpoint source BMPs are part of a phased approach of management strategies within the Lake Okeechobee BMAP;
- Adds that where water quality problems are detected for agricultural nonpoint sources despite the appropriate implementation of adopted BMPs, BMPs may be revised and reevaluated;
- Specifies that the DEP, in consultation with the SFWMD and affected parties, shall develop nonagricultural nonpoint source interim measures, BMPs, or other measures necessary for Lake Okeechobee watershed TMDL reduction. It directs the DEP or the SFWMD to adopt new practices by rule;
- Provides that where water quality problems are detected for agricultural and nonagricultural nonpoint sources despite the appropriate implementation of adopted BMPs, a reevaluation of BMPs will be conducted. If the reevaluation determines that the BMPs or other measures require modification, the rule will be revised to require implementation of the modified practice within a reasonable time period as specified in the rule;
- Provides that the requirements of the Lake Okeechobee BMAP and s. 403.067(7), F.S., for the Lake Okeechobee watershed are met through the implementation of agricultural BMPs set forth in a permit issued pursuant to Rule 40E-63, F.A.C., regarding the Everglades Program of the district. An entity in compliance with agricultural BMPs in Rule 40E-63, F.A.C., may elect to use the permit issued under Rule 40E-63, F.A.C., in lieu of the requirements of the Lake Okeechobee BMAP. The agricultural BMPs implemented through a permit issued under Rule 40E-63, F.A.C., are subject to reevaluation as provided for in s. 373.4595(3)(b)5., F.S.;
- Requires the DACS, in cooperation with the DEP and the SFWMD, to provide technical and financial assistance for implementation of agricultural and nonagricultural nonpoint source BMPs, subject to the availability of funds;
- Requires the DEP to require all entities disposing of biosolids within the Lake Okeechobee watershed and the remaining areas of Okeechobee, Glades, and Hendry Counties to develop and submit to the DEP an agricultural use plan that limits applications based upon phosphorus loading consistent with the Lake Okeechobee BMAP instead of the phosphorus limits established in the SFWMD's Works of the District (WOD) program;
- Mandates that rules developed by the DACS that require entities within the Lake Okeechobee watershed that land-apply animal manure to develop resource management system level conservation plans, must include criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, site inspection requirements, and recordkeeping requirements.
  - This same provision is included under the sections concerning the Caloosahatchee River and St. Lucie River BMAPs.
- Requires the SFWMD to revise Rule 40E-61, F.A.C., regarding the Works of the District (WOD) program, to be consistent with the provisions of the Lake Okeechobee Watershed Protection Program and s. 403.067, F.S., and to provide for a monitoring program for nonpoint source dischargers required to monitor water quality by s. 403.067, F.S., and to provide the results to be reported to the coordinating agencies; and
- Requires the SFWMD, in cooperation with the other coordinating agencies, to evaluate the feasibility of Lake Okeechobee internal phosphorous load removal projects. The evaluation must consider all reasonable methods of phosphorous removal.

The bill amends s. 373.4595(4), F.S., to include the following revisions to the Caloosahatchee and St. Lucie River Watershed Protection Programs:

- Regarding the Caloosahatchee Watershed Protection Program, the bill:
  - Specifies the Caloosahatchee River Watershed Protection Plan includes the Caloosahatchee River Watershed Construction Project and the Caloosahatchee River Watershed Research and Water Quality Monitoring Program;
  - Requires the SFWMD, in cooperation with other coordinating agencies and local governments, to implement a Caloosahatchee River Watershed Research and Water Quality Monitoring Program and provides requirements for the program; and
  - Specifies the Caloosahatchee River Watershed BMAPs make up the Caloosahatchee River Watershed Pollutant Control Program;
- Regarding the St. Lucie River Watershed Protection Program, the bill:
  - Specifies the St. Lucie River Watershed Protection Plan includes the St. Lucie River Watershed Construction project and the St. Lucie River Watershed Research and Water Quality Monitoring Programs;
  - Requires the SFWMD, in cooperation with other coordinating agencies and local governments, to establish a St. Lucie River Watershed Research and Water Quality Monitoring Program and provides requirements for the program;
  - Specifies the St. Lucie River Watershed BMAPs make up the St. Lucie River Watershed Pollutant Control Program.

For both programs, the bill requires the SFWMD to initiate rulemaking to provide for a monitoring program for nonpoint source dischargers required to monitor water quality and report the results to the coordinating agencies.

The bill requires evaluation of pollutant load reduction goals, and any other objectives and goals contained in the River Watershed Protection Programs beginning March 1, 2020, and every five years thereafter, concurrent with the updates to the BMAPs for both programs.

The bill amends s. 373.4595(5), F.S., to require the DEP to initiate development of BMAPs for the Lake Okeechobee watershed, the Caloosahatchee River watershed and estuary, and the St. Lucie River watershed and estuary, although all the BMAPs listed here are underway or already adopted.

It provides that management strategies and pollution reduction requirements set forth in a BMAP subject to permitting in s. 373.4595(7), F.S., must be completed pursuant to the schedule set forth in the BMAP, and specifies that the implementation schedule may extend beyond the five-year permit term.

The bill provides that management strategies and pollution reduction requirements set forth in a BMAP are not subject to challenge under ch. 120, F.S., at the time they are incorporated, in an identical form, into a DEP or SFWMD issued permit, or a permit modification issued in accordance s. 373.4595(7), F.S., regarding Lake Okeechobee Protection Permits.

The bill amends s. 373.4595(6), F.S., to require the DEP to report March 1 of every year on the status of the Lake Okeechobee, Caloosahatchee River Watershed, and St. Lucie River Watershed BMAPs. It also requires the DACS to report on the status of the implementation of agricultural

nonpoint source BMPs, including an implementation assurance report summarizing survey responses and response rates, site inspections, and other methods used to verify implementation and compliance with BMPs in the Lake Okeechobee, Caloosahatchee, and St. Lucie watersheds.

The bill amends s. 373.4596(7), F.S., to include the following changes to the permitting requirements in s. 373.4595, F.S.:

- Owners and operators of existing structures that discharge into or from Lake Okeechobee that were subject to certain DEP consent orders and are subject to requirements for the Everglades Construction Project do not require a permit under this section and must be governed by permits issued under ss. 373.413 and 373.416, F.S., and the Lake Okeechobee BMAP;
- Owners and operators of existing structures that are subject to s. 373.4592(4)(a), F.S., relating to the Everglades Construction Project, that discharge into or from Lake Okeechobee, are considered in compliance with the requirements of s. 373.4596(7)(c), F.S., if they are fully compliant with the conditions of permits issued under Rule 40E-63, F.A.C., regarding the Everglades Program of the district;
- The SFWMD must submit a complete application for a permit modification from the DEP to the Lake Okeechobee structure permits to incorporate proposed changes necessary to ensure that discharges through the structures covered by the permit are consistent with the BMAP by January 1, 2016. It removes the provision stating that these changes must be designed to achieve compliance with WQSs by January 1, 2015;
- The DEP must require permits for SFWMD regional projects that are part of the Lake Okeechobee Watershed Construction Project. SFWMD regional projects that are part of the Lake Okeechobee Watershed Construction Project must achieve certain design objectives for phosphorus; and
- The SFWMD must demonstrate reasonable assurances that the regional projects will achieve the design objectives for phosphorus.

**Section 21** amends s. 373.467, F.S., to revise the membership requirements for the Harris Chain of Lakes Restoration Council. One member must be a person with experience in environmental science or regulation, rather than an environmental engineer. It requires an attorney and an engineer, rather than individuals that have training in either discipline. It also clarifies that the two members, who are residents of the county, are not required to meet any of the other requirements of membership to be appointed to the council. As the statute is currently written, it appears those two members are prohibited from meeting any of the other requirements for membership. The bill provides that the Lake County legislative delegation may waive the qualifications for membership on a case-by-case basis for good cause. The bill provides that resignation by a council member or the failure of a member to attend three consecutive meetings without being excused by the chair of the committee results in a vacancy.

**Section 22** amends s. 373.536, F.S., to require the WMDs to include an annual funding plan for each of the five years included in their plans for water resource and water supply development components.

The bill specifies that the plan must include the water supply projects proposed for funding and assistance. The plan will identify both anticipated available district funding and additional funding needs for the second through fifth years of the funding plan. Funding requests for

projects submitted to the Florida Water Resources Advisory Council for consideration for state funding must be identified separately. Projects included in the work program must be shown how they support the implementation of MFLs and water reservations and how they help to avoid the adverse effects of competition for water supplies.

The bill requires the DEP to post the work program on its website.

**Section 23** amends s. 373.703, F.S., regarding water production, to include private landowners on the list of entities that a WMD is authorized to join with in carrying out its duties. It also provides that the section does not apply to the development and implementation of pilot projects pursuant to s. 373.037, F.S.

**Section 24** amends s. 373.705, F.S., to specify that it is the intent of the Legislature that WMDs identify and implement water resource development projects, and are responsible for securing necessary funding for regionally significant projects that prevent or limit adverse water resource impacts, avoid competition among water users, or support the provision of new water supplies in order to meet an MFL, implement a recovery or prevention strategy or water reservation.

It also requires the WMDs to include in their annual budget submittals the amount of funds for each project in the annual funding plan pursuant to s. 373.536(6)(a)4., F.S., (amended in section 19 of the bill) and the amount of funds requested for each project submitted for consideration for state funding to the Florida Water Resources Advisory Council.

The bill provides that water supply development projects that are consistent with the relevant regional water supply plans and that meet one or more of the following criteria will receive priority consideration for state or WMD funding assistance:

- The project supports establishment of a dependable, sustainable supply of water that is not otherwise financially feasible;
- The project provides substantial environmental benefits by preventing or limiting adverse water resource impacts, but requires funding assistance to be economically competitive with other options; or
- The project significantly implements reuse, storage, recharge, or conservation of water in a manner that contributes to the sustainability of regional water resources.

The bill adds projects that reduce or eliminate the adverse effects of competition between legal users and the natural system to the list of projects that will be given first consideration for state or WMD funding assistance.

The bill adds “if the project reduces or eliminates the adverse effects of competition between legal users and the natural system,” to the list of considerations when choosing projects for state or WMD funding assistance.

The bill provides that despite the criteria for first consideration for funding water supply development projects, first consideration for state or WMD funding for water supply development projects will be given to pilot projects pursuant to s. 373.037, F.S.

The bill requires the WMDs to promote expanded cost-share criteria for additional conservation practices, such as soil and moisture sensors and other irrigation improvements, water-saving equipment, and water-saving household fixtures, and software technologies that can achieve verifiable water conservation by providing water use information to utility customers.

**Section 25** amends s. 373.707, F.S., to include self-suppliers as entities that may receive technical and financial assistance from a WMD for alternative water supply projects if the projects reduce competition for limited water supplies and are in the public interest.

The bill provides that when state funds are provided through specific appropriation for a priority project of the water resource work program selected by the Water Resources Advisory Council, those funds serve to supplement existing WMD or basin board funding for alternative water supply development assistance and should not result in a reduction of such funding.

The bill replaces projects selected for inclusion in the Water Protection and Sustainability Program with projects identified in plans prepared pursuant to s. 373.536(6)(a)4., F.S., regarding projects included in the WMDs' annual tentative and adopted budget submittals.

The bill expands the eligibility of local sponsors that a WMD may waive matching construction costs for an alternative water supply project for. Under existing law, only fiscally disadvantaged small local governments qualify. The bill authorizes the WMDs to waive the match requirement for any water user for projects determined by the WMD to be in the public interest and that are not otherwise financially feasible.

The bill provides that the WMD governing boards will determine the projects that will be selected for financial assistance. In addition to factors the governing boards choose to use, the bill provides factors that will be given significant weight, which are:

- Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource impacts;
- Whether the project reduces competition for water supplies;
- Whether the project brings about replacement of traditional sources in order to help implement an MFL or a reservation;
- Whether the project will be implemented by a CUP permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227, F.S., concerning water conservation;
- The quantity of water supplied by the project as compared to its cost;
- Projects in which the construction and delivery to end users of reuse water is a major component;
- Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority;
- Whether the project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9), F.S.;
- Whether the county or municipality, or the multiple counties or municipalities, in which the project is located has implemented a high-water recharge protection tax assessment program as provided in s. 193.625, F.S.; and
- Whether the project is a pilot project under s. 373.037, F.S.

**Section 26** amends s. 373.709, F.S., to require regional water supply plans to contain a list of water supply projects options that are technically and financially feasible.

It also requires the DEP to report on the status of regional water supply planning in each WMD to include an analysis of the sufficiency of potential sources of funding from all sources for water resource development and water supply development projects. The report must also include an explanation of how each project identified in the five-year water resource development work program will contribute to additional water for MFLs or water reservations

**Section 27** creates Part VIII of ch. 373, F.S., to consist of ss. 373.801, 373.802, 373.803, 373.805, 373.807, 373.811, and 373.813, F.S., and provides the title, “Florida Springs and Aquifer Protection Act.”

**Section 28** creates s. 373.801, F.S., to provide legislative findings and intent:

- Detailing the importance of Florida’s springs, and various benefits they provide to the state including providing critical habitat for plants and animals. Springs provide immeasurable natural, recreational, economic, and inherent value. Water quality in springs is an indicator of local conditions of the Floridan Aquifer. Water flows in springs reflect regional aquifer conditions. Springs also provide recreational opportunities for Floridians and visitors to the state and economically benefit local and state economies.
- Stating that water quantity and water quality in springs may be related. It also specifies the primary responsibilities of the DEP, WMDs, DACS, and local governments.
- Recognizing that springs are only as healthy as their springsheds and identifying several of the problems affecting springs, including pollution runoff from urban and agricultural lands, stormwater runoff, and reduced water levels of the Floridan aquifer, which may have led to the degradation of many of Florida’s springs.
- Recognizing that without significant action, the quality of Florida’s springs will continue to degrade.
- Stating that springshed boundaries need to be delineated using the best available data.
- Recognizing that springsheds often cross WMD and local government jurisdictional boundaries, which requires a coordinated response.
- Recognizing that aquifers and springs are complex systems affected by many variables and influences.
- Recognizing that action is urgently needed, and action can be modified as additional data is acquired.

**Section 29** creates s. 373.802, F.S., to provide definitions for “department,” “local government,” “onsite sewage and treatment disposal system,” “spring run,” “springshed,” and “spring vent.”

The bill also defines:

- “Outstanding Florida Springs,” which includes all historic first magnitude springs, as determined by the DEP using the most recent version of the Florida Geological Survey’s springs bulletin. The following springs are also considered OFSs: Deleon Spring, Peacock Spring, Poe Spring Rock Springs, Wekiwa Spring, and Gemini Spring. The term does not include submarine springs.

- “Priority Focus Area,” meaning “the area or areas of a basin where the Floridan Aquifer is most vulnerable to groundwater withdrawals or pollutant inputs, where the groundwater travel times are the fastest, and where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by the department in consultation with the appropriate water management districts, and delineated in a basin management action plan.”

**Section 30** creates s. 373.803, F.S., to direct the DEP, in consultation with the WMDs, to delineate priority focus areas for each OFS or group of springs that contain one or more OFS, and is identified as impaired, using the best available data. The bill requires the delineation of the priority focus areas to be completed by July 1, 2018, and provides that a priority focus area will be effective upon incorporation in a BMAP. It directs the DEP to consider groundwater travel time, hydrogeology, and nutrient load when delineating the areas.

**Section 31** creates s. 373.805, F.S., to direct either a WMD or the DEP to adopt a recovery or prevention strategy concurrently with the adoption of an MFL for an OFS, if it is below, or projected within 20 years to fall below, an MFL.

When an MFL for an OFS is revised, if the spring is below or projected within 20 years to fall below the MFL, a WMD or the DEP must concurrently adopt or modify a recovery or prevention strategy. The bill provides that a WMD or the DEP may adopt the revised MFL before the adoption of a recovery or prevention strategy if the revised MFL is less constraining on existing or projected future consumptive uses.

For any OFS without an adopted recovery or prevention strategy, a WMD or the DEP must expeditiously adopt a recovery or prevention strategy if the WMD or the DEP determines that the OFS has fallen below, or is projected within 20 years to fall below, the adopted MFL.

The bill provides the following minimum requirements for a recovery or prevention strategy for OFSs:

- A list of all specific projects identified for implementation of the plan;
- A priority listing of each project;
- For each project, the estimated cost and date of completion;
- The source and amount of financial assistance from the WMD for each project. Except for the Northwest and Suwanee River WMDs, it may not be less than 25 percent of the total cost unless there are funding sources that provide more than 75 percent of the total cost of the project;
- An estimate of each project’s benefit to an OFS; and
- An implementation plan designed with a target to achieve the adopted MFL within 20 years or less after the adoption of a recovery or prevention strategy, with a schedule of five, ten, and 15-year measurable interim milestones intended to achieve the adopted MFL. The schedule is not a rule but is intended to provide guidance for planning and funding purposes.

The bill also provides for extensions of up to five years for local governments for any project in an adopted recovery or prevention strategy, which may be granted if the local government



provides sufficient evidence that an extension is in the best interest of the public. If the local government is in a rural area of opportunity, the DEP may grant an extension of up to 10 years.

**Section 32** creates s. 373.807, F.S., to provide a deadline of July 1, 2015, for the DEP to initiate assessment of any OFS for which a determination of impairment has not been made and complete the assessment of them under the numeric nutrient standards for spring vents by July 1, 2018. The bill requires that:

- When a TMDL is adopted, the DEP, or the DEP in coordination with a WMD, will concurrently initiate development of a BMAP;
- For an OFS that has an adopted nutrient TMDL before July 1, 2015, the DEP, or the DEP in coordination with a WMD, will initiate development of a BMAP by July 1, 2015; and
- As the BMAP is developed, if Onsite Sewage Treatment and Disposal Systems (OSTDSs) are identified as contributors of at least 20 percent of nonpoint source nutrient pollution that needs to be addressed within local government jurisdictions, the BMAP will include an OSTDS remediation plan for those systems identified as requiring remediation.

BMAPs for OFSs must be adopted within three years of their initiation and must include:

- A list of all projects and programs for implementing a TMDL;
- A list of all projects in any incorporated OSTDS remediation plan, if applicable;
- A priority ranking of all projects;
- A planning level cost estimate and completion date of each project;
- The source and amount of any financial assistance from the DEP, WMD, or other entity;
- The estimate of each project's nutrient load reduction;
- The identification of each point source or category of nonpoint sources with an estimated allocation of the pollutant load for each point source and category of nonpoint sources; and
- An implementation plan designed with a target to achieve the adopted TMDL no more than 20 years after the adoption of a BMAP. The plan must include a schedule of five, ten, and 15-year measurable milestones intended to achieve the adopted nutrient TMDL. The schedule is not a rule but is intended to provide guidance for planning and funding purposes and is exempt from rulemaking.

The bill requires BMAPs adopted by July 1, 2015, that affect an OFS to be revised if necessary to comply with this section by the DEP, or the DEP in conjunction with a WMD, by July 1, 2018. Any OSTDS remediation plans approved by the DEP will be considered incorporated in an existing BMAP pursuant to s. 403.067(7), F.S.. Additionally, a local government may apply for an extension of up to five years, or 10 years in the case of a local government within a rural area of opportunity, for any project in an adopted BMAP upon showing that an extension is in the best interest of the public.

Within 12 months after the adoption of a BMAP containing a priority focus area or areas of an OFS located fully or partially within a local government's jurisdictional boundaries, the local government must adopt an ordinance that meets or exceeds the requirements of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. The DEP must revise the model ordinance to require that, within a priority focus area of an OFS with an adopted nutrient TMDL, the nitrogen application rate of fertilizer may not exceed the lowest, basic maintenance

rate of the most recent recommendations by the University of Florida's Institute of Food and Agricultural Sciences (IFAS).

As part of a BMAP that includes an OFS, the DEP, in consultation with the Department of Health (DOH) and relevant local governments and local public and private wastewater utilities, will develop an OSTDS remediation plan for a spring that the DEP determines OSTDSs within a priority focus area contribute at least 20 percent of nonpoint source nutrient pollution. The plan will be completed and adopted as part of the BMAP no later than the first five-year milestone required by s. 373.807(2)(b)8., F.S.

In preparing the plan, the DEP will:

- Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems;
- Develop and implement a public education plan to provide area residents with reliable, understandable information about OSTDSs and springs; and
- Develop projects necessary to reduce the nutrient impacts from OSTDSs.

The plan must include options for:

- Repair;
- Upgrade;
- Replacement;
- Drainfield modification;
- Addition of effective nitrogen reducing features;
- Connection to a central sewerage system; or
- Other action for systems or groups of systems within a priority focus area which contribute at least 20 percent of nonpoint source nutrient pollution.

The DEP will include in the plan a priority ranking for each system or group of systems that require remediation and will award funds to implement the remediation projects identified in the BMAP, contingent on specific appropriations in the General Appropriations Act, which may include all or part of the costs necessary to match local funding for repair, upgrade, replacement, drainfield modification, initial connection to a central sewerage system, or other action.

In awarding funds, the DEP may consider expected nutrient reduction benefit per unit cost, size and scope of the project, relative local financial contribution to the project, and financial impact on property owners and the community. The DEP may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity.

The bill requires the DEP to provide notice to local governments that have any jurisdiction in a priority focus area of an OFS of any permit applicants under s. 403.814(12), F.S., which relates to general permits for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres.

**Section 33** creates s. 373.811, F.S., to prohibit activities in a priority focus area in effect for an Outstanding Florida Springs.

Activities prohibited within a priority focus area are:

- Construction of domestic wastewater disposal system with permitted capacities of 100,000 gallons per day or greater unless the system meets a treatment standard of 3 mg/L total nitrogen on an annual permitted basis, unless the DEP determines a higher standard is necessary to attain a TMDL for the OFS;
- Construction of OSTDSs on lots less than one acre, if the addition of the specific systems conflicts with an onsite treatment and disposal system remediation plan incorporated into a BMAP;
- Construction of facilities for the disposal of hazardous waste;
- Land application of class A or B domestic wastewater biosolids not in accordance with a DEP approved nutrient management plan establishing the rate at which all biosolids, soil amendments, and sources of nutrients at the land application site can be applied to the land for crop production while minimizing the amount of pollutants and nutrients discharged to groundwater or waters of the state; and
- New agriculture operations that do not implement BMPs, measures necessary to achieve pollution reduction levels established by the DEP, or groundwater monitoring plans approved by a WMD or the DEP.

**Section 34** creates s. 373.813, F.S., to direct the DEP to adopt rules improve water quantity and quality to administer Part VIII of ch. 373, F.S.

The bill specifies the DACS is the lead agency for coordinating the reduction of agricultural nonpoint sources of pollution for the protection of OFSs. The DACS and the DEP will study and, if necessary, initiate rulemaking to implement new or revised agricultural BMPs, in cooperation with applicable local governments, and stakeholders, within a reasonable time.

The bill directs the DEP, the DACS, and the Institute of Food and Agriculture Sciences to conduct research into improved or additional nutrient management tools, with a sensitivity to the necessary balance between water quality improvements and agricultural productivity. If necessary, the tools must be incorporated into revised agricultural BMPs adopted by rule by DACS.

**Section 35** amends s. 403.061, F.S., to require the DEP to create a consolidated water resources work plan that provides a catalog of all water resource projects and regionally significant water supply projects under construction, completed in the previous five years, or planned to begin construction in the next five years. The plan must be developed in consultation with state agencies, the WMDs, regional water supply authorities, and local governments.

For each project in the plan, there must be:

- A description of the project;
- The total cost of the project; and
- The governmental entity financing the project.

The DEP must also create and maintain a web-based, interactive map that includes:

- All watersheds and each water body within them;
- The county or counties in which the watershed or water body is located;

- The WMD or districts in which the watershed or water body is located;
- Whether an MFL has been adopted for the water body and, if it has not been adopted, when it is anticipated to be adopted;
- Whether a recovery or prevention strategy has been adopted for the watershed or water body and, if it has not been adopted, when it is anticipated to be adopted;
- The impairment status of each watershed or water body;
- Whether a TMDL has been adopted, if necessary, and, if it has not been adopted, when it is anticipated to be adopted;
- Whether a BMAP has been adopted and, if it has not been adopted, when it is anticipated to be adopted;
- Each project listed on the five-year water resources work program pursuant to s. 373.036(7), F.S., (amended in section 8 of the bill);
- The agency or agencies and local sponsor, if any, responsible for overseeing the project;
- The estimated cost and completion date of each project and the financial contribution of each entity;
- The quantitative estimated benefit to the watershed or water body; and
- The water projects completed within the last five years within the watershed or water body.

The bill requires the DEP and the WMDs to prominently display a link on their websites to the interactive map required by the bill.

The information provided in the plan and the information used to develop the web-based interactive map is intended to help facilitate the ability of the Florida Water Resources Advisory Council (described in section 34 of the bill), the Legislature, and the public to consider the projects contained in the tentative water resources work program (also described in section 34 of the bill) in relation to all projects undertaken within a 10-year period and the existing condition of water resources in the project area and in the state as a whole. The bill provides rulemaking authority to the DEP to accomplish this purpose.

The bill also requires the DEP to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply and provides criteria. Notwithstanding this classification or the inclusion of treated water supply as a designated use of a surface water, a surface water used for treated potable water supply may be reclassified as waters designated for potable water supply.

**Section 36** creates s. 403.0616, F.S., to create the Florida Water Resources Advisory Council within the DEP.

The advisory council's purpose is to evaluate water resource projects prioritized and submitted by state agencies, WMDs, regional water supply authorities, or local governments. The council must evaluate and recommend projects eligible for state funding as priority projects of statewide, regional, or critical local importance under chs. 373 or 403, F.S.

The council must review and evaluate all water resource projects that are prioritized and reported by state agencies, local governments, regional water supply authorities, or by the WMDs in the consolidated annual report (described in section 8 of the bill) for the purpose of providing the

Legislature with recommendations for projects that improve or restore the water resources of the state. It is also responsible for submitting pilot projects that test the effectiveness of innovative or existing nutrient reduction or water conservation technologies or practices designed to minimize nutrient pollution or restore flows in the water bodies of the state.

The council is made up of five voting and five ex officio, nonvoting members. Those members are:

- The Secretary of Environmental Protection, who shall serve as chair of the council;
- The Commissioner of Agriculture;
- The executive director of the Fish and Wildlife Conservation Commission (FWC);
- Two members with expertise in a scientific discipline related to water resources, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives, respectively; and
- The executive directors of the five WMDs, all of whom are non-voting members.

The appointed members serve two-year terms and may not serve more than a total of six years. The appointed members will receive reimbursement for expenses and per diem for travel. The President of the Senate and the Speaker of the House of Representatives may fill a vacancy at any time for an unexpired term of an appointed member.

If a member of the council no longer holds the position required to serve on the council, the interim agency head will represent the agency on the council.

The council is required to hold at least two separately noticed public meetings per year, with notice provided at least five days, but no more than 15 days before each meeting. The DEP will provide staff support.

By July 15 of each year, the council must release a tentative water resources work program with legislative recommendations for water resource projects. The bill provides for a 30-day period for the public to submit comments on the program.

By August 31 of each year, the council must adopt, by an affirmative vote of three of the council members, the tentative work program and submit it to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill requires the council to recommend rules for adoption by the DEP to competitively evaluate, select, and rank projects for the tentative water resources work program. The council must develop specific criteria for the evaluation, selection, and ranking of projects. In ranking the projects, preference is given for projects:

- That will have a significant, measurable impact on improving water quantity or water quality;
- In areas of greatest impairment;
- Of state or regional significance;
- Recommended by multiple districts or multiple local governments cooperatively;
- With a significant monetary commitment by the local project sponsor or sponsors;
- In rural areas of opportunity;
- That may be funded through appropriate loan programs; and

- That have significant private contributions of time or money.

The section provides the DEP with rulemaking authority to implement this section of the bill in consultation with the DACS, the FWC, and the WMDs.

**Section 37** creates s. 403.0617, F.S., to implement an innovative nutrient and sediment reduction and conservation pilot project program.

The bill directs the DEP to adopt rules to competitively evaluate and rank projects for selection and prioritization by the Water Resources Advisory Council. The projects are intended to test the effectiveness of innovative or existing nutrient reduction or water conservation technologies, programs or practices designed to minimize nutrient pollution or restore flows. The projects may not be harmful to the ecological resources in the study area.

The bill provides the following minimum considerations:

- Level of impairment of the waterbody, watershed, or water segment in which the project is located;
- Quantity of pollutants, especially nitrogen, the project is estimated to remove;
- The potential for the project to provide a cost effective solution to pollution caused by OSTDSs;
- The flow necessary to restore a water resource to its adopted MFL;
- The anticipated impact the project will have on restoring or increasing water flow or water level;
- The amount of matching funds for the project which will be provided by the entities responsible for implementing the project;
- Whether the project is located in a rural area of opportunity, with preference given to the local government responsible for implementing the project;
- For multiple-year projects, whether the project has funding sources that are identified and assured through the expected completion date;
- The cost of the project and length of time it will take to complete relative to its expected benefits; and
- Whether the entities responsible for implementing the project have used their own funds for projects to improve water quality or conserve water use, with preference given to those entities that have expended such funds.

**Section 38** amends s. 403.0623, F.S., to direct the DEP, in coordination with the WMDs, and regional water supply authorities, to establish statewide standards for the collection of water quantity, water quality, and related data to ensure quality, reliability, and validity of the data and testing results.

The bill requires the WMDs to submit data collected after June 30, 2015, to the DEP for analysis to ensure statewide consistency. The DEP is required to maintain a centralized database for all testing results and analyses, which must be accessible by the WMDs.

The bill directs the DEP to coordinate with federal agencies, to the extent practicable, to ensure its collection and analysis of data is consistent with this section.

The bill requires state agencies and WMDs to use the DEP's testing results and analysis, if available, in order to receive state funds for the acquisition of lands or the financing of a water resource projects.

The bill provides rulemaking authority to the DEP and the WMDs to implement this section of the bill.

**Section 39** amends s. 403.067, F.S., to provide that each new or revised BMAP must include:

- The appropriate management strategies available through existing water quality protection programs to achieve TMDLs, which may provide for phased implementation to promote timely, cost-effective actions;
- A description of BMPs adopted by rule;
- A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;
- The source and amount of financial assistance to be made available by the DEP, a WMD, or other entity for each listed project, if applicable; and
- A planning-level estimate of each listed project's expected load reduction, if applicable.

The bill provides that BMAPs are enforceable pursuant to ss. 403.067, 403.121, 403.141, and 403.161, F.S., and that management strategies, including BMPs and water quality monitoring, are enforceable under ch. 403, F.S.

The bill provides that no later than January 1, 2016:

- The DEP, in consultation with the WMDs and DACS will initiate rulemaking to adopt procedures to verify implementation of water quality monitoring required in lieu of implementation of BMPs or other measures;
- The DEP, in consultation with the WMDs and DACS, will initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim measures, BMPs, or other measures adopted by rule; and
- DACS, in consultation with the WMDs and the DEP, will initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, BMPs, or other measures adopted by rule.

The bill provides that rules will include enforcement procedures applicable to the landowner, discharger, or other responsible person required to implement applicable management strategies, including BMPs, or water quality monitoring as a result of noncompliance.

**Section 40** creates s. 403.0675, F.S., to require the DEP, in conjunction with the WMDs, to submit progress reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of each TMDL, BMAP, MFL, and recovery or prevention strategy adopted pursuant to s. 403.067, F.S., or parts I and VIII of ch. 373, F.S. The report must include the status of each project identified to achieve an adopted TMDL or an adopted minimum flow or minimum water level, as applicable.

If a report indicates that any of the five, ten, or 15-year milestones, or the 20-year target date, if applicable, for achieving a TMDL or MFL will not be met, the report must include an explanation of the possible causes and potential solutions.

If applicable, the report shall include project descriptions, estimated costs, proposed priority ranking for project implementation, and funding needed to achieve the TMDL or the MFL by the target date.

DACS will report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the implementation of the agricultural nonpoint source BMPs including an implementation assurance report summarizing survey responses and response rates, site inspections and other methods used to verify implementation of and compliance with BMPs pursuant to BMAPs.

**Section 41** amends s. 403.861, F.S. to require the DEP to establish rules concerning the use of surface waters for treated potable public water supply.

The bill provides that when a construction permit is issued to construct a new public water system drinking water treatment facility to provide potable water using a surface water of the state that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the DEP must add treated potable water supply as a designated use of the surface water segment.

The bill provides that for existing public water system drinking water treatment facilities that use a surface water of the state as a treated potable water supply, and the surface water classification does not include potable water as a designated use, the DEP shall add treated potable water supply as a designated use of the surface water segment.

**Section 42** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Existing regulatory programs require local governments to expend funds to comply with Minimum Flows and Levels (MFLs), Water Quality Standards (WQSs), and Basin Management Action Plans (BMAPs). This bill requires additional expenditures for Onsite Sewage Treatment and Disposal Systems (OSTDS) remediation plans and implementation of those plans. A comprehensive fiscal analysis of the bill is required to determine the total impact and whether this bill is a mandate.

##### **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 exact impact of PCS/CS/SB 918 on the private sector and individuals cannot be calculated because many of the costs are dependent on activities, such as delineation of priority focus areas that have not occurred. Some examples of potential private sector impacts are:

- Provisions that will require some property owners in priority focus areas to upgrade their Onsite Sewage Treatment and Disposal Systems (OSTDSs) or connect to a central sewerage system. This could result in higher rates for sewage disposal compared to the costs of using an OSTDS. Aerobic Treatment Units (ATUs) are also more costly to operate than conventional OSTDSs;
- Rate payers may pay for ongoing operation and maintenance for advanced wastewater treatment plants through rate increases, in addition to costs associated with disposal of Class A and B biosolids in landfills;
- Property owners may have to pay more for passive nitrogen removing systems installed in OSTDSs to install in new developments with lots of less than one acre. They may also face more expensive pump out costs as a result of more expensive disposal options;
- Urban fertilizer use may decrease because of ordinances causing a reduction in revenue for fertilizer companies;
- Septic tank contractors may benefit due to increased scrutiny and required upgrades to OSTDSs;
- An indeterminate positive fiscal impact to local business and real estate prices with the creation of the Shared-Use Nonmotorized Trail (SunTrail);
- The cost of water monitoring, assuming it is for water quantity monitoring, could cost between \$300 to \$1,500 per well per year, though it depends heavily on how that monitoring is accomplished; and
- Significant cost savings for dischargers currently discharging into class III waters used for potable water supply.

**C. Government Sector Impact:**

The bill requires a number of activities that will result in significant increased costs for several government entities, including the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), and the Water Management Districts (WMDs).

Senate Bill 2500, the Senate's Fiscal Year 2015-2016 General Appropriations Bill, provides \$50 million for Springs restoration and land acquisition, \$50 million for Water Resources and land acquisition, and \$25 million for SunTrail, from the Land Acquisition Trust Fund. In addition, SB 2500 appropriates six positions and \$1,429,721 to the DEP

from the Land Acquisition Trust Fund for information technology initiatives and delineation of springs protection zones as required in PCS/CS/SB 918. Three positions and \$299,629 from the Land Acquisition Trust Fund are appropriated to the DACS for implementation of agricultural best management practices. For the Northwest Florida Water Management District (NFWFMD), \$1.5 million is provided from the Land Acquisition Trust Fund for activities related to the establishment of Minimum Flows and Levels.

Additional costs that are indeterminate include:

- Minimum Flows and Levels (MFLs) - The bill would require the Water Management Districts (WMDs) and the Department of Environmental Protection (DEP) to adopt MFLs by certain deadlines, which are expected to cost between \$280,000 and \$2.25 million per MFL, including agency costs for extensive data collection, analysis and modeling, stakeholder coordination, and rulemaking. Costs can vary widely depending on the complexity of the system and the amount and type of scientific and technical data that exists or must be collected. Calculation of interim MFLs will be accomplished using existing staff and resources.
- MFLs Recovery or Prevention Strategies - The WMDs (excluding the Northwest Florida and Suwannee River WMDs) would be required to fund at least 25 percent of recovery or prevention strategies projects. However, the WMDs may provide less than a 25 percent match if another specific source(s) of funding will provide more than 75 percent of the project cost. Since the number of project applicants and project costs is unknown, the fiscal impact is indeterminate at this time.
- Water Resources Advisory Council - The bill requires the creation of the Water Resources Advisory Council within, and staffed by, the DEP. Per diem for travel to attend council meetings is authorized for the two appointed council members. The estimated cost to the Land Acquisition Trust Fund is indeterminate and should be insignificant.
- Alternative Water Supply Projects – The Water Management Districts that provide technical and financial assistance to self-suppliers for alternative water supply projects will result in a negative fiscal impact on those WMDs that provide such assistance. The actual cost to the Land Acquisition Trust Fund is indeterminate.
- Alternative Water Supply Pilot Program – The bill requires the SFWMD, SWFWMD, and the SJRWMD to designate and implement alternative water supply projects. The bill gives the WMDs the power to issue revenue bonds to pay the costs and expenses related to these projects.

According to the DEP, creation of a database of lands where public access is available could require significant financial resources for information collection, website, and mobile application development. Development of enhancements to the Water Information Network (WIN) is estimated to cost between \$4 million and \$5 million over the next five years.

The DACS requested \$25 million from the General Revenue Fund to continue the development and implementation of agricultural best management practices in the Northern Everglades and Florida spring sheds in the fiscal year 2015-2016 Legislative Budget Request. The DACS estimates this amount will be sufficient to implement the provisions in this bill relating to agricultural best management practices.

There may be a positive fiscal impact to the Florida Department of Transportation (FDOT) with the increase in concession agreements for displays at shared-use nonmotorized trail (SunTrail) facilities.

## **VI. Technical Deficiencies:**

The requirement to conduct water monitoring in section 13 of the bill does not specify what kind of monitoring is required or whether or not consumptive use permits must be revised to include monitoring.

In various sections of the bill, the terms “minimum flows and levels” and “minimum flows or levels” are used. In other sections of the bill, the term “minimum flows and minimum water levels” is used. The terms are synonymous but may be interpreted differently under the statutory construction rule that the Legislature is acting intentionally and purposefully when terms are amended in one statute but not another in the same bill.

The bill could require significant funding, which may have to come from bonding, by the affected WMDs to fund projects as part of the alternative water supply pilot program. The prioritization of projects as part of the pilot program could be inconsistent with other provisions of the bill.

The bill provides that if an MFL has been established for an OFS, a WMD (other than the NFWMD) or the DEP will use emergency rulemaking authority to adopt MFLs no later than July 1, 2016. It is unclear if emergency rulemaking authority will be available if MFLs for an OFS have not been established by July 1, 2016.

The phrase “results in a vacancy on the council” in Section 21 of the bill, concerning the Harris Chain of Lakes Restoration Council, may be misinterpreted and may need to be reworded to specify that resignation of a council member or the failure of a member to attend three consecutive meetings without an excuse approved by the chair of the committee results in the removal of the committee member.

## **VII. Related Issues:**

The Florida Water Resources Advisory Council is required to release a tentative water resources work program by July 15 of each year. The bill should indicate what year the first work program must be released.

The bill defines outstanding Florida springs as all first magnitude springs in Florida, as defined in the most recent version of the Florida Geological Survey’s springs bulletin. A future bulletin

could remove one of the first magnitude springs from its list, creating problems for ongoing projects by removing the regulatory structure established in this bill.

It is unclear what happens if the Department of Environmental Protection (DEP) determines that data submitted by a Water Management District (WMD) is inconsistent with statewide standards established by the DEP in coordination with the WMDs.

It is unclear what the definition of “self-suppliers” is.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 259.032, 373.019, 373.036, 373.042, 373.0421, 373.1501, 373.219, 373.223, 373.2234, 373.227, 373.233, 373.4591, 373.4595, 373.467, 373.536, 373.703, 373.705, 373.707, 373.709, 403.061, 403.0623, 403.067, and 403.861.

This bill creates the following sections of the Florida Statutes: 339.81, 339.82, 339.83, 373.037, 373.0465, 373.801, 373.802, 373.803, 373.805, 373.807, 373.811, 373.813, 403.0616, 403.0617, and 403.0675.

The bill makes conforming changes to the following section of the Florida Statutes: 260.0144 and 335.065.

## IX. Additional Information:

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

### **Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The committee substitute:

- Removes guidance for setting interim minimum water flows or minimum water levels and removes all references to interim minimum water flows or minimum water levels;
- Creates a pilot program for alternative water supply development in restricted allocation areas:
  - Provides definitions;
  - Provides legislative findings;
  - Requires the South Florida Water Management District (SFWMD), Southwest Florida Water Management District (SWFWMD), and the St. Johns River Water Management District (SJRWMD) to designate and implement alternative water supply projects;
  - Specifies the powers and restrictions of the SFWMD, the SWFWMD, and the SJRWMD with respect to implementing pilot projects under the section;
  - Provides for funding assistance from the Water Management Districts (WMDs) for pilot projects; and
  - Provides reporting requirements.

- Removes definition of the minimum flow or minimum water level for an Outstanding Florida Springs (OFS) as being the limit and level, respectively, at which further withdrawals would be harmful to the water resources or ecology of the area;
- Provides a WMD and the DEP with emergency rulemaking authority to adopt an established minimum flow or minimum water level for an OFS no later than July 1, 2016, except for the NFWFMD, which must adopt minimum water flows and minimum water levels by July 1, 2026;
- Provides that rules adopted pursuant to s. 373.042, F.S., concerning minimum flows and minimum water levels, are not subject to s. 120.541(3), F.S., concerning ratification of rules by the legislature;
- Directs the DEP to adopt by rule a uniform definition of the term “harmful to the water resources” for OFSS;
- Clarifies that the requirement for monitoring water use under a Consumptive Use Permit (CUP) authorizing 100,000 or more gallons per day applies to a new, renewal of, or modification to a CUP and that in addition to 100,000 gallons per day, the well or wells subject to monitoring must have an inside diameter of eight inches or more and that the results must be reported to the applicable WMD at least annually;
- Clarifies that the requirement that permitted water allocations may not be modified due to water conservation during the term of the CUP does not apply to areas included in a regional water supply plan or to areas included in a declaration of water shortage or emergency, pursuant to s. 373.246, F.S.;
- Clarifies that when the WMDs adopt rules that provide water conservation incentives, those incentives may include limited permit extensions;
- Clarifies that CUPs may not be reduced during the term of the permit due to actual water use being less than permitted water use due to market conditions;
- Specifies that the Lake Okeechobee basin management action plan (BMAP) is designed to achieve the Total Maximum Daily Load (TMDL), rather than to reduce phosphorus loads;
- Provides requirements for the Lake Okeechobee, the Caloosahatchee River, and the St. Lucie River BMAPs:
  - They must include milestones for implementation and water quality improvement and an associated water quality monitoring component;
  - The DEP must develop schedules to establish 5, 10, and 15 year measurable milestones and a target for achieving water quality improvement to be used to provide guidance for planning and funding purposes and exempts the schedule from the provisions of s. 120.54(1)(a), concerning rulemaking;
  - Assessments of progress toward the 5, 10, and 15 year milestones must be conducted every 5 years and revisions to the BMAPs must be made, as appropriate, as a result of each 5-year review;
  - The assessments must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives;
  - Upon the first 5-year review, a schedule, measurable milestones, and a target for achieving water quality improvement consistent with certain provisions must be adopted into the BMAPs;
  - Revisions to the BMAPs must be made by the DEP in cooperation with basin stakeholders;

- Revisions to the management strategies must follow certain procedures; and
- Revised BMAPs must be adopted pursuant to s. 403.067(7)(a)4., F.S.;
- Specifies that for Lake Okeechobee, where water quality problems are detected for agricultural and nonagricultural nonpoint sources despite the appropriate implementation of best management practices (BMPs), the BMPs must be reevaluated to determine whether the BMPs or other measures require modification. If so, the rule must be revised to require modified BMPs to be implemented within a reasonable amount of time;
- Concerning entities within the Lake Okeechobee, Caloosahatchee River, and St. Lucie River watersheds, the bill requires, rather than allows, rules adopted by DACS relating to the land application of animal manure to include site inspection requirements. Existing requirements are criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, and recordkeeping requirement;
- Specifies that the DEP, rather than the SFWMD must conduct an evaluation of any pollutant load reduction goals, as well as any other specific objectives and goals, as stated in the River Watershed Protection Programs;
- Requires the DEP to include an implementation assurance report in its annual progress report;
- Requires the SFWMD to submit a complete application for a permit modification to the Lake Okeechobee structure permits by January 1, 2016;
- Provides that a member of the Harris Chain of Lakes Restoration Council must be a person with experience in environmental science or regulation, rather than an environmental engineer;
- Provides the Lake County legislative delegation with the authority to waive the qualifications for membership on the council on a case-by-case basis if good cause is shown;
- Provides that resignation by a council member, or failure by a council member to attend three consecutive meetings without an excuse approved by the chair of the council, will result in a vacancy;
- Provides that the provisions of s. 373.703, F.S., concerning water production, do not apply to the development and implementation of pilot projects pursuant to s. 373.037;
- Provides criteria for priority consideration for state funding for water supply development projects;
- Adds certain software technologies to list of examples for WMDs to promote expanded cost-share criteria for additional conservation practices;
- Provides criteria for WMDs to consider when determining which alternative water supply projects are selected for financial assistance;
- Specifies that “priority focus areas” are delineated in a BMAP;
- Provides that priority focus areas in OFSs are effective when incorporated in a BMAP;
- Provides that when a MFL for an OFS is revised, a WMD or the DEP must concurrently adopt a recovery or prevention strategy or modify an existing one;
- Provides that a schedule of 5, 10, and 15 year milestones as part of a recovery or prevention strategy or a BMAP is not a rule but is intended to provide guidance for

planning and funding purposes and is exempt from s. 120.54(1)(a), regarding rulemaking;

- Provides that if OSTDSs are identified as 20 percent of nonpoint source nutrient pollution, the relevant BMAP must include an OSTDS remediation plan;
- Requires the implementation of an ordinance that meets or exceeds the requirements of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes within 12 months, rather than 6 months, of the adoption of a BMAP containing a priority focus area of an OFS, rather than after the delineation of a priority focus area;
- Makes the development of an OSTDS remediation plan the responsibility of the DEP as part of the BMAP process rather than the responsibility of local governments and provides requirements;
- Removes requirements associated with local governments with respect to OSTDS remediation plans;
- Adds public and private wastewater utilities as entities the DEP must consult with when developing an OSTDS remediation plan;
- Provides that an OSTDS remediation plan must be completed by the DEP and adopted as part of a BMAP no later than the first 5 year milestone of the BMAP;
- Provides for funding for OSTDS remediation projects;
- Prohibits new domestic wastewater disposal facilities, rather than municipal or industrial wastewater disposal facilities within priority focus areas in effect for an OFS when necessary to attain a TMDL;
- Removes references to passive nitrogen removing OSTDSs and prohibits the installation of specific systems that conflict with a remediation plan incorporated into a BMAP for an OFS;
- Clarifies when the land application of Class A or B domestic wastewater biosolids may not be applied within a priority focus area of an OFS;
- Requires the DEP to adopt rules to improve water quantity and water quality to administer the Florida Springs and Aquifer Protection Act, rather than adopting rules to create a program;
- Removes rulemaking authority for the DOH, DACS, and the WMDs to administer the Florida Springs and Aquifer Protection Act;
- Removes a required yearly report under the Florida Springs and Aquifer Protection Act;
- Adds regional water supply authorities to list of entities the DEP is required to consult with when creating a consolidated water resources work plan and adds regionally significant water supply projects to list of items that must be reported;
- Adds regional water supply authorities to list of entities the Florida Water Resources Advisory Council may accept water resource project submissions from;
- Provides requirements for new or revised BMAPs;
- Adds site inspection requirements to what must be incorporated into rules adopted by DACS concerning interim measures, BMPs or other measures necessary to achieve pollution reduction; and
- Provides for the enforcement and verification of BMAPs and management strategies.

**CS by Environmental Preservation and Conservation on March 24, 2015:**

- Changes the implementation date to create a database and website providing information on conservation lands the public may access from January 1, 2016, to July 1, 2016;
- Clarifies that the addition of local and federal land to the database is a continuing endeavor and should be accomplished to the extent practicable;
- Requires the Florida Department of Transportation (FDOT) to budget \$50 million yearly for SunTrails;
- Clarifies that the provision of technical assistance to self-suppliers (requiring the expenditure of public funds) must be consistent with the public policy of the state set forth in s. 373.016, F.S., related to water resources;
- Clarifies the grading system required for the status of water resources must reflect the severity of the impairment;
- Clarifies that the list of prioritized projects is for projects for which the water management district or local government are requesting state funding through the water resources work program;
- Changes the date for using an interim Minimum Flow Level (MFL) from January 1, 2016, to July 1, 2016, to align the use of the interim MFL with the adoption of recovery or prevention strategies;
- Adds a provision to ensure natural weather variations do not trigger an interim MFL violation;
- Provides emergency rulemaking authority for the adoption of an interim MFL and recovery or prevention strategies;
- Allows interim MFLs and recovery or prevention strategies to remain in effect until January 1, 2018, and specifies they are renewable during any pending rule challenge or request for ratification;
- Defines the term “Central Florida Water Initiative”;
- Provides for an interagency agreement between the Department of Environmental Protection (DEP), South Florida Water Management District (SFWMD), Southwest Florida Water Management District (SWFWMD), St. Johns River Water Management District (SJRWMD), and the Department of Agriculture and Consumer Services (DACS) to develop and implement a multi-district regional water supply plan and provides plan criteria and requirements, including:
  - Uniform rules for regulatory programs;
  - Uniform rules to include a goal for residential per capita water use for each consumptive use permit;
  - A single definition of “harmful to the water course” as it relates to the issuance of Consumptive Use Permits (CUPs);
  - Rules to include existing recovery strategies;
- Requires the DEP to initiate rulemaking by December 31, 2015 to be applied by the WMDs only within the Central Florida Water Initiative (CFWI);
- Allows the DEP to grant variances where there are unique circumstances or hydrogeological factors that make application of uniform rules unrealistic or impractical;



- Specifies the authority of the SFWMD as sponsor of the Central and Southern Florida (C&SF) Project to allocate quantities of, and assign priorities for the use of, water within its jurisdiction;
- Directs the district to provide recommendations to the U.S. Army Corps of Engineers when developing or implementing certain water control plans or regulations schedules;
- Directs the WMD governing boards to give consideration to the identification of preferred water supply sources for water users for whom access to or development of new water supplies is not technically or financially feasible;
- Provides conditions under which the DEP and the WMD governing boards are directed to give preference to certain applications where the use of alternative water supply is not technically or financially feasible;
- Provides that when giving preference to new competing water use applicants for whom alternative water supplies are not technically or financially feasible, the preference must be given to the applicant for whom the water source is nearest;
- Provides priority consideration to certain public-private partnerships for water storage, groundwater recharge, water quality improvements, and water supply on private agricultural lands;
- Clarifies that the role of private land owners is in enhancing hydrologic improvement, improving water quality and assisting in water supply;
- Revises and provides definitions relating to the Northern Everglades and Estuaries Protection Program, including:
  - Deletes definition for “district Works of the District (WOD) program”;
  - Clarifies provisions of the Lake Okeechobee Watershed Protection Program;
  - Provides requirements for the Lake Okeechobee BMAP;
  - Provides for technical and financial assistance for implementation of agricultural best management practices;
  - Directs the SFWMD to revise certain rules and provide for a water quality monitoring program;
  - Revises provisions for the Caloosahatchee River Watershed Protection Program and the St. Lucie River Watershed Protection Program;
  - Revises permitting and annual reporting requirements relating to Northern Everglades Estuary Protection Program (NEEPP);
  - Clarifies that reevaluation of agricultural best management practices include revision, if necessary, pursuant to s. 403.067(7)(c)4, F.S.;
  - Changes reference to Rule 40E-63, F.A.C., to “the Everglades Program,”
  - Adds provisions requiring the district to initiate rulemaking to provide for a monitoring program for nonpoint source discharges to monitor water quality in the Caloosahatchee Watershed;
  - Adds provisions requiring the district to initiate rulemaking to provide for a monitoring program for nonpoint source dischargers required to monitor water quality in the St. Lucie watershed;
  - Provides that the Basin Management Action Plans for Lake Okeechobee, the Caloosahatchee River watershed and estuary and The St. Lucie River watershed and estuary are enforceable pursuant to ss. 403.067, 403.121, 403.141 and 403.161, F.S.;

- Requires a WMD to include an annual funding plan in the water resource development work program;
- Directs the DEP to post the work program on its website;
- Requires the separate identification of projects submitted for state funding through the water resources work program pursuant to s. 403.0616, F.S.;
- Directs WMDs to consider funding assistance for certain water supply development projects;
- Requiring governing boards to include certain information in their annual budget submittals;
- Authorizes water management districts to provide technical and financial assistance to self-suppliers and to waive certain construction costs of alternative water supply development projects if they are in the public interest and not otherwise financially feasible;
- Clarifies that the provision of technical assistance to self-suppliers (requiring the expenditure of public funds) must be consistent with the public policy of the state set forth in s. 373.707(1)(f), F.S.;
- Includes reference to water resources work program in provisions related to state funding;
- Requires water supply plans to include traditional and alternative water supply project options that are technically and financially feasible;
- Directs the department to report certain funding analyses and project explanations in regional water supply planning reports;
- Revises language to replace “spring protection and management zones” with “priority focus areas”;
- Excludes “submarine springs” from definition of “Outstanding Florida Springs”;
- Recognizes that priority focus areas may encompass a spring or group of springs;
- Requires the delineation of priority focus areas by July 1, 2018;
- Removes the requirement for a map and legal description depicting spring protection and management zones;
- Revises language to make it clear that implementation plans are intended to achieve certain goals with respect to MFLs and Total Maximum Daily Loads (TMDLs);
- Provides that requirements for local governments to create septic tank remediation plans are notwithstanding other conflicting provisions of law;
- Requires the identification of Onsite Sewage Treatment and Disposal Systems (OSTDS) contributing at least 20 percent of nonpoint source nutrient pollution to Outstanding Florida Springs (OFSs);
- Includes drainfield modification in the types of repairs and upgrades that can be identified for OSTDSs;
- Specifies the types of costs that a property owner is not required to pay if an OSTDS requires remediation;
- Requires the department notify local governments of all permit applicants under s. 403.814(12), F.S., in priority focus areas of OFSs;
- Removes the term “septage” from the types of prohibited land applications in priority focus areas;

- Directs the department to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply and provides criteria for the rule;
- Reduces the number of required meetings by the Water Resources Advisory Council from eight to two;
- Provides for the Innovative Nutrient and Sediment Reduction and Conservation Pilot Project Program;
- Requires the department to adopt rules to competitively evaluate and rank projects for selection and prioritization by the Water Resources Advisory Council pursuant to s. 403.0616, F.S., for submission to the Legislature for funding of pilot projects;
- Provides eligibility for projects that test the effectiveness of innovative or existing nutrient reduction or water conservation technologies or practices designed to minimize nutrient pollution or restore flows in the water bodies of the state;

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Dean)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (g) is added to subsection (11) of  
section 259.032, Florida Statutes, to read:

259.032 Conservation and Recreation Lands Trust Fund;  
purpose.—

(11)

(g) In order to ensure that the public has knowledge of and



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11 access to conservation lands, as defined in s. 253.034(2)(c),  
12 the department shall publish, update, and maintain a database of  
13 such lands where public access is compatible with conservation  
14 and recreation purposes.

15 1. By July 1, 2016, the database must be available to the  
16 public online and must include, at a minimum, the location,  
17 types of allowable recreational opportunities, points of public  
18 access, facilities or other amenities, restrictions, and any  
19 other information the department deems appropriate to increase  
20 public awareness of recreational opportunities on conservation  
21 lands. Such data must be electronically accessible, searchable,  
22 and downloadable in a generally acceptable format.

23 2. The department, through its own efforts or through  
24 partnership with a third-party entity, shall create an  
25 application downloadable on mobile devices to be used to locate  
26 state lands available for public access using the user's  
27 locational information or based upon an activity of interest.

28 3. The database and application must include information  
29 for all state conservation lands to which the public has a right  
30 of access for recreational purposes. Beginning January 1, 2018,  
31 to the greatest extent practicable, the database shall include  
32 similar information for lands owned by federal and local  
33 government entities that allow access for recreational purposes.

34 4. By January 1 of each year, the department shall provide  
35 a report to the Governor, the President of the Senate, and the  
36 Speaker of the House of Representatives describing the  
37 percentage of public lands acquired under this chapter to which  
38 the public has access and efforts undertaken by the department  
39 to increase public access to such lands.



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40 Section 2. Section 260.0144, Florida Statutes, is amended  
41 to read:

42 260.0144 Sponsorship of state greenways and trails.—The  
43 department may enter into a concession agreement with a not-for-  
44 profit entity or private sector business or entity for  
45 commercial sponsorship to be displayed on state greenway and  
46 trail facilities not included within the Shared-Use Nonmotorized  
47 Trail Network established in chapter 339 ~~or property specified~~  
48 ~~in this section~~. The department may establish the cost for  
49 entering into a concession agreement.

50 (1) A concession agreement shall be administered by the  
51 department and must include the requirements found in this  
52 section.

53 (2) (a) Space for a commercial sponsorship display may be  
54 provided through a concession agreement on certain state-owned  
55 greenway or trail facilities or property.

56 (b) Signage or displays erected under this section shall  
57 comply with the provisions of s. 337.407 and chapter 479, and  
58 shall be limited as follows:

59 1. One large sign or display, not to exceed 16 square feet  
60 in area, may be located at each trailhead or parking area.

61 2. One small sign or display, not to exceed 4 square feet  
62 in area, may be located at each designated trail public access  
63 point.

64 (c) Before installation, each name or sponsorship display  
65 must be approved by the department.

66 (d) The department shall ensure that the size, color,  
67 materials, construction, and location of all signs are  
68 consistent with the management plan for the property and the



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69 standards of the department, do not intrude on natural and  
70 historic settings, and contain only a logo selected by the  
71 sponsor and the following sponsorship wording:

72  
73       ... (Name of the sponsor)... proudly sponsors the costs  
74 of maintaining the ... (Name of the greenway or  
75 trail)....

76  
77       ~~(e) Sponsored state greenways and trails are authorized at~~  
78 ~~the following facilities or property:~~

- 79       ~~1. Florida Keys Overseas Heritage Trail.~~  
80       ~~2. Blackwater Heritage Trail.~~  
81       ~~3. Tallahassee St. Marks Historic Railroad State Trail.~~  
82       ~~4. Nature Coast State Trail.~~  
83       ~~5. Withlacoochee State Trail.~~  
84       ~~6. General James A. Van Fleet State Trail.~~  
85       ~~7. Palatka-Lake Butler State Trail.~~

86       (e)~~(f)~~ The department may enter into commercial sponsorship  
87 agreements for other state greenways or trails as authorized in  
88 this section. A qualified entity that desires to enter into a  
89 commercial sponsorship agreement shall apply to the department  
90 on forms adopted by department rule.

91       (f)~~(g)~~ All costs of a display, including development,  
92 construction, installation, operation, maintenance, and removal  
93 costs, shall be paid by the concessionaire.

94       (3) A concession agreement shall be for a minimum of 1  
95 year, but may be for a longer period under a multiyear  
96 agreement, and may be terminated for just cause by the  
97 department upon 60 days' advance notice. Just cause for



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98 termination of a concession agreement includes, but is not  
99 limited to, violation of the terms of the concession agreement  
100 or any provision of this section.

101 (4) Commercial sponsorship pursuant to a concession  
102 agreement is for public relations or advertising purposes of the  
103 not-for-profit entity or private sector business or entity, and  
104 may not be construed by that not-for-profit entity or private  
105 sector business or entity as having a relationship to any other  
106 actions of the department.

107 (5) This section does not create a proprietary or  
108 compensable interest in any sign, display site, or location.

109 (6) Proceeds from concession agreements shall be  
110 distributed as follows:

111 (a) Eighty-five percent shall be deposited into the  
112 appropriate department trust fund that is the source of funding  
113 for management and operation of state greenway and trail  
114 facilities and properties.

115 (b) Fifteen percent shall be deposited into the State  
116 Transportation Trust Fund for use in the Traffic and Bicycle  
117 Safety Education Program and the Safe Paths to School Program  
118 administered by the Department of Transportation.

119 (7) The department may adopt rules to administer this  
120 section.

121 Section 3. Subsections (3) and (4) of section 335.065,  
122 Florida Statutes, are amended to read:

123 335.065 Bicycle and pedestrian ways along state roads and  
124 transportation facilities.—

125 (3) The department, in cooperation with the Department of  
126 Environmental Protection, shall establish a statewide integrated





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127 system of bicycle and pedestrian ways in such a manner as to  
128 take full advantage of any such ways which are maintained by any  
129 governmental entity. ~~The department may enter into a concession~~  
130 ~~agreement with a not for profit entity or private sector~~  
131 ~~business or entity for commercial sponsorship displays on~~  
132 ~~multiuse trails and related facilities and use any concession~~  
133 ~~agreement revenues for the maintenance of the multiuse trails~~  
134 ~~and related facilities. Commercial sponsorship displays are~~  
135 ~~subject to the requirements of the Highway Beautification Act of~~  
136 ~~1965 and all federal laws and agreements, when applicable. For~~  
137 ~~the purposes of this section, bicycle facilities may be~~  
138 ~~established as part of or separate from the actual roadway and~~  
139 ~~may utilize existing road rights of way or other rights of way~~  
140 ~~or easements acquired for public use.~~

141 ~~(a) A concession agreement shall be administered by the~~  
142 ~~department and must include the requirements of this section.~~

143 ~~(b)1. Signage or displays erected under this section shall~~  
144 ~~comply with s. 337.407 and chapter 479 and shall be limited as~~  
145 ~~follows:~~

146 ~~a. One large sign or display, not to exceed 16 square feet~~  
147 ~~in area, may be located at each trailhead or parking area.~~

148 ~~b. One small sign or display, not to exceed 4 square feet~~  
149 ~~in area, may be located at each designated trail public access~~  
150 ~~point.~~

151 ~~2. Before installation, each name or sponsorship display~~  
152 ~~must be approved by the department.~~

153 ~~3. The department shall ensure that the size, color,~~  
154 ~~materials, construction, and location of all signs are~~  
155 ~~consistent with the management plan for the property and the~~



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156 ~~standards of the department, do not intrude on natural and~~  
157 ~~historic settings, and contain only a logo selected by the~~  
158 ~~sponsor and the following sponsorship wording:~~

159  
160 ~~... (Name of the sponsor) ... proudly sponsors the costs~~  
161 ~~of maintaining the ... (Name of the greenway or~~  
162 ~~trail)....~~

163  
164 ~~4. All costs of a display, including development,~~  
165 ~~construction, installation, operation, maintenance, and removal~~  
166 ~~costs, shall be paid by the concessionaire.~~

167 ~~(c) A concession agreement shall be for a minimum of 1~~  
168 ~~year, but may be for a longer period under a multiyear~~  
169 ~~agreement, and may be terminated for just cause by the~~  
170 ~~department upon 60 days' advance notice. Just cause for~~  
171 ~~termination of a concession agreement includes, but is not~~  
172 ~~limited to, violation of the terms of the concession agreement~~  
173 ~~or this section.~~

174 ~~(4) (a) The department may use appropriated funds to support~~  
175 ~~the establishment of a statewide system of interconnected~~  
176 ~~multiuse trails and to pay the costs of planning, land~~  
177 ~~acquisition, design, and construction of such trails and related~~  
178 ~~facilities. The department shall give funding priority to~~  
179 ~~projects that:~~

180 ~~1. Are identified by the Florida Greenways and Trails~~  
181 ~~Council as a priority within the Florida Greenways and Trails~~  
182 ~~System under chapter 260.~~

183 ~~2. Support the transportation needs of bicyclists and~~  
184 ~~pedestrians.~~



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185 ~~3. Have national, statewide, or regional importance.~~

186 ~~4. Facilitate an interconnected system of trails by~~  
187 ~~completing gaps between existing trails.~~

188 ~~(b) A project funded under this subsection shall:~~

189 ~~1. Be included in the department's work program developed~~  
190 ~~in accordance with s. 339.135.~~

191 ~~2. Be operated and maintained by an entity other than the~~  
192 ~~department upon completion of construction. The department is~~  
193 ~~not obligated to provide funds for the operation and maintenance~~  
194 ~~of the project.~~

195 Section 4. Section 339.81, Florida Statutes, is created to  
196 read:

197 339.81 Florida Shared-Use Nonmotorized Trail Network.—

198 (1) The Legislature finds that increasing demands continue  
199 to be placed on the state's transportation system by a growing  
200 economy, continued population growth, and increasing tourism.  
201 The Legislature also finds that significant challenges exist in  
202 providing additional capacity to the conventional transportation  
203 system and enhanced accommodation of alternative travel modes to  
204 meet the needs of residents and visitors are required. The  
205 Legislature further finds that improving bicyclist and  
206 pedestrian safety for both residents and visitors remains a high  
207 priority. Therefore, the Legislature declares that the  
208 development of a nonmotorized trail network will increase  
209 mobility and recreational alternatives for residents and  
210 visitors of this state, enhance economic prosperity, enrich  
211 quality of life, enhance safety, and reflect responsible  
212 environmental stewardship. To that end, it is the intent of the  
213 Legislature that the department make use of its expertise in



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214 efficiently providing transportation projects and develop the  
215 Florida Shared-Use Nonmotorized Trail Network, consisting of a  
216 statewide network of nonmotorized trails, which allows  
217 nonmotorized vehicles and pedestrians to access a variety of  
218 origins and destinations with limited exposure to motorized  
219 vehicles.

220 (2) The Florida Shared-Use Nonmotorized Trail Network is  
221 created as a component of the Florida Greenways and Trails  
222 System established in chapter 260. The statewide network  
223 consists of multiuse trails or shared-use paths physically  
224 separated from motor vehicle traffic and constructed with  
225 asphalt, concrete, or another hard surface which, by virtue of  
226 design, location, extent of connectivity or potential  
227 connectivity, and allowable uses, provides nonmotorized  
228 transportation opportunities for bicyclists and pedestrians  
229 statewide between and within a wide range of points of origin  
230 and destinations, including, but not limited to, communities,  
231 conservation areas, state parks, beaches, and other natural or  
232 cultural attractions for a variety of trip purposes, including  
233 work, school, shopping, and other personal business, as well as  
234 social, recreational, and personal fitness purposes.

235 (3) Network components do not include sidewalks, nature  
236 trails, loop trails wholly within a single park or natural area,  
237 or on-road facilities, such as bicycle lanes or routes other  
238 than:

239 (a) On-road facilities that are no longer than one-half  
240 mile connecting two or more nonmotorized trails, if the  
241 provision of a non-motorized trail without the use of the on-  
242 road facility is not feasible, and if such on-road facilities



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243 are signed and marked for nonmotorized use; or

244 (b) On-road components of the Florida Keys Overseas  
245 Heritage Trail.

246 (4) The planning, development, operation, and maintenance  
247 of the Florida Shared-Use Nonmotorized Trail Network is declared  
248 to be a public purpose, and the department, together with other  
249 agencies of this state and all counties, municipalities, and  
250 special districts of this state, may spend public funds for such  
251 purposes and accept gifts and grants of funds, property, or  
252 property rights from public or private sources to be used for  
253 such purposes.

254 (5) The department shall include the Florida Shared-Use  
255 Nonmotorized Trail Network in its work program developed  
256 pursuant to s. 339.135. For purposes of funding and maintaining  
257 projects within the network, the department shall allocate in  
258 its program and resource plan a minimum of \$50 million annually,  
259 beginning in the 2015-2016 fiscal year.

260 (6) The department may enter into a memorandum of agreement  
261 with a local government or other agency of the state to transfer  
262 maintenance responsibilities of an individual network component.  
263 The department may contract with a not-for-profit entity or  
264 private sector business or entity to provide maintenance  
265 services on an individual network component.

266 (7) The department may adopt rules to aid in the  
267 development and maintenance of components of the network.

268 Section 5. Section 339.82, Florida Statutes, is created to  
269 read:

270 339.82 Shared-Use Nonmotorized Trail Network Plan.—

271 (1) The department shall develop a network plan for the



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272 Florida Shared-Use Nonmotorized Trail Network in coordination  
273 with the Department of Environmental Protection, metropolitan  
274 planning organizations, affected local governments and public  
275 agencies, and the Florida Greenways and Trails Council. The plan  
276 must be consistent with the Florida Greenways and Trails Plan  
277 developed under s. 260.014 and must be updated at least once  
278 every 5 years.

279 (2) The network plan must include all of the following:

280 (a) A needs assessment, including, but not limited to, a  
281 comprehensive inventory and analysis of existing trails that may  
282 be considered for inclusion in the Florida Shared-Use  
283 Nonmotorized Trail Network.

284 (b) A project prioritization process that includes  
285 assigning funding priority to projects that:

286 1. Are identified by the Florida Greenways and Trails  
287 Council as a priority within the Florida Greenways and Trails  
288 System under chapter 260;

289 2. Facilitate an interconnected network of trails by  
290 completing gaps between existing facilities; and

291 3. Maximize use of federal, local, and private funding and  
292 support mechanisms, including, but not limited to, donation of  
293 funds, real property, and maintenance responsibilities.

294 (c) A map that illustrates existing and planned facilities  
295 and identifies critical gaps between facilities.

296 (d) A finance plan based on reasonable projections of  
297 anticipated revenues, including both 5-year and 10-year cost-  
298 feasible components.

299 (e) Performance measures that include quantifiable  
300 increases in trail network access and connectivity.



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301 (f) A timeline for the completion of the base network using  
302 new and existing data from the department, the Department of  
303 Environmental Protection, and other sources.

304 (g) A marketing plan prepared in consultation with the  
305 Florida Tourism Industry Marketing Corporation.

306 Section 6. Section 339.83, Florida Statutes, is created to  
307 read:

308 339.83 Sponsorship of Shared-Use Nonmotorized Trails.—

309 (1) The department may enter into a concession agreement  
310 with a not-for-profit entity or private sector business or  
311 entity for commercial sponsorship signs, pavement markings, and  
312 exhibits on nonmotorized trails and related facilities  
313 constructed as part of the Shared-Use Nonmotorized Trail  
314 Network. The concession agreement may also provide for  
315 recognition of trail sponsors in any brochure, map, or website  
316 providing trail information. Trail websites may provide links to  
317 sponsors. Revenue from such agreements may be used for the  
318 maintenance of the nonmotorized trails and related facilities.

319 (a) A concession agreement shall be administered by the  
320 department.

321 (b)1. Signage, pavement markings, or exhibits erected  
322 pursuant to this section must comply with s. 337.407 and chapter  
323 479 and are limited as follows:

324 a. One large sign, pavement marking, or exhibit, not to  
325 exceed 16 square feet in area, may be located at each trailhead  
326 or parking area.

327 b. One small sign, pavement marking, or exhibit, not to  
328 exceed 4 square feet in area, may be located at each designated  
329 trail public access point where parking is not provided.



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330 c. Pavement markings denoting specified distances must be  
331 located at least 1 mile apart.

332 2. Before installation, each sign, pavement marking, or  
333 exhibit must be approved by the department.

334 3. The department shall ensure that the size, color,  
335 materials, construction, and location of all signs, pavement  
336 markings, and exhibits are consistent with the management plan  
337 for the property and the standards of the department, do not  
338 intrude on natural and historic settings, and contain a logo  
339 selected by the sponsor and the following sponsorship wording:

340  
341 ...(Name of the sponsor)... proudly sponsors the costs  
342 of maintaining the ...(Name of the greenway or  
343 trail)....

344  
345 4. Exhibits may provide additional information and  
346 materials, including, but not limited to, maps and brochures for  
347 trail user services related or proximate to the trail. Pavement  
348 markings may display mile marker information.

349 5. The costs of a sign, pavement marking, or exhibit,  
350 including development, construction, installation, operation,  
351 maintenance, and removal costs, shall be paid by the  
352 concessionaire.

353 (c) A concession agreement shall be for a minimum of 1  
354 year, but may be for a longer period under a multiyear  
355 agreement, and may be terminated for just cause by the  
356 department upon 60 days' advance notice. Just cause for  
357 termination of a concession agreement includes, but is not  
358 limited to, violation of the terms of the concession agreement





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359 or this section.

360 (2) Pursuant to s. 287.057, the department may contract for  
361 the provision of services related to the trail sponsorship  
362 program, including recruitment and qualification of businesses,  
363 review of applications, permit issuance, and fabrication,  
364 installation, and maintenance of signs, pavement markings, and  
365 exhibits. The department may reject all proposals and seek  
366 another request for proposals or otherwise perform the work. The  
367 contract may allow the contractor to retain a portion of the  
368 annual fees as compensation for its services.

369 (3) This section does not create a proprietary or  
370 compensable interest in any sponsorship site or location for any  
371 permittee, and the department may terminate permits or change  
372 locations of sponsorship sites as it determines necessary for  
373 construction or improvement of facilities.

374 (4) The department may adopt rules to establish  
375 requirements for qualification of businesses, qualification and  
376 location of sponsorship sites, and permit applications and  
377 processing. The department may adopt rules to establish other  
378 criteria necessary to implement this section and to provide for  
379 variances when necessary to serve the interest of the public or  
380 when required to ensure equitable treatment of program  
381 participants.

382 Section 7. Subsection (24) of section 373.019, Florida  
383 Statutes, is amended to read:

384 373.019 Definitions.—When appearing in this chapter or in  
385 any rule, regulation, or order adopted pursuant thereto, the  
386 term:

387 (24) "Water resource development" means the formulation and



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388 implementation of regional water resource management strategies,  
389 including the collection and evaluation of surface water and  
390 groundwater data; structural and nonstructural programs to  
391 protect and manage water resources; the development of regional  
392 water resource implementation programs; the construction,  
393 operation, and maintenance of major public works facilities to  
394 provide for flood control, surface and underground water  
395 storage, and groundwater recharge augmentation; and related  
396 technical assistance to local governments, ~~and to~~ government-  
397 owned and privately owned water utilities, and self-suppliers to  
398 the extent assistance to self-suppliers promotes the policies as  
399 set forth in s. 373.016.

400 Section 8. Paragraph (b) of subsection (7) of section  
401 373.036, Florida Statutes, is amended to read:

402 373.036 Florida water plan; district water management  
403 plans.—

404 (7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

405 (b) The consolidated annual report shall contain the  
406 following elements, as appropriate to that water management  
407 district:

408 1. A district water management plan annual report or the  
409 annual work plan report allowed in subparagraph (2)(e)4.

410 2. The department-approved minimum flows and minimum water  
411 levels annual priority list and schedule required by s.  
412 373.042(3) s. ~~373.042(2)~~.

413 3. The annual 5-year capital improvements plan required by  
414 s. 373.536(6)(a)3.

415 4. The alternative water supplies annual report required by  
416 s. 373.707(8)(n).



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417           5. The final annual 5-year water resource development work  
418 program required by s. 373.536(6) (a)4.

419           6. The Florida Forever Water Management District Work Plan  
420 annual report required by s. 373.199(7).

421           7. The mitigation donation annual report required by s.  
422 373.414(1) (b)2.

423           8. Information on all projects related to water quality or  
424 water quantity as part of a 5-year work program, including:

425           a. A list of all specific projects identified to implement  
426 a basin management action plan or a recovery or prevention  
427 strategy;

428           b. A priority ranking for each listed project for which  
429 state funding through the water resources work program is  
430 requested, which must be made available to the public for  
431 comment at least 30 days before submission of the consolidated  
432 annual report;

433           c. The estimated cost for each listed project;

434           d. The estimated completion date for each listed project;

435           e. The source and amount of financial assistance to be made  
436 available by the department, a water management district, or  
437 other entity for each listed project; and

438           f. A quantitative estimate of each listed project's benefit  
439 to the watershed, water body, or water segment in which it is  
440 located.

441           9. A grade for each watershed, water body, or water segment  
442 in which a project listed under subparagraph 8. is located  
443 representing the level of impairment and violations of adopted  
444 minimum flow or minimum water level. The grading system must  
445 reflect the severity of the impairment of the watershed,



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446 waterbody, or water segment.

447 Section 9. Section 373.042, Florida Statutes, is amended to  
448 read:

449 373.042 Minimum flows and minimum water levels.-

450 (1) Within each section, or within the water management  
451 district as a whole, the department or the governing board shall  
452 establish the following:

453 (a) Minimum flow for all surface watercourses in the area.  
454 The minimum flow for a given watercourse is ~~shall be~~ the limit  
455 at which further withdrawals would be significantly harmful to  
456 the water resources or ecology of the area.

457 (b) Minimum water level. The minimum water level is ~~shall~~  
458 ~~be~~ the level of groundwater in an aquifer and the level of  
459 surface water at which further withdrawals would be  
460 significantly harmful to the water resources or ecology of the  
461 area.

462  
463 The minimum flow and minimum water level shall be calculated by  
464 the department and the governing board using the best  
465 information available. When appropriate, minimum flows and  
466 minimum water levels may be calculated to reflect seasonal  
467 variations. The department and the governing board shall ~~also~~  
468 consider, and at their discretion may provide for, the  
469 protection of nonconsumptive uses in the establishment of  
470 minimum flows and minimum water levels.

471 (2) (a) If a minimum flow or minimum water level has been  
472 established for an Outstanding Florida Spring, a water  
473 management district or the department shall use the emergency  
474 rulemaking authority provided in paragraph (c) to adopt a



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475 minimum flow or minimum water level no later than July 1, 2016,  
476 except for the Northwest Florida Water Management District,  
477 which shall expeditiously adopt minimum flows and minimum water  
478 levels for Outstanding Florida Springs no later than July 1,  
479 2026.

480 (b) For Outstanding Florida Springs identified on a water  
481 management district's priority list developed pursuant to  
482 subsection (3) which have the potential to be affected by  
483 withdrawals in an adjacent district, the adjacent district or  
484 districts and the department shall collaboratively develop and  
485 implement a recovery or prevention strategy for an Outstanding  
486 Florida Spring not meeting an adopted minimum flow or minimum  
487 water level.

488 (c) The Legislature finds that the failure to adopt minimum  
489 flows and minimum water levels or recovery or prevention  
490 strategies for Outstanding Florida Springs has resulted in an  
491 immediate danger to the public health, safety, and welfare and  
492 that immediate action must be taken to address the condition of  
493 Outstanding Florida Springs. The district or the department  
494 shall use emergency rulemaking provisions pursuant to s.  
495 120.54(4) to adopt minimum flows and minimum water levels under  
496 this subsection and recovery or prevention strategies adopted  
497 concurrently with a minimum flow or minimum water level pursuant  
498 to s. 373.805(2).

499 (3)~~(2)~~ By November 15, 1997, and annually thereafter, each  
500 water management district shall submit to the department for  
501 review and approval a priority list and schedule for the  
502 establishment of minimum flows and minimum water levels for  
503 surface watercourses, aquifers, and surface waters within the



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504 district. The priority list and schedule shall identify those  
505 listed water bodies for which the district will voluntarily  
506 undertake independent scientific peer review; any reservations  
507 proposed by the district to be established pursuant to s.  
508 373.223(4); and those listed water bodies that have the  
509 potential to be affected by withdrawals in an adjacent district  
510 for which the department's adoption of a reservation pursuant to  
511 s. 373.223(4) or a minimum flow or minimum water level pursuant  
512 to subsection (1) may be appropriate. By March 1, 2006, and  
513 annually thereafter, each water management district shall  
514 include its approved priority list and schedule in the  
515 consolidated annual report required by s. 373.036(7). The  
516 priority list shall be based upon the importance of the waters  
517 to the state or region and the existence of or potential for  
518 significant harm to the water resources or ecology of the state  
519 or region, and shall include those waters which are experiencing  
520 or may reasonably be expected to experience adverse impacts.  
521 Each water management district's priority list and schedule  
522 shall include all first magnitude springs, and all second  
523 magnitude springs within state or federally owned lands  
524 purchased for conservation purposes. The specific schedule for  
525 establishment of spring minimum flows and minimum water levels  
526 shall be commensurate with the existing or potential threat to  
527 spring flow from consumptive uses. Springs within the Suwannee  
528 River Water Management District, or second magnitude springs in  
529 other areas of the state, need not be included on the priority  
530 list if the water management district submits a report to the  
531 Department of Environmental Protection demonstrating that  
532 adverse impacts are not now occurring nor are reasonably



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533 expected to occur from consumptive uses during the next 20  
534 years. The priority list and schedule is not subject to any  
535 proceeding pursuant to chapter 120. Except as provided in  
536 subsection (4) ~~(3)~~, the development of a priority list and  
537 compliance with the schedule for the establishment of minimum  
538 flows and minimum water levels pursuant to this subsection  
539 satisfies the requirements of subsection (1).

540 (4) ~~(3)~~ Minimum flows or minimum water levels for priority  
541 waters in the counties of Hillsborough, Pasco, and Pinellas  
542 shall be established by October 1, 1997. Where a minimum flow or  
543 minimum water level for the priority waters within those  
544 counties has not been established by the applicable deadline,  
545 the secretary of the department shall, if requested by the  
546 governing body of any local government within whose jurisdiction  
547 the affected waters are located, establish the minimum flow or  
548 minimum water level in accordance with the procedures  
549 established by this section. The department's reasonable costs  
550 in establishing a minimum flow or minimum water level shall,  
551 upon request of the secretary, be reimbursed by the district.

552 (5) ~~(4)~~ A water management district shall provide the  
553 department with technical information and staff support for the  
554 development of a reservation, minimum flow or minimum water  
555 level, or recovery or prevention strategy to be adopted by the  
556 department by rule. A water management district shall apply any  
557 reservation, minimum flow or minimum water level, or recovery or  
558 prevention strategy adopted by the department by rule without  
559 the district's adoption by rule of such reservation, minimum  
560 flow or minimum water level, or recovery or prevention strategy.

561 (6) ~~(5)~~ (a) Upon written request to the department or



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562 governing board by a substantially affected person, or by  
563 decision of the department or governing board, prior to the  
564 establishment of a minimum flow or minimum water level and prior  
565 to the filing of any petition for administrative hearing related  
566 to the minimum flow or minimum water level, all scientific or  
567 technical data, methodologies, and models, including all  
568 scientific and technical assumptions employed in each model,  
569 used to establish a minimum flow or minimum water level shall be  
570 subject to independent scientific peer review. Independent  
571 scientific peer review means review by a panel of independent,  
572 recognized experts in the fields of hydrology, hydrogeology,  
573 limnology, biology, and other scientific disciplines, to the  
574 extent relevant to the establishment of the minimum flow or  
575 minimum water level.

576 (b) If independent scientific peer review is requested, it  
577 shall be initiated at an appropriate point agreed upon by the  
578 department or governing board and the person or persons  
579 requesting the peer review. If no agreement is reached, the  
580 department or governing board shall determine the appropriate  
581 point at which to initiate peer review. The members of the peer  
582 review panel shall be selected within 60 days of the point of  
583 initiation by agreement of the department or governing board and  
584 the person or persons requesting the peer review. If the panel  
585 is not selected within the 60-day period, the time limitation  
586 may be waived upon the agreement of all parties. If no waiver  
587 occurs, the department or governing board may proceed to select  
588 the peer review panel. The cost of the peer review shall be  
589 borne equally by the district and each party requesting the peer  
590 review, to the extent economically feasible. The panel shall





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591 submit a final report to the governing board within 120 days  
592 after its selection unless the deadline is waived by agreement  
593 of all parties. Initiation of peer review pursuant to this  
594 paragraph shall toll any applicable deadline under chapter 120  
595 or other law or district rule regarding permitting, rulemaking,  
596 or administrative hearings, until 60 days following submittal of  
597 the final report. Any such deadlines shall also be tolled for 60  
598 days following withdrawal of the request or following agreement  
599 of the parties that peer review will no longer be pursued. The  
600 department or the governing board shall give significant weight  
601 to the final report of the peer review panel when establishing  
602 the minimum flow or minimum water level.

603 (c) If the final data, methodologies, and models, including  
604 all scientific and technical assumptions employed in each model  
605 upon which a minimum flow or level is based, have undergone peer  
606 review pursuant to this subsection, by request or by decision of  
607 the department or governing board, no further peer review shall  
608 be required with respect to that minimum flow or minimum water  
609 level.

610 (d) No minimum flow or minimum water level adopted by rule  
611 or formally noticed for adoption on or before May 2, 1997, shall  
612 be subject to the peer review provided for in this subsection.

613 ~~(7)~~ (6) If a petition for administrative hearing is filed  
614 under chapter 120 challenging the establishment of a minimum  
615 flow or minimum water level, the report of an independent  
616 scientific peer review conducted under subsection ~~(5)~~ (4) is  
617 admissible as evidence in the final hearing, and the  
618 administrative law judge must render the order within 120 days  
619 after the filing of the petition. The time limit for rendering



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620 the order shall not be extended except by agreement of all the  
621 parties. To the extent that the parties agree to the findings of  
622 the peer review, they may stipulate that those findings be  
623 incorporated as findings of fact in the final order.

624 (8) The rules adopted pursuant to this section are not  
625 subject to s. 120.541(3).

626 Section 10. Section 373.0421, Florida Statutes, is amended  
627 to read:

628 373.0421 Establishment and implementation of minimum flows  
629 and minimum levels.—

630 (1) ESTABLISHMENT.—

631 (a) *Considerations.*—When establishing minimum flows and  
632 minimum water levels pursuant to s. 373.042, the department or  
633 governing board shall consider changes and structural  
634 alterations to watersheds, surface waters, and aquifers and the  
635 effects such changes or alterations have had, and the  
636 constraints such changes or alterations have placed, on the  
637 hydrology of an affected watershed, surface water, or aquifer,  
638 provided that nothing in this paragraph shall allow significant  
639 harm as provided by s. 373.042(1) caused by withdrawals.

640 (b) *Exclusions.*—

641 1. The Legislature recognizes that certain water bodies no  
642 longer serve their historical hydrologic functions. The  
643 Legislature also recognizes that recovery of these water bodies  
644 to historical hydrologic conditions may not be economically or  
645 technically feasible, and that such recovery effort could cause  
646 adverse environmental or hydrologic impacts. Accordingly, the  
647 department or governing board may determine that setting a  
648 minimum flow or minimum water level for such a water body based



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649 on its historical condition is not appropriate.

650 2. The department or the governing board is not required to  
651 establish minimum flows or minimum water levels pursuant to s.  
652 373.042 for surface water bodies less than 25 acres in area,  
653 unless the water body or bodies, individually or cumulatively,  
654 have significant economic, environmental, or hydrologic value.

655 3. The department or the governing board shall not set  
656 minimum flows or minimum water levels pursuant to s. 373.042 for  
657 surface water bodies constructed prior to the requirement for a  
658 permit, or pursuant to an exemption, a permit, or a reclamation  
659 plan which regulates the size, depth, or function of the surface  
660 water body under the provisions of this chapter, chapter 378, or  
661 chapter 403, unless the constructed surface water body is of  
662 significant hydrologic value or is an essential element of the  
663 water resources of the area.

664  
665 The exclusions of this paragraph shall not apply to the  
666 Everglades Protection Area, as defined in s. 373.4592(2)(i).

667 (2) If the existing flow or water level in a water body is  
668 below, or is projected to fall within 20 years below, the  
669 applicable minimum flow or minimum water level established  
670 pursuant to s. 373.042, the department or governing board,  
671 concurrent with the adoption of the minimum flow or minimum  
672 water level and as part of the regional water supply plan  
673 described in s. 373.709, shall adopt and ~~expeditiously~~ implement  
674 a recovery or prevention strategy, which includes the  
675 development of additional water supplies and other actions,  
676 consistent with the authority granted by this chapter, to:

677 (a) Achieve recovery to the established minimum flow or



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678 minimum water level as soon as practicable; or

679 (b) Prevent the existing flow or water level from falling  
680 below the established minimum flow or minimum water level.

681  
682 The recovery or prevention strategy must ~~shall~~ include a phased  
683 in approach ~~phasing~~ or a timetable which will allow for the  
684 provision of sufficient water supplies for all existing and  
685 projected reasonable-beneficial uses, including development of  
686 additional water supplies and implementation of conservation and  
687 other efficiency measures concurrent with and, to the maximum  
688 extent practical, ~~and~~ to offset, reductions in permitted  
689 withdrawals, consistent with ~~the provisions of~~ this chapter. The  
690 recovery or prevention strategy may not depend solely on water  
691 shortage restrictions declared pursuant to s. 373.175 or s.  
692 373.246.

693 (3) In order to ensure that sufficient water is available  
694 for all existing and future reasonable-beneficial uses and the  
695 natural systems, the applicable regional water supply plan  
696 prepared pursuant to s. 373.709 shall be amended to include any  
697 water supply development project or water resource development  
698 project identified in a recovery or prevention strategy. Such  
699 amendment shall be approved concurrently with relevant portions  
700 of the recovery or prevention strategy.

701 (4) The water management district shall notify the  
702 department if an application for a water use permit is denied  
703 based upon the impact that the use will have on an adopted  
704 minimum flow or minimum water level. Upon receipt of such  
705 notice, the department shall, as soon as practicable and in  
706 cooperation with the water management district, conduct a review



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707 of the applicable regional water supply plan prepared pursuant  
708 to s. 373.709. Such review shall include an assessment by the  
709 department of the adequacy of the plan in addressing the  
710 legislative intent of s. 373.705(2) (b) which provides that  
711 sufficient water be available for all existing and future  
712 reasonable-beneficial uses and natural systems and that the  
713 adverse effects of competition for water supplies be avoided. If  
714 the department determines, based upon this review, that the  
715 regional water supply plan does not adequately address the  
716 legislative intent of s. 373.705(2) (b), the water management  
717 district shall immediately initiate an update of the plan  
718 consistent with s. 373.709.

719 (5)~~(3)~~ The provisions of this section are supplemental to  
720 any other specific requirements or authority provided by law.  
721 Minimum flows and minimum water levels shall be reevaluated  
722 periodically and revised as needed.

723 Section 11. Section 373.0465, Florida Statutes, is created  
724 to read:

725 373.0465 Central Florida Water Initiative.-

726 (1) The Legislature finds that:

727 (a) Historically, the Floridan Aquifer system has supplied  
728 the vast majority of the water used in the Central Florida  
729 Coordination Area.

730 (b) Because the boundaries of the St. Johns River Water  
731 Management District, the South Florida Water Management  
732 District, and the Southwest Florida Water Management District  
733 meet within the Central Florida Coordination Area, the three  
734 districts and the Department of Environmental Protection have  
735 worked cooperatively to determine that the Floridan Aquifer



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736 system is locally approaching the sustainable limits of use and  
737 are exploring the need to develop sources of water to meet the  
738 long-term water needs of the area.

739 (c) The Central Florida Water Initiative is a collaborative  
740 process involving the Department of Environmental Protection,  
741 the St. Johns River Water Management District, the South Florida  
742 Water Management District, the Southwest Florida Water  
743 Management District, the Department of Agriculture and Consumer  
744 Services, regional public water supply utilities, and other  
745 stakeholders. As set forth in the Central Florida Water  
746 Initiative Guiding Document of January 30, 2015, the initiative  
747 has developed an initial framework, for a unified process to  
748 address the current and long-term water supply needs of Central  
749 Florida without causing harm to the water resources and  
750 associated natural systems.

751 (d) Developing water sources as an alternative to continued  
752 reliance on the Floridan Aquifer will benefit existing and  
753 future water users and natural systems within and beyond the  
754 boundaries of the Central Florida Water Initiative.

755 (2) (a) As used in this section, the term "Central Florida  
756 Water Initiative Area" means all of Orange, Osceola, Polk, and  
757 Seminole Counties, and southern Lake County, as designated by  
758 the Central Florida Water Initiative Guiding Document of January  
759 30, 2015.

760 (b) The department, the St. Johns River Water Management  
761 District, the South Florida Water Management District, the  
762 Southwest Florida Water Management District, and the Department  
763 of Agriculture and Consumer Services shall:

764 1. Provide for a continuation of the collaborative process



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765 in the Central Florida Water Initiative Area among the state  
766 agencies, affected water management districts, regional public  
767 water supply utilities, and other stakeholders;

768 2. Build upon the guiding principles and goals set forth in  
769 the Central Florida Water Initiative Guiding Document of January  
770 30, 2015, and the work that has already been accomplished by the  
771 Central Florida Water Initiative participants;

772 3. Develop and implement, as set forth in the Central  
773 Florida Water Initiative Guiding Document of January 30, 2015, a  
774 single multidistrict regional water supply plan, including any  
775 needed recovery or prevention strategies and a list of water  
776 supply development projects or water resource projects; and

777 4. Provide for a single hydrologic planning model to assess  
778 the availability of groundwater in the Central Florida Water  
779 Initiative Area.

780 (c) In developing the water supply planning program  
781 consistent with the goals set forth in this subsection, the  
782 department, the St. Johns River Water Management District, the  
783 South Florida Water Management District, the Southwest Florida  
784 Water Management District, and the Department of Agriculture and  
785 Consumer Services shall:

786 1. Consider limitations on groundwater use together with  
787 opportunities for new, increased, or redistributed groundwater  
788 uses that are consistent with the conditions established under  
789 s. 373.223;

790 2. Establish a coordinated process for the identification  
791 of water resources requiring new or revised conditions  
792 consistent with the conditions established under s. 373.223;

793 3. Consider existing recovery or prevention strategies;



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794 4. Include a list of water supply options sufficient to  
795 meet the water needs of all existing and future reasonable-  
796 beneficial uses consistent with the conditions established under  
797 s. 373.223; and

798 5. Identify, as necessary, which of the water supply  
799 sources are preferred water supply sources pursuant to s.  
800 373.2234.

801 (d) The department, in consultation with the St. Johns  
802 River Water Management District, the South Florida Water  
803 Management District, the Southwest Florida Water Management  
804 District, and the Department of Agriculture and Consumer  
805 Services, shall adopt uniform rules for application within the  
806 Central Florida Water Initiative Area that include:

807 1. A single, uniform definition of "harmful to the water  
808 resources" consistent with the term's usage in s. 373.219;

809 2. A single method for calculating residential per capita  
810 water use;

811 3. A single process for permit reviews;

812 4. A single, consistent process, as appropriate, to set  
813 minimum flows and minimum water levels and water reservations;

814 5. A goal for residential per capita water use for each  
815 consumptive use permit; and

816 6. An annual conservation goal for each consumptive use  
817 permit consistent with the regional water supply plan.

818  
819 The uniform rules shall include existing recovery strategies  
820 within the Central Florida Water Initiative Area adopted before  
821 July 1, 2015. The department may grant variances to the uniform  
822 rules if there are unique circumstances or hydrogeological





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823 factors that make application of the uniform rules unrealistic  
824 or impractical.

825 (e) The department shall initiate rulemaking for the  
826 uniform rules by December 31, 2015. The department's uniform  
827 rules shall be applied by the water management districts only  
828 within the Central Florida Water Initiative Area. Upon adoption  
829 of the rules, the water management districts shall implement the  
830 rules without further rulemaking pursuant to s. 120.54. The  
831 rules adopted by the department pursuant to this section are  
832 considered the rules of the water management districts.

833 (f) Water management district planning programs developed  
834 pursuant this subsection shall be approved or adopted as  
835 required under this chapter. However, such planning programs may  
836 not serve to modify planning programs in areas of the affected  
837 districts that are not within the Central Florida Water  
838 Initiative Area, but may include interregional projects located  
839 outside the Central Florida Water Initiative Area which are  
840 consistent with planning and regulatory programs in the areas in  
841 which they are located.

842 Section 12. Subsection (4) of section 373.1501, Florida  
843 Statutes, is amended, present subsections (7) and (8) are  
844 renumbered as subsections (8) and (9), respectively, and a new  
845 subsection (7) is added to that section, to read:

846 373.1501 South Florida Water Management District as local  
847 sponsor.—

848 (4) The district is authorized to act as local sponsor of  
849 the project for those project features within the district as  
850 provided in this subsection and subject to the oversight of the  
851 department as further provided in s. 373.026. The district shall



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852 exercise the authority of the state to allocate quantities of  
853 water within its jurisdiction, including the water supply in  
854 relation to the project, and be responsible for allocating water  
855 and assigning priorities among the other water uses served by  
856 the project pursuant to state law. The district may:

857 (a) Act as local sponsor for all project features  
858 previously authorized by Congress.~~†~~

859 (b) Continue data gathering, analysis, research, and design  
860 of project components, participate in preconstruction  
861 engineering and design documents for project components, and  
862 further refine the Comprehensive Plan of the restudy as a guide  
863 and framework for identifying other project components.~~†~~

864 (c) Construct pilot projects that will assist in  
865 determining the feasibility of technology included in the  
866 Comprehensive Plan of the restudy.~~†~~ ~~and~~

867 (d) Act as local sponsor for project components.

868 (7) When developing or implementing water control plans or  
869 regulation schedules required for the operation of the project,  
870 the district shall provide recommendations to the United States  
871 Army Corps of Engineers which are consistent with all district  
872 programs and plans.

873 Section 13. Subsection (3) is added to section 373.219,  
874 Florida Statutes, to read:

875 373.219 Permits required.—

876 (3) The department shall adopt by rule a uniform definition  
877 of the term "harmful to the water resources" for Outstanding  
878 Florida Springs to provide water management districts with  
879 minimum standards necessary to be consistent with the overall  
880 water policy of the state. This subsection does not prohibit a



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881 water management district from adopting a definition that is  
882 more protective of the water resources consistent with local or  
883 regional conditions and objectives.

884 Section 14. Subsection (6) is added to section 373.223,  
885 Florida Statutes, to read:

886 373.223 Conditions for a permit.—

887 (6) A new, renewal of, or modification to a consumptive use  
888 permit authorizing groundwater withdrawals of 100,000 gallons or  
889 more per day and authorizing the use of a well or wells with an  
890 inside diameter of 8 inches or greater shall be monitored, the  
891 results of which shall be reported to the applicable water  
892 management district at least annually.

893 Section 15. Section 373.2234, Florida Statutes, is amended  
894 to read:

895 373.2234 Preferred water supply sources.—

896 (1) The governing board of a water management district is  
897 authorized to adopt rules that identify preferred water supply  
898 sources for consumptive uses for which there is sufficient data  
899 to establish that a preferred source will provide a substantial  
900 new water supply to meet the existing and projected reasonable-  
901 beneficial uses of a water supply planning region identified  
902 pursuant to s. 373.709(1), while sustaining existing water  
903 resources and natural systems. At a minimum, such rules must  
904 contain a description of the preferred water supply source and  
905 an assessment of the water the preferred source is projected to  
906 produce.

907 (2) (a) If an applicant proposes to use a preferred water  
908 supply source, that applicant's proposed water use is subject to  
909 s. 373.223(1), except that the proposed use of a preferred water



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910 supply source must be considered by a water management district  
911 when determining whether a permit applicant's proposed use of  
912 water is consistent with the public interest pursuant to s.  
913 373.223(1) (c) .

914 (b) The governing board of a water management district  
915 shall consider the identification of preferred water supply  
916 sources for water users for whom access to or development of new  
917 water supplies is not technically or financially feasible.  
918 Identification of preferred water supply sources for such water  
919 users must be consistent with s. 373.016.

920 (c) A consumptive use permit issued for the use of a  
921 preferred water supply source must be granted, when requested by  
922 the applicant, for at least a 20-year period and may be subject  
923 to the compliance reporting provisions of s. 373.236(4) .

924 (3) (a) Nothing in This section does not: shall be construed  
925 to

926 1. Exempt the use of preferred water supply sources from  
927 the provisions of ss. 373.016(4) and 373.223(2) and (3); or be  
928 construed to

929 2. Provide that permits issued for the use of a  
930 nonpreferred water supply source must be issued for a duration  
931 of less than 20 years or that the use of a nonpreferred water  
932 supply source is not consistent with the public interest; or-

933 3. Additionally, nothing in this section shall be  
934 interpreted to Require the use of a preferred water supply  
935 source or to restrict or prohibit the use of a nonpreferred  
936 water supply source.

937 (b) Rules adopted by the governing board of a water  
938 management district to implement this section shall specify that



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939 the use of a preferred water supply source is not required and  
940 that the use of a nonpreferred water supply source is not  
941 restricted or prohibited.

942 Section 16. Present subsection (5) of section 373.227,  
943 Florida Statutes, is redesignated as subsection (7), and a new  
944 subsection (5) and a subsection (6) are added to that section,  
945 to read:

946 373.227 Water conservation; legislative findings and  
947 intent; objectives; comprehensive statewide water conservation  
948 program requirements.—

949 (5) In order to incentivize water conservation, in areas  
950 not included in a regional water supply plan pursuant to s.  
951 373.709 and in areas not included in a declaration of water  
952 shortage or emergency pursuant to s. 373.246, if actual water  
953 use is less than permitted water use due to documented  
954 implementation of water conservation measures, including, but  
955 not limited to, those measures identified in best management  
956 practices pursuant to s. 570.93, the permitted allocation may  
957 not be modified due to such water conservation during the term  
958 of the permit. In order to promote water conservation and the  
959 implementation of measures that produce significant water  
960 savings beyond those required in a consumptive use permit, each  
961 water management district shall adopt rules providing water  
962 conservation incentives, which may include limited permit  
963 extensions.

964 (6) For consumptive use permits for agricultural  
965 irrigation, if actual water use is less than permitted water use  
966 due to weather events, crop diseases, nursery stock  
967 availability, market conditions, or changes in crop type, a



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968 district may not, as a result, reduce permitted allocation  
969 amounts during the term of the permit.

970 Section 17. Subsection (2) of section 373.233, Florida  
971 Statutes, is amended to read:

972 373.233 Competing applications.-

973 (2) (a) If In the event that two or more competing  
974 applications qualify equally under the provisions of subsection  
975 (1), the governing board or the department shall give preference  
976 to a renewal application over an initial application.

977 (b) If two or more competing applications qualify equally  
978 under subsection (1) and none of the competing applications is a  
979 renewal application, the governing board or the department shall  
980 give preference to the application for the use where the source  
981 is nearest to the area of use or application consistent with s.  
982 373.016(4) (a).

983 Section 18. Section 373.4591, Florida Statutes, is amended  
984 to read:

985 373.4591 Improvements on private agricultural lands.-

986 (1) The Legislature encourages public-private partnerships  
987 to accomplish water storage, groundwater recharge, and water  
988 quality improvements on private agricultural lands. Priority  
989 consideration shall be given to public-private partnerships  
990 that:

991 (a) Store or treat water on private lands for purposes of  
992 enhancing hydrologic improvement, improving water quality, or  
993 assisting in water supply;

994 (b) Provide critical ground water recharge; or

995 (c) Provide for changes in land use to activities that  
996 minimize nutrient loads and maximize water conservation.



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997           (2) (a) When an agreement is entered into between the  
998 department, a water management district, or the Department of  
999 Agriculture and Consumer Services and a private landowner to  
1000 establish ~~such~~ a public-private partnership that may create or  
1001 impact wetlands or other surface waters, a baseline condition  
1002 determining the extent of wetlands and other surface waters on  
1003 the property shall be established and documented in the  
1004 agreement before improvements are constructed.

1005           (b) When an agreement is entered into between the  
1006 Department of Agriculture and Consumer Services and a private  
1007 landowner to implement best management practices pursuant to s.  
1008 403.067(7)(c), a baseline condition determining the extent of  
1009 wetlands and other surface water on the property may be  
1010 established at the option and expense of the private landowner  
1011 and documented in the agreement before improvements are  
1012 constructed. The Department of Agriculture and Consumer Services  
1013 shall submit the landowner's proposed baseline condition  
1014 documentation to the lead agency for review and approval, and  
1015 the agency shall use its best efforts to complete the review  
1016 within 45 days.

1017           (3) The Department of Agriculture and Consumer Services,  
1018 the department, and the water management districts shall provide  
1019 a process for reviewing these requests in the timeframe  
1020 specified. The determination of a baseline condition shall be  
1021 conducted using the methods set forth in the rules adopted  
1022 pursuant to s. 373.421. The baseline condition documented in an  
1023 agreement shall be considered the extent of wetlands and other  
1024 surface waters on the property for the purpose of regulation  
1025 under this chapter for the duration of the agreement and after



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1026 its expiration.

1027 Section 19. Paragraph (h) of subsection (1) and subsections  
1028 (2) through (7) of section 373.4595, Florida Statutes, are  
1029 amended, and present subsections (8) through (13) of that  
1030 section are redesignated as subsections (9) through (14),  
1031 respectively, and a new subsection (8) is added to that section,  
1032 to read:

1033 373.4595 Northern Everglades and Estuaries Protection  
1034 Program.—

1035 (1) FINDINGS AND INTENT.—

1036 (h) The Legislature finds that the expeditious  
1037 implementation of the Lake Okeechobee Watershed Protection  
1038 Program, the Caloosahatchee River Watershed Protection Program,  
1039 Plan and the St. Lucie River Watershed Protection Program Plans  
1040 is needed to improve the quality, quantity, timing, and  
1041 distribution of water in the northern Everglades ecosystem and  
1042 that this section, in conjunction with s. 403.067, including the  
1043 implementation of the plans developed and approved pursuant to  
1044 subsections (3) and (4), and any related basin management action  
1045 plan developed and implemented pursuant to s. 403.067(7)(a),  
1046 provide a reasonable means of achieving the total maximum daily  
1047 load requirements and achieving and maintaining compliance with  
1048 state water quality standards.

1049 (2) DEFINITIONS.—As used in this section, the term:

1050 (a) "Best management practice" means a practice or  
1051 combination of practices determined by the coordinating  
1052 agencies, based on research, field-testing, and expert review,  
1053 to be the most effective and practicable on-location means,  
1054 including economic and technological considerations, for





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1055 improving water quality in agricultural and urban discharges.  
1056 Best management practices for agricultural discharges shall  
1057 reflect a balance between water quality improvements and  
1058 agricultural productivity.

1059 (b) "Biosolids" means the solid, semisolid, or liquid  
1060 residue generated during the treatment of domestic wastewater in  
1061 a domestic wastewater treatment facility, formerly known as  
1062 "domestic wastewater residuals" or "residuals," and includes  
1063 products and treated material from biosolids treatment  
1064 facilities and septage management facilities regulated by the  
1065 department. The term does not include the treated effluent or  
1066 reclaimed water from a domestic wastewater treatment facility,  
1067 solids removed from pump stations and lift stations, screenings  
1068 and grit removed from the preliminary treatment components of  
1069 domestic wastewater treatment facilities, or ash generated  
1070 during the incineration of biosolids.

1071 (c) ~~(b)~~ "Caloosahatchee River watershed" means the  
1072 Caloosahatchee River, its tributaries, its estuary, and the area  
1073 within Charlotte, Glades, Hendry, and Lee Counties from which  
1074 surface water flow is directed or drains, naturally or by  
1075 constructed works, to the river, its tributaries, or its  
1076 estuary.

1077 (d) ~~(c)~~ "Coordinating agencies" means the Department of  
1078 Agriculture and Consumer Services, the Department of  
1079 Environmental Protection, and the South Florida Water Management  
1080 District.

1081 (e) ~~(d)~~ "Corps of Engineers" means the United States Army  
1082 Corps of Engineers.

1083 (f) ~~(e)~~ "Department" means the Department of Environmental



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1084 Protection.

1085 (g)~~(f)~~ "District" means the South Florida Water Management  
1086 District.

1087 ~~(g) "District's WOD program" means the program implemented~~  
1088 ~~pursuant to rules adopted as authorized by this section and ss.~~  
1089 ~~373.016, 373.044, 373.085, 373.086, 373.109, 373.113, 373.118,~~  
1090 ~~373.451, and 373.453, entitled "Works of the District Basin."~~

1091 (h) "Lake Okeechobee Watershed Construction Project" means  
1092 the construction project developed pursuant to this section  
1093 ~~paragraph (3)(b).~~

1094 (i) "Lake Okeechobee Watershed Protection Plan" means the  
1095 Lake Okeechobee Watershed Construction Project and the Lake  
1096 Okeechobee Watershed Research and Water Quality Monitoring  
1097 Program ~~plan developed pursuant to this section and ss. 373.451-~~  
1098 ~~373.459.~~

1099 (j) "Lake Okeechobee watershed" means Lake Okeechobee, its  
1100 tributaries, and the area within which surface water flow is  
1101 directed or drains, naturally or by constructed works, to the  
1102 lake or its tributaries.

1103 ~~(k) "Lake Okeechobee Watershed Phosphorus Control Program"~~  
1104 ~~means the program developed pursuant to paragraph (3)(c).~~

1105 (k)~~(l)~~ "Northern Everglades" means the Lake Okeechobee  
1106 watershed, the Caloosahatchee River watershed, and the St. Lucie  
1107 River watershed.

1108 (l)~~(m)~~ "Project component" means any structural or  
1109 operational change, resulting from the Restudy, to the Central  
1110 and Southern Florida Project as it existed and was operated as  
1111 of January 1, 1999.

1112 (m)~~(n)~~ "Restudy" means the Comprehensive Review Study of



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1113 the Central and Southern Florida Project, for which federal  
1114 participation was authorized by the Federal Water Resources  
1115 Development Acts of 1992 and 1996 together with related  
1116 Congressional resolutions and for which participation by the  
1117 South Florida Water Management District is authorized by s.  
1118 373.1501. The term includes all actions undertaken pursuant to  
1119 the aforementioned authorizations which will result in  
1120 recommendations for modifications or additions to the Central  
1121 and Southern Florida Project.

1122 (n) ~~(o)~~ "River Watershed Protection Plans" means the  
1123 Caloosahatchee River Watershed Protection Plan and the St. Lucie  
1124 River Watershed Protection Plan developed pursuant to this  
1125 section.

1126 (o) "Soil amendment" means any substance or mixture of  
1127 substances sold or offered for sale for soil enriching or  
1128 corrective purposes, intended or claimed to be effective in  
1129 promoting or stimulating plant growth, increasing soil or plant  
1130 productivity, improving the quality of crops, or producing any  
1131 chemical or physical change in the soil, except amendments,  
1132 conditioners, additives, and related products that are derived  
1133 solely from inorganic sources and that contain no recognized  
1134 plant nutrients.

1135 (p) "St. Lucie River watershed" means the St. Lucie River,  
1136 its tributaries, its estuary, and the area within Martin,  
1137 Okeechobee, and St. Lucie Counties from which surface water flow  
1138 is directed or drains, naturally or by constructed works, to the  
1139 river, its tributaries, or its estuary.

1140 (q) "Total maximum daily load" means the sum of the  
1141 individual wasteload allocations for point sources and the load



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1142 allocations for nonpoint sources and natural background adopted  
1143 pursuant to s. 403.067. Before ~~Prior to~~ determining individual  
1144 wasteload allocations and load allocations, the maximum amount  
1145 of a pollutant that a water body or water segment can assimilate  
1146 from all sources without exceeding water quality standards must  
1147 first be calculated.

1148 (3) LAKE OKEECHOBEE WATERSHED PROTECTION PROGRAM.—The Lake  
1149 Okeechobee Watershed Protection Program shall consist of the  
1150 Lake Okeechobee Watershed Protection Plan, the Lake Okeechobee  
1151 Basin Management Action Plan adopted pursuant to s. 403.067, the  
1152 Lake Okeechobee Exotic Species Control Program, and the Lake  
1153 Okeechobee Internal Phosphorus Management Program. The Lake  
1154 Okeechobee Basin Management Action Plan adopted pursuant to s.  
1155 403.067 shall be the component of the Lake Okeechobee Watershed  
1156 Protection ~~A protection Program for Lake Okeechobee that~~  
1157 ~~achieves phosphorus load reductions for Lake Okeechobee shall be~~  
1158 ~~immediately implemented as specified in this subsection. As~~  
1159 provided in s. 403.067(7)(a)5., the Lake Okeechobee Basin  
1160 Management Action Plan must include milestones for  
1161 implementation and water quality improvement and an associated  
1162 water quality monitoring component sufficient to evaluate  
1163 whether reasonable progress in pollutant load reductions is  
1164 being achieved over time. The department shall develop a  
1165 schedule to establish 5-, 10-, and 15-year measurable milestones  
1166 and a target for achieving water quality improvement consistent  
1167 with this section. The schedule shall be used to provide  
1168 guidance for planning and funding purposes and is exempt from s.  
1169 120.54(1)(a). An assessment of progress toward these milestones  
1170 shall be conducted every 5 years and revisions to the plan shall



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1171 be made, as appropriate, as a result of each 5-year review. The  
1172 assessment shall be provided to the Governor, the President of  
1173 the Senate, and the Speaker of the House of Representatives.  
1174 Upon the first 5-year review, a schedule, measureable  
1175 milestones, and a target for achieving water quality improvement  
1176 consistent with the provisions of this section shall be adopted  
1177 into the plan. Revisions to the basin management action plan  
1178 shall be made by the department in cooperation with basin  
1179 stakeholders. Revisions to the management strategies must follow  
1180 the procedures set forth in s. 403.067(7)(c)4. Revised basin  
1181 management action plans must be adopted pursuant to s.  
1182 403.067(7)(a)4. The Lake Okeechobee Watershed Protection Program  
1183 shall address the reduction of phosphorus loading to the lake  
1184 from both internal and external sources. Phosphorus load  
1185 reductions shall be achieved through a phased program of  
1186 implementation. ~~Initial implementation actions shall be~~  
1187 ~~technology-based, based upon a consideration of both the~~  
1188 ~~availability of appropriate technology and the cost of such~~  
1189 ~~technology, and shall include phosphorus reduction measures at~~  
1190 ~~both the source and the regional level. The initial phase of~~  
1191 ~~phosphorus load reductions shall be based upon the district's~~  
1192 ~~Technical Publication 81-2 and the district's WOD program, with~~  
1193 ~~subsequent phases of phosphorus load reductions based upon the~~  
1194 ~~total maximum daily loads established in accordance with s.~~  
1195 403.067. In the development and administration of the Lake  
1196 Okeechobee Watershed Protection Program, the coordinating  
1197 agencies shall maximize opportunities provided by federal cost-  
1198 sharing programs and opportunities for partnerships with the  
1199 private sector.



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1200 (a) *Lake Okeechobee Watershed Protection Plan.*—In order to  
1201 protect and restore surface water resources, the district, in  
1202 cooperation with the other coordinating agencies, shall complete  
1203 a Lake Okeechobee Watershed Protection Plan in accordance with  
1204 this section and ss. 373.451–373.459. Beginning March 1, 2020,  
1205 and every 5 years thereafter, the district shall update the Lake  
1206 Okeechobee Watershed Protection Plan to ensure that it is  
1207 consistent with the Lake Okeechobee Basin Management Action Plan  
1208 adopted pursuant to s. 403.067. The Lake Okeechobee Watershed  
1209 Protection Plan shall identify the geographic extent of the  
1210 watershed, be coordinated with the plans developed pursuant to  
1211 paragraphs (4) (a) and (c) ~~(b)~~, and include the Lake Okeechobee  
1212 Watershed Construction Project and the Lake Okeechobee Watershed  
1213 Research and Water Quality Monitoring Program ~~contain an~~  
1214 implementation schedule for subsequent phases of phosphorus load  
1215 reduction consistent with the total maximum daily loads  
1216 established in accordance with s. 403.067. The plan shall  
1217 consider and build upon a review and analysis of ~~the following:~~  
1218 1. the performance of projects constructed during Phase I  
1219 and Phase II of the Lake Okeechobee Watershed Construction  
1220 Project, pursuant to subparagraph 1.; paragraph ~~(b)~~.  
1221 2. relevant information resulting from the Lake Okeechobee  
1222 Basin Management Action Plan ~~Watershed Phosphorus Control~~  
1223 Program, pursuant to paragraph ~~(b)~~; ~~(c)~~.  
1224 3. relevant information resulting from the Lake Okeechobee  
1225 Watershed Research and Water Quality Monitoring Program,  
1226 pursuant to subparagraph 2.; paragraph ~~(d)~~.  
1227 4. relevant information resulting from the Lake Okeechobee  
1228 Exotic Species Control Program, pursuant to paragraph (c); and



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1229 ~~(e)~~.  
1230       ~~5.~~ relevant information resulting from the Lake Okeechobee  
1231 Internal Phosphorus Management Program, pursuant to paragraph  
1232 (d) ~~(f)~~.  
1233       ~~1.~~ ~~(b)~~ *Lake Okeechobee Watershed Construction Project*.—To  
1234 improve the hydrology and water quality of Lake Okeechobee and  
1235 downstream receiving waters, including the Caloosahatchee and  
1236 St. Lucie Rivers and their estuaries, the district, in  
1237 cooperation with the other coordinating agencies, shall design  
1238 and construct the Lake Okeechobee Watershed Construction  
1239 Project. The project shall include:  
1240       ~~a.~~ ~~1.~~ Phase I.—Phase I of the Lake Okeechobee Watershed  
1241 Construction Project shall consist of a series of project  
1242 features consistent with the recommendations of the South  
1243 Florida Ecosystem Restoration Working Group’s Lake Okeechobee  
1244 Action Plan. Priority basins for such projects include S-191, S-  
1245 154, and Pools D and E in the Lower Kissimmee River. In order to  
1246 obtain phosphorus load reductions to Lake Okeechobee as soon as  
1247 possible, the following actions shall be implemented:  
1248       (I) ~~a.~~ The district shall serve as a full partner with the  
1249 Corps of Engineers in the design and construction of the Grassy  
1250 Island Ranch and New Palm Dairy stormwater treatment facilities  
1251 as components of the Lake Okeechobee Water Retention/Phosphorus  
1252 Removal Critical Project. The Corps of Engineers shall have the  
1253 lead in design and construction of these facilities. Should  
1254 delays be encountered in the implementation of either of these  
1255 facilities, the district shall notify the department and  
1256 recommend corrective actions.  
1257       (II) ~~b.~~ The district shall obtain permits and complete



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1258 construction of two of the isolated wetland restoration projects  
1259 that are part of the Lake Okeechobee Water Retention/Phosphorus  
1260 Removal Critical Project. The additional isolated wetland  
1261 projects included in this critical project shall further reduce  
1262 phosphorus loading to Lake Okeechobee.

1263 (III) ~~e.~~ The district shall work with the Corps of Engineers  
1264 to expedite initiation of the design process for the Taylor  
1265 Creek/Nubbins Slough Reservoir Assisted Stormwater Treatment  
1266 Area, a project component of the Comprehensive Everglades  
1267 Restoration Plan. The district shall propose to the Corps of  
1268 Engineers that the district take the lead in the design and  
1269 construction of the Reservoir Assisted Stormwater Treatment Area  
1270 and receive credit towards the local share of the total cost of  
1271 the Comprehensive Everglades Restoration Plan.

1272 b.2. Phase II technical plan and construction. ~~By February~~  
1273 ~~1, 2008,~~ The district, in cooperation with the other  
1274 coordinating agencies, shall develop a detailed technical plan  
1275 for Phase II of the Lake Okeechobee Watershed Construction  
1276 Project which provides the basis for the Lake Okeechobee Basin  
1277 Management Action Plan adopted by the department pursuant to s.  
1278 403.067. The detailed technical plan shall include measures for  
1279 the improvement of the quality, quantity, timing, and  
1280 distribution of water in the northern Everglades ecosystem,  
1281 including the Lake Okeechobee watershed and the estuaries, and  
1282 for facilitating the achievement of water quality standards. Use  
1283 of cost-effective biologically based, hybrid wetland/chemical  
1284 and other innovative nutrient control technologies shall be  
1285 incorporated in the plan where appropriate. The detailed  
1286 technical plan shall also include a Process Development and





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1287 Engineering component to finalize the detail and design of Phase  
1288 II projects and identify additional measures needed to increase  
1289 the certainty that the overall objectives for improving water  
1290 quality and quantity can be met. Based on information and  
1291 recommendations from the Process Development and Engineering  
1292 component, the Phase II detailed technical plan shall be  
1293 periodically updated. Phase II shall include construction of  
1294 additional facilities in the priority basins identified in sub-  
1295 subparagraph a. subparagraph 1., as well as facilities for other  
1296 basins in the Lake Okeechobee watershed. ~~This detailed technical~~  
1297 ~~plan will require legislative ratification pursuant to paragraph~~  
1298 ~~(i).~~ The technical plan shall:

1299       (I)a. Identify Lake Okeechobee Watershed Construction  
1300 Project facilities designed to contribute to achieving all  
1301 applicable total maximum daily loads established pursuant to s.  
1302 403.067 within the Lake Okeechobee watershed.

1303       (II)b. Identify the size and location of all such Lake  
1304 Okeechobee Watershed Construction Project facilities.

1305       (III)e. Provide a construction schedule for all such Lake  
1306 Okeechobee Watershed Construction Project facilities, including  
1307 the sequencing and specific timeframe for construction of each  
1308 Lake Okeechobee Watershed Construction Project facility.

1309       (IV)d. Provide a schedule for the acquisition of lands or  
1310 sufficient interests necessary to achieve the construction  
1311 schedule.

1312       (V)e. Provide a detailed schedule of costs associated with  
1313 the construction schedule.

1314       (VI)f. Identify, to the maximum extent practicable, impacts  
1315 on wetlands and state-listed species expected to be associated



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1316 with construction of such facilities, including potential  
1317 alternatives to minimize and mitigate such impacts, as  
1318 appropriate.

1319 (VII) ~~g.~~ Provide for additional measures, including  
1320 voluntary water storage and quality improvements on private  
1321 land, to increase water storage and reduce excess water levels  
1322 in Lake Okeechobee and to reduce excess discharges to the  
1323 estuaries.

1324 (VIII) ~~The technical plan shall also~~ Develop the  
1325 appropriate water quantity storage goal to achieve the desired  
1326 Lake Okeechobee range of lake levels and inflow volumes to the  
1327 Caloosahatchee and St. Lucie estuaries while meeting the other  
1328 water-related needs of the region, including water supply and  
1329 flood protection.

1330 (IX) ~~h.~~ Provide for additional source controls needed to  
1331 enhance performance of the Lake Okeechobee Watershed  
1332 Construction Project facilities. Such additional source controls  
1333 shall be incorporated into the Lake Okeechobee Basin Management  
1334 Action Plan ~~Watershed Phosphorous Control Program~~ pursuant to  
1335 paragraph (b) ~~(e)~~.

1336 c.3. ~~Evaluation.~~ Within 5 years after the adoption of the  
1337 Lake Okeechobee Basin Management Action Plan pursuant to s.  
1338 403.067 and every 5 ~~By January 1, 2004, and every 3~~ years  
1339 thereafter, the department ~~district~~, in cooperation with the  
1340 other coordinating agencies, shall conduct an evaluation of the  
1341 Lake Okeechobee Watershed Construction Project and identify any  
1342 further load reductions necessary to achieve compliance with the  
1343 ~~all~~ Lake Okeechobee ~~watershed~~ total maximum daily loads  
1344 established pursuant to s. 403.067. ~~Additionally,~~ The district



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1345 shall identify modifications to facilities of the Lake  
1346 Okeechobee Watershed Construction Project as appropriate to meet  
1347 the total maximum daily loads. Modifications to the Lake  
1348 Okeechobee Watershed Construction Project resulting from this  
1349 evaluation shall be incorporated into the Lake Okeechobee Basin  
1350 Management Action Plan and ~~The evaluation shall be included in~~  
1351 the applicable annual progress report submitted pursuant to  
1352 subsection (6).

1353 d.4. Coordination and review.—To ensure the timely  
1354 implementation of the Lake Okeechobee Watershed Construction  
1355 Project, the design of project facilities shall be coordinated  
1356 with the department and other interested parties, including  
1357 affected local governments, to the maximum extent practicable.  
1358 Lake Okeechobee Watershed Construction Project facilities shall  
1359 be reviewed and commented upon by the department before ~~prior to~~  
1360 the execution of a construction contract by the district for  
1361 that facility.

1362 2. Lake Okeechobee Watershed Research and Water Quality  
1363 Monitoring Program.—The coordinating agencies shall implement a  
1364 Lake Okeechobee Watershed Research and Water Quality Monitoring  
1365 Program. Results from the program shall be used by the  
1366 department, in cooperation with the other coordinating agencies,  
1367 to make modifications to the Lake Okeechobee Basin Management  
1368 Action Plan adopted pursuant to s. 403.067, as appropriate. The  
1369 program shall:

1370 a. Evaluate all available existing water quality data  
1371 concerning total phosphorus in the Lake Okeechobee watershed,  
1372 develop a water quality baseline to represent existing  
1373 conditions for total phosphorus, monitor long-term ecological



1374 changes, including water quality for total phosphorus, and  
1375 measure compliance with water quality standards for total  
1376 phosphorus, including any applicable total maximum daily load  
1377 for the Lake Okeechobee watershed as established pursuant to s.  
1378 403.067. Beginning March 1, 2020, and every 5 years thereafter,  
1379 the department shall reevaluate water quality and quantity data  
1380 to ensure that the appropriate projects are being designated and  
1381 incorporated into the Lake Okeechobee Basin Management Action  
1382 Plan adopted pursuant to s. 403.067. The district shall  
1383 implement a total phosphorus monitoring program at appropriate  
1384 structures owned or operated by the district and within the Lake  
1385 Okeechobee watershed.

1386 b. Develop a Lake Okeechobee water quality model that  
1387 reasonably represents the phosphorus dynamics of Lake Okeechobee  
1388 and incorporates an uncertainty analysis associated with model  
1389 predictions.

1390 c. Determine the relative contribution of phosphorus from  
1391 all identifiable sources and all primary and secondary land  
1392 uses.

1393 d. Conduct an assessment of the sources of phosphorus from  
1394 the Upper Kissimmee Chain-of-Lakes and Lake Istokpoga, and their  
1395 relative contribution to the water quality of Lake Okeechobee.  
1396 The results of this assessment shall be used by the coordinating  
1397 agencies as part of the Lake Okeechobee Basin Management Action  
1398 Plan adopted pursuant to s. 403.067 to develop interim measures,  
1399 best management practices, or regulations, as applicable.

1400 e. Assess current water management practices within the  
1401 Lake Okeechobee watershed and develop recommendations for  
1402 structural and operational improvements. Such recommendations



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1403 shall balance water supply, flood control, estuarine salinity,  
1404 maintenance of a healthy lake littoral zone, and water quality  
1405 considerations.

1406 f. Evaluate the feasibility of alternative nutrient  
1407 reduction technologies, including sediment traps, canal and  
1408 ditch maintenance, fish production or other aquaculture,  
1409 bioenergy conversion processes, and algal or other biological  
1410 treatment technologies and include any alternative nutrient  
1411 reduction technologies determined to be feasible in the Lake  
1412 Okeechobee Basin Management Action Plan adopted pursuant to s.  
1413 403.067.

1414 g. Conduct an assessment of the water volumes and timing  
1415 from the Lake Okeechobee watershed and their relative  
1416 contribution to the water level changes in Lake Okeechobee and  
1417 to the timing and volume of water delivered to the estuaries.

1418 (b)(e) Lake Okeechobee Basin Management Action Plan  
1419 Watershed Phosphorus Control Program.—The Lake Okeechobee Basin  
1420 Management Action Plan adopted pursuant to s. 403.067 shall be  
1421 the watershed phosphorus control component for Lake Okeechobee.  
1422 The Lake Okeechobee Basin Management Action Plan shall be  
1423 Program is designed to be a multifaceted approach designed to  
1424 achieve the total maximum daily load reducing phosphorus loads  
1425 by improving the management of phosphorus sources within the  
1426 Lake Okeechobee watershed through implementation of regulations  
1427 and best management practices, continued development and  
1428 continued implementation of improved best management practices,  
1429 improvement and restoration of the hydrologic function of  
1430 natural and managed systems, and use utilization of alternative  
1431 technologies for nutrient reduction. The plan must include an



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1432 implementation schedule pursuant to this subsection for  
1433 pollutant load reductions consistent with the adopted total  
1434 maximum daily load. The department shall develop a schedule to  
1435 establish 5-, 10-, and 15-year milestones and a target to  
1436 achieve the adopted total maximum daily load no more than 20  
1437 years after adoption of the plan. The schedule shall be used to  
1438 provide guidance for planning and funding purposes and is exempt  
1439 from the provisions of s. 120.54(1)(a). If achieving the adopted  
1440 total maximum daily load within 20 years is not practicable, the  
1441 schedule shall contain an explanation of the constraints that  
1442 prevent achieving the total maximum daily load within 20 years  
1443 and an estimate of the time needed to achieve the total maximum  
1444 daily load and additional 5-year measurable milestones, as  
1445 necessary. The coordinating agencies shall develop an  
1446 interagency agreement pursuant to ss. 373.046 and 373.406 which  
1447 is consistent with the department taking the lead on water  
1448 quality protection measures through the Lake Okeechobee Basin  
1449 Management Action Plan adopted pursuant to s. 403.067; the  
1450 district taking the lead on hydrologic improvements pursuant to  
1451 paragraph (a); and the Department of Agriculture and Consumer  
1452 Services taking the lead on agricultural interim measures, best  
1453 management practices, and other measures adopted pursuant to s.  
1454 403.067. The interagency agreement shall specify how best  
1455 management practices for nonagricultural nonpoint sources are  
1456 developed and how all best management practices are implemented  
1457 and verified consistent with s. 403.067 and this section. The  
1458 interagency agreement shall address measures to be taken by the  
1459 coordinating agencies during any best management practice  
1460 reevaluation performed pursuant to subparagraphs 5. and 10. The



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1461 department shall use best professional judgment in making the  
1462 initial determination of best management practice effectiveness.  
1463 The coordinating agencies may develop an intergovernmental  
1464 agreement with local governments to implement nonagricultural  
1465 nonpoint source best management practices within their  
1466 respective geographic boundaries. The coordinating agencies  
1467 shall facilitate the application of federal programs that offer  
1468 opportunities for water quality treatment, including  
1469 preservation, restoration, or creation of wetlands on  
1470 agricultural lands.

1471       1. Agricultural nonpoint source best management practices,  
1472 developed in accordance with s. 403.067 and designed to achieve  
1473 the objectives of the Lake Okeechobee Watershed Protection  
1474 Program as part of a phased approach of management strategies  
1475 within the Lake Okeechobee Basin Management Action Plan, shall  
1476 be implemented on an expedited basis. ~~The coordinating agencies~~  
1477 ~~shall develop an interagency agreement pursuant to ss. 373.046~~  
1478 ~~and 373.406(5) that assures the development of best management~~  
1479 ~~practices that complement existing regulatory programs and~~  
1480 ~~specifies how those best management practices are implemented~~  
1481 ~~and verified. The interagency agreement shall address measures~~  
1482 ~~to be taken by the coordinating agencies during any best~~  
1483 ~~management practice reevaluation performed pursuant to sub-~~  
1484 ~~subparagraph d. The department shall use best professional~~  
1485 ~~judgment in making the initial determination of best management~~  
1486 ~~practice effectiveness.~~

1487       ~~2.a.~~ As provided in s. 403.067(7)(e), the Department of  
1488 Agriculture and Consumer Services, in consultation with the  
1489 department, the district, and affected parties, shall initiate



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1490 rule development for interim measures, best management  
1491 practices, conservation plans, nutrient management plans, or  
1492 other measures necessary for Lake Okeechobee watershed total  
1493 maximum daily load reduction. The rule shall include thresholds  
1494 for requiring conservation and nutrient management plans and  
1495 criteria for the contents of such plans. Development of  
1496 agricultural nonpoint source best management practices shall  
1497 initially focus on those priority basins listed in sub-  
1498 subparagraph (a)1.a. subparagraph (b)1. The Department of  
1499 Agriculture and Consumer Services, in consultation with the  
1500 department, the district, and affected parties, shall conduct an  
1501 ongoing program for improvement of existing and development of  
1502 new agricultural nonpoint source interim measures and ~~or~~ best  
1503 management practices. The Department of Agriculture and Consumer  
1504 Services shall adopt for the purpose of adoption of such  
1505 practices by rule. The Department of Agriculture and Consumer  
1506 Services shall work with the University of Florida ~~Florida's~~  
1507 Institute of Food and Agriculture Sciences to review and, where  
1508 appropriate, develop revised nutrient application rates for all  
1509 agricultural soil amendments in the watershed.

1510 ~~3.b.~~ As provided in s. 403.067, where agricultural nonpoint  
1511 source best management practices or interim measures have been  
1512 adopted by rule of the Department of Agriculture and Consumer  
1513 Services, the owner or operator of an agricultural nonpoint  
1514 source addressed by such rule shall either implement interim  
1515 measures or best management practices or demonstrate compliance  
1516 with state water quality standards addressed by the Lake  
1517 Okeechobee Basin Management Action Plan adopted pursuant to s.  
1518 403.067 ~~the district's WOD program~~ by conducting monitoring





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1519 prescribed by the department or the district. Owners or  
1520 operators of agricultural nonpoint sources who implement interim  
1521 measures or best management practices adopted by rule of the  
1522 Department of Agriculture and Consumer Services shall be subject  
1523 to ~~the provisions of s. 403.067(7). The Department of~~  
1524 ~~Agriculture and Consumer Services, in cooperation with the~~  
1525 ~~department and the district, shall provide technical and~~  
1526 ~~financial assistance for implementation of agricultural best~~  
1527 ~~management practices, subject to the availability of funds.~~

1528 4.e. The district or department shall conduct monitoring at  
1529 representative sites to verify the effectiveness of agricultural  
1530 nonpoint source best management practices.

1531 5.d. Where water quality problems are detected for  
1532 agricultural nonpoint sources despite the appropriate  
1533 implementation of adopted best management practices, ~~the~~  
1534 ~~Department of Agriculture and Consumer Services, in consultation~~  
1535 ~~with the other coordinating agencies and affected parties, shall~~  
1536 institute a reevaluation of the best management practices shall  
1537 be conducted pursuant to s. 403.067(7)(c)4. Should the  
1538 reevaluation determine that the best management practices or  
1539 other measures require modification, the rule shall be revised  
1540 to require implementation of the modified practice within a  
1541 reasonable time period as specified in the rule and make  
1542 appropriate changes to the rule adopting best management  
1543 practices.

1544 6.2. As provided in s. 403.067, nonagricultural nonpoint  
1545 source best management practices, developed in accordance with  
1546 s. 403.067 and designed to achieve the objectives of the Lake  
1547 Okeechobee Watershed Protection Program as part of a phased



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1548 approach of management strategies within the Lake Okeechobee  
1549 Basin Management Action Plan, shall be implemented on an  
1550 expedited basis. ~~The department and the district shall develop~~  
1551 ~~an interagency agreement pursuant to ss. 373.046 and 373.406(5)~~  
1552 ~~that assures the development of best management practices that~~  
1553 ~~complement existing regulatory programs and specifies how those~~  
1554 ~~best management practices are implemented and verified. The~~  
1555 ~~interagency agreement shall address measures to be taken by the~~  
1556 ~~department and the district during any best management practice~~  
1557 ~~reevaluation performed pursuant to sub-subparagraph d.~~

1558 7.a. The department and the district are directed to work  
1559 with the University of Florida ~~Florida's~~ Institute of Food and  
1560 Agricultural Sciences to develop appropriate nutrient  
1561 application rates for all nonagricultural soil amendments in the  
1562 watershed. As provided in s. 403.067 ~~s. 403.067(7)(e)~~, the  
1563 department, in consultation with the district and affected  
1564 parties, shall develop nonagricultural nonpoint source interim  
1565 measures, best management practices, or other measures necessary  
1566 for Lake Okeechobee watershed total maximum daily load  
1567 reduction. Development of nonagricultural nonpoint source best  
1568 management practices shall initially focus on those priority  
1569 basins listed in sub-subparagraph (a)1.a. ~~subparagraph (b)1.~~ The  
1570 department, the district, and affected parties shall conduct an  
1571 ongoing program for improvement of existing and development of  
1572 new interim measures and ~~or~~ best management practices. The  
1573 department or the district shall adopt such practices by rule  
1574 ~~The district shall adopt technology-based standards under the~~  
1575 ~~district's WOD program for nonagricultural nonpoint sources of~~  
1576 ~~phosphorus. Nothing in this sub-subparagraph shall affect the~~



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1577 ~~authority of the department or the district to adopt basin-~~  
1578 ~~specific criteria under this part to prevent harm to the water~~  
1579 ~~resources of the district.~~

1580 ~~8.b.~~ Where nonagricultural nonpoint source best management  
1581 practices or interim measures have been developed by the  
1582 department and adopted by the district, the owner or operator of  
1583 a nonagricultural nonpoint source shall implement interim  
1584 measures or best management practices and be subject to ~~the~~  
1585 ~~provisions of s. 403.067(7). The department and district shall~~  
1586 ~~provide technical and financial assistance for implementation of~~  
1587 ~~nonagricultural nonpoint source best management practices,~~  
1588 ~~subject to the availability of funds.~~

1589 ~~9.e.~~ As provided in s. 403.067, the district or the  
1590 department shall conduct monitoring at representative sites to  
1591 verify the effectiveness of nonagricultural nonpoint source best  
1592 management practices.

1593 ~~10.d.~~ Where water quality problems are detected for  
1594 nonagricultural nonpoint sources despite the appropriate  
1595 implementation of adopted best management practices, ~~the~~  
1596 ~~department and the district shall institute a reevaluation of~~  
1597 ~~the best management practices~~ shall be conducted pursuant to s.  
1598 403.067(7)(c)4. Should the reevaluation determine that the best  
1599 management practices or other measures require modification, the  
1600 rule shall be revised to require implementation of the modified  
1601 practice within a reasonable time period as specified in the  
1602 rule.

1603 ~~11.3.~~ The provisions of Subparagraphs 1. and 2. and 7. do  
1604 ~~may~~ not preclude the department or the district from requiring  
1605 compliance with water quality standards or with current best



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1606 management practices requirements set forth in any applicable  
1607 regulatory program authorized by law for the purpose of  
1608 protecting water quality. ~~Additionally,~~ Subparagraphs ~~1. and 2.~~  
1609 and 7. are applicable only to the extent that they do not  
1610 conflict with any rules adopted by the department that are  
1611 necessary to maintain a federally delegated or approved program.

1612 12. The program of agricultural best management practices  
1613 set forth in the Everglades Program of the district, meets the  
1614 requirements of this paragraph and s. 403.067(7) for the Lake  
1615 Okeechobee watershed. An entity in compliance with best  
1616 management practices set forth in the Everglades Program of the  
1617 district, may elect to use that permit in lieu of the  
1618 requirements of this paragraph. The provisions of s.  
1619 373.4595(3)(b)5. apply to this subparagraph. This subparagraph  
1620 does not alter any requirement under s. 373.4592.

1621 13. The Department of Agriculture and Consumer Services, in  
1622 cooperation with the department and the district, shall provide  
1623 technical and financial assistance for implementation of  
1624 agricultural best management practices, subject to the  
1625 availability of funds. The department and district shall provide  
1626 technical and financial assistance for implementation of  
1627 nonagricultural nonpoint source best management practices,  
1628 subject to the availability of funds.

1629 14.4. Projects that reduce the phosphorus load originating  
1630 from domestic wastewater systems within the Lake Okeechobee  
1631 watershed shall be given funding priority in the department's  
1632 revolving loan program under s. 403.1835. The department shall  
1633 coordinate and provide assistance to those local governments  
1634 seeking financial assistance for such priority projects.



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1635            ~~15.5.~~ Projects that make use of private lands, or lands  
1636 held in trust for Indian tribes, to reduce nutrient loadings or  
1637 concentrations within a basin by one or more of the following  
1638 methods: restoring the natural hydrology of the basin, restoring  
1639 wildlife habitat or impacted wetlands, reducing peak flows after  
1640 storm events, increasing aquifer recharge, or protecting range  
1641 and timberland from conversion to development, are eligible for  
1642 grants available under this section from the coordinating  
1643 agencies. For projects of otherwise equal priority, special  
1644 funding priority will be given to those projects that make best  
1645 use of the methods outlined above that involve public-private  
1646 partnerships or that obtain federal match money. Preference  
1647 ranking above the special funding priority will be given to  
1648 projects located in a rural area of opportunity designated by  
1649 the Governor. Grant applications may be submitted by any person  
1650 or tribal entity, and eligible projects may include, but are not  
1651 limited to, the purchase of conservation and flowage easements,  
1652 hydrologic restoration of wetlands, creating treatment wetlands,  
1653 development of a management plan for natural resources, and  
1654 financial support to implement a management plan.

1655            ~~16.6.a.~~ The department shall require all entities disposing  
1656 of domestic wastewater biosolids ~~residuals~~ within the Lake  
1657 Okeechobee watershed and the remaining areas of Okeechobee,  
1658 Glades, and Hendry Counties to develop and submit to the  
1659 department an agricultural use plan that limits applications  
1660 based upon phosphorus loading consistent with the Lake  
1661 Okeechobee Basin Management Action Plan adopted pursuant to s.  
1662 403.067. ~~By July 1, 2005, phosphorus concentrations originating~~  
1663 ~~from these application sites may not exceed the limits~~



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1664 ~~established in the district's WOD program. After December 31,~~  
1665 ~~2007,~~ The department may not authorize the disposal of domestic  
1666 wastewater biosolids ~~residuals~~ within the Lake Okeechobee  
1667 watershed unless the applicant can affirmatively demonstrate  
1668 that the phosphorus in the biosolids ~~residuals~~ will not add to  
1669 phosphorus loadings in Lake Okeechobee or its tributaries. This  
1670 demonstration shall be based on achieving a net balance between  
1671 phosphorus imports relative to exports on the permitted  
1672 application site. Exports shall include only phosphorus removed  
1673 from the Lake Okeechobee watershed through products generated on  
1674 the permitted application site. This prohibition does not apply  
1675 to Class AA biosolids ~~residuals~~ that are marketed and  
1676 distributed as fertilizer products in accordance with department  
1677 rule.

1678 ~~17.b.~~ Private and government-owned utilities within Monroe,  
1679 Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian  
1680 River, Okeechobee, Highlands, Hendry, and Glades Counties that  
1681 dispose of wastewater biosolids ~~residual~~ sludge from utility  
1682 operations and septic removal by land spreading in the Lake  
1683 Okeechobee watershed may use a line item on local sewer rates to  
1684 cover wastewater biosolids ~~residual~~ treatment and disposal if  
1685 such disposal and treatment is done by approved alternative  
1686 treatment methodology at a facility located within the areas  
1687 designated by the Governor as rural areas of opportunity  
1688 pursuant to s. 288.0656. This additional line item is an  
1689 environmental protection disposal fee above the present sewer  
1690 rate and may not be considered a part of the present sewer rate  
1691 to customers, notwithstanding provisions to the contrary in  
1692 chapter 367. The fee shall be established by the county



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1693 commission or its designated assignee in the county in which the  
1694 alternative method treatment facility is located. The fee shall  
1695 be calculated to be no higher than that necessary to recover the  
1696 facility's prudent cost of providing the service. Upon request  
1697 by an affected county commission, the Florida Public Service  
1698 Commission will provide assistance in establishing the fee.  
1699 Further, for utilities and utility authorities that use the  
1700 additional line item environmental protection disposal fee, such  
1701 fee may not be considered a rate increase under the rules of the  
1702 Public Service Commission and shall be exempt from such rules.  
1703 Utilities using ~~the provisions of~~ this section may immediately  
1704 include in their sewer invoicing the new environmental  
1705 protection disposal fee. Proceeds from this environmental  
1706 protection disposal fee shall be used for treatment and disposal  
1707 of wastewater biosolids residuals, including any treatment  
1708 technology that helps reduce the volume of biosolids residuals  
1709 that require final disposal, but such proceeds may not be used  
1710 for transportation or shipment costs for disposal or any costs  
1711 relating to the land application of biosolids residuals in the  
1712 Lake Okeechobee watershed.

1713 18.e. No less frequently than once every 3 years, the  
1714 Florida Public Service Commission or the county commission  
1715 through the services of an independent auditor shall perform a  
1716 financial audit of all facilities receiving compensation from an  
1717 environmental protection disposal fee. The Florida Public  
1718 Service Commission or the county commission through the services  
1719 of an independent auditor shall also perform an audit of the  
1720 methodology used in establishing the environmental protection  
1721 disposal fee. The Florida Public Service Commission or the



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1722 county commission shall, within 120 days after completion of an  
1723 audit, file the audit report with the President of the Senate  
1724 and the Speaker of the House of Representatives and shall  
1725 provide copies to the county commissions of the counties set  
1726 forth in subparagraph 17. sub-subparagraph b. The books and  
1727 records of any facilities receiving compensation from an  
1728 environmental protection disposal fee shall be open to the  
1729 Florida Public Service Commission and the Auditor General for  
1730 review upon request.

1731 19.7. The Department of Health shall require all entities  
1732 disposing of septage within the Lake Okeechobee watershed to  
1733 develop and submit to that agency an agricultural use plan that  
1734 limits applications based upon phosphorus loading consistent  
1735 with the Lake Okeechobee Basin Management Action Plan adopted  
1736 pursuant to s. 403.067. ~~By July 1, 2005, phosphorus~~  
1737 ~~concentrations originating from these application sites may not~~  
1738 ~~exceed the limits established in the district's WOD program.~~

1739 20.8. The Department of Agriculture and Consumer Services  
1740 shall initiate rulemaking requiring entities within the Lake  
1741 Okeechobee watershed which land-apply animal manure to develop  
1742 resource management system level conservation plans, according  
1743 to United States Department of Agriculture criteria, which limit  
1744 such application. Such rules shall ~~may~~ include criteria and  
1745 thresholds for the requirement to develop a conservation or  
1746 nutrient management plan, requirements for plan approval, site  
1747 inspection requirements, and recordkeeping requirements.

1748 21. The district shall revise chapter 40E-61, Florida  
1749 Administrative Code, to be consistent with this section and s.  
1750 403.067; provide for a monitoring program for nonpoint source





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1751 dischargers required to monitor water quality by s. 403.067; and  
1752 provide for the results of such monitoring to be reported to the  
1753 coordinating agencies.

1754 ~~9. The district, the department, or the Department of~~  
1755 ~~Agriculture and Consumer Services, as appropriate, shall~~  
1756 ~~implement those alternative nutrient reduction technologies~~  
1757 ~~determined to be feasible pursuant to subparagraph (d)6.~~

1758 ~~(d) Lake Okeechobee Watershed Research and Water Quality~~  
1759 ~~Monitoring Program. The district, in cooperation with the other~~  
1760 ~~coordinating agencies, shall establish a Lake Okeechobee~~  
1761 ~~Watershed Research and Water Quality Monitoring Program that~~  
1762 ~~builds upon the district's existing Lake Okeechobee research~~  
1763 ~~program. The program shall:~~

1764 ~~1. Evaluate all available existing water quality data~~  
1765 ~~concerning total phosphorus in the Lake Okeechobee watershed,~~  
1766 ~~develop a water quality baseline to represent existing~~  
1767 ~~conditions for total phosphorus, monitor long-term ecological~~  
1768 ~~changes, including water quality for total phosphorus, and~~  
1769 ~~measure compliance with water quality standards for total~~  
1770 ~~phosphorus, including any applicable total maximum daily load~~  
1771 ~~for the Lake Okeechobee watershed as established pursuant to s.~~  
1772 ~~403.067. Every 3 years, the district shall reevaluate water~~  
1773 ~~quality and quantity data to ensure that the appropriate~~  
1774 ~~projects are being designated and implemented to meet the water~~  
1775 ~~quality and storage goals of the plan. The district shall also~~  
1776 ~~implement a total phosphorus monitoring program at appropriate~~  
1777 ~~structures owned or operated by the South Florida Water~~  
1778 ~~Management District and within the Lake Okeechobee watershed.~~

1779 ~~2. Develop a Lake Okeechobee water quality model that~~



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1780 ~~reasonably represents phosphorus dynamics of the lake and~~  
1781 ~~incorporates an uncertainty analysis associated with model~~  
1782 ~~predictions.~~

1783 ~~3. Determine the relative contribution of phosphorus from~~  
1784 ~~all identifiable sources and all primary and secondary land~~  
1785 ~~uses.~~

1786 ~~4. Conduct an assessment of the sources of phosphorus from~~  
1787 ~~the Upper Kissimmee Chain of Lakes and Lake Istokpoga, and their~~  
1788 ~~relative contribution to the water quality of Lake Okeechobee.~~  
1789 ~~The results of this assessment shall be used by the coordinating~~  
1790 ~~agencies to develop interim measures, best management practices,~~  
1791 ~~or regulation, as applicable.~~

1792 ~~5. Assess current water management practices within the~~  
1793 ~~Lake Okeechobee watershed and develop recommendations for~~  
1794 ~~structural and operational improvements. Such recommendations~~  
1795 ~~shall balance water supply, flood control, estuarine salinity,~~  
1796 ~~maintenance of a healthy lake littoral zone, and water quality~~  
1797 ~~considerations.~~

1798 ~~6. Evaluate the feasibility of alternative nutrient~~  
1799 ~~reduction technologies, including sediment traps, canal and~~  
1800 ~~ditch maintenance, fish production or other aquaculture,~~  
1801 ~~bioenergy conversion processes, and algal or other biological~~  
1802 ~~treatment technologies.~~

1803 ~~7. Conduct an assessment of the water volumes and timing~~  
1804 ~~from the Lake Okeechobee watershed and their relative~~  
1805 ~~contribution to the water level changes in Lake Okeechobee and~~  
1806 ~~to the timing and volume of water delivered to the estuaries.~~

1807 ~~(c)(e) Lake Okeechobee Exotic Species Control Program.—The~~  
1808 ~~coordinating agencies shall identify the exotic species that~~



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1809 threaten the native flora and fauna within the Lake Okeechobee  
1810 watershed and develop and implement measures to protect the  
1811 native flora and fauna.

1812 (d)~~(f)~~ *Lake Okeechobee Internal Phosphorus Management*  
1813 *Program.*—The district, in cooperation with the other  
1814 coordinating agencies and interested parties, shall evaluate the  
1815 feasibility of ~~complete a~~ Lake Okeechobee internal phosphorus  
1816 load removal projects ~~feasibility study~~. The evaluation  
1817 ~~feasibility study~~ shall be based on technical feasibility, as  
1818 well as economic considerations, and shall consider ~~address~~ all  
1819 reasonable methods of phosphorus removal. If projects ~~methods~~  
1820 are found to be feasible, the district shall immediately pursue  
1821 the design, funding, and permitting for implementing such  
1822 projects ~~methods~~.

1823 (e)~~(g)~~ *Lake Okeechobee Watershed Protection Program Plan*  
1824 *implementation.*—The coordinating agencies shall be jointly  
1825 responsible for implementing the Lake Okeechobee Watershed  
1826 Protection Program Plan, consistent with the statutory authority  
1827 and responsibility of each agency. Annual funding priorities  
1828 shall be jointly established, and the highest priority shall be  
1829 assigned to programs and projects that address sources that have  
1830 the highest relative contribution to loading and the greatest  
1831 potential for reductions needed to meet the total maximum daily  
1832 loads. In determining funding priorities, the coordinating  
1833 agencies shall also consider the need for regulatory compliance,  
1834 the extent to which the program or project is ready to proceed,  
1835 and the availability of federal matching funds or other nonstate  
1836 funding, including public-private partnerships. Federal and  
1837 other nonstate funding shall be maximized to the greatest extent



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1838 practicable.

1839 ~~(f)~~ ~~(h)~~ *Priorities and implementation schedules.*—The  
1840 coordinating agencies are authorized and directed to establish  
1841 priorities and implementation schedules for the achievement of  
1842 total maximum daily loads, compliance with the requirements of  
1843 s. 403.067, and compliance with applicable water quality  
1844 standards within the waters and watersheds subject to this  
1845 section.

1846 ~~(i) Legislative ratification.~~—~~The coordinating agencies~~  
1847 ~~shall submit the Phase II technical plan developed pursuant to~~  
1848 ~~paragraph (b) to the President of the Senate and the Speaker of~~  
1849 ~~the House of Representatives prior to the 2008 legislative~~  
1850 ~~session for review. If the Legislature takes no action on the~~  
1851 ~~plan during the 2008 legislative session, the plan is deemed~~  
1852 ~~approved and may be implemented.~~

1853 (4) CALOOSAHATCHEE RIVER WATERSHED PROTECTION PROGRAM AND  
1854 ST. LUCIE RIVER WATERSHED PROTECTION PROGRAM.—A protection  
1855 program shall be developed and implemented as specified in this  
1856 subsection. In order to protect and restore surface water  
1857 resources, the program shall address the reduction of pollutant  
1858 loadings, restoration of natural hydrology, and compliance with  
1859 applicable state water quality standards. The program shall be  
1860 achieved through a phased program of implementation. In  
1861 addition, pollutant load reductions based upon adopted total  
1862 maximum daily loads established in accordance with s. 403.067  
1863 shall serve as a program objective. In the development and  
1864 administration of the program, the coordinating agencies shall  
1865 maximize opportunities provided by federal and local government  
1866 cost-sharing programs and opportunities for partnerships with



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1867 the private sector and local government. The program plan shall  
1868 include a goal for salinity envelopes and freshwater inflow  
1869 targets for the estuaries based upon existing research and  
1870 documentation. The goal may be revised as new information is  
1871 available. This goal shall seek to reduce the frequency and  
1872 duration of undesirable salinity ranges while meeting the other  
1873 water-related needs of the region, including water supply and  
1874 flood protection, while recognizing the extent to which water  
1875 inflows are within the control and jurisdiction of the district.

1876 (a) *Caloosahatchee River Watershed Protection Plan.* ~~No~~  
1877 ~~later than January 1, 2009,~~ The district, in cooperation with  
1878 the other coordinating agencies, Lee County, and affected  
1879 counties and municipalities, shall complete a River Watershed  
1880 Protection Plan in accordance with this subsection. The  
1881 Caloosahatchee River Watershed Protection Plan shall identify  
1882 the geographic extent of the watershed, be coordinated as needed  
1883 with the plans developed pursuant to paragraph (3) (a) and  
1884 paragraph (c) ~~(b)~~ of this subsection, and ~~contain an~~  
1885 ~~implementation schedule for pollutant load reductions consistent~~  
1886 ~~with any adopted total maximum daily loads and compliance with~~  
1887 ~~applicable state water quality standards.~~ The plan shall include  
1888 the Caloosahatchee River Watershed Construction Project and the  
1889 Caloosahatchee River Watershed Research and Water Quality  
1890 Monitoring Program. ÷

1891 1. *Caloosahatchee River Watershed Construction Project.* ~~To~~  
1892 improve the hydrology, water quality, and aquatic habitats  
1893 within the watershed, the district shall, no later than January  
1894 1, 2012, plan, design, and construct the initial phase of the  
1895 Watershed Construction Project. In doing so, the district shall:



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1896 a. Develop and designate the facilities to be constructed  
1897 to achieve stated goals and objectives of the Caloosahatchee  
1898 River Watershed Protection Plan.

1899 b. Conduct scientific studies that are necessary to support  
1900 the design of the Caloosahatchee River Watershed Construction  
1901 Project facilities.

1902 c. Identify the size and location of all such facilities.

1903 d. Provide a construction schedule for all such facilities,  
1904 including the sequencing and specific timeframe for construction  
1905 of each facility.

1906 e. Provide a schedule for the acquisition of lands or  
1907 sufficient interests necessary to achieve the construction  
1908 schedule.

1909 f. Provide a schedule of costs and benefits associated with  
1910 each construction project and identify funding sources.

1911 g. To ensure timely implementation, coordinate the design,  
1912 scheduling, and sequencing of project facilities with the  
1913 coordinating agencies, Lee County, other affected counties and  
1914 municipalities, and other affected parties.

1915 2. Caloosahatchee River Watershed Research and Water  
1916 Quality Monitoring Program.—The district, in cooperation with  
1917 the other coordinating agencies and local governments, shall  
1918 implement a Caloosahatchee River Watershed Research and Water  
1919 Quality Monitoring Program that builds upon the district's  
1920 existing research program and that is sufficient to carry out,  
1921 comply with, or assess the plans, programs, and other  
1922 responsibilities created by this subsection. The program shall  
1923 also conduct an assessment of the water volumes and timing from  
1924 Lake Okeechobee and the Caloosahatchee River watershed and their



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1925 relative contributions to the timing and volume of water  
1926 delivered to the estuary.

1927 (b)2. Caloosahatchee River Watershed Basin Management  
1928 Action Plans Pollutant Control Program.—The basin management  
1929 action plans adopted pursuant to s. 403.067 for the  
1930 Caloosahatchee River watershed shall be the Caloosahatchee River  
1931 Watershed Pollutant Control Program. The plans shall be ~~is~~  
1932 designed to be a multifaceted approach to reducing pollutant  
1933 loads by improving the management of pollutant sources within  
1934 the Caloosahatchee River watershed through implementation of  
1935 regulations and best management practices, development and  
1936 implementation of improved best management practices,  
1937 improvement and restoration of the hydrologic function of  
1938 natural and managed systems, and utilization of alternative  
1939 technologies for pollutant reduction, such as cost-effective  
1940 biologically based, hybrid wetland/chemical and other innovative  
1941 nutrient control technologies. The plans shall contain an  
1942 implementation schedule for pollutant load reductions consistent  
1943 with the adopted total maximum daily load. As provided in s.  
1944 403.067(7)(a)5., the Caloosahatchee River Watershed Basin  
1945 Management Action Plan must include milestones for  
1946 implementation and water quality improvement and an associated  
1947 water quality monitoring component sufficient to evaluate  
1948 whether reasonable progress in pollutant load reductions is  
1949 being achieved over time. The department shall develop a  
1950 schedule to establish 5-, 10-, and 15-year measurable milestones  
1951 and a target for achieving water quality improvement consistent  
1952 with the provisions of this section. The schedule shall be used  
1953 to provide guidance for planning and funding purposes and is



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1954 exempt from the provisions of s. 120.54(1)(a). An assessment of  
1955 progress toward these milestones shall be conducted every 5  
1956 years, and revisions to the plan shall be made, as appropriate,  
1957 as a result of each 5-year review. The assessment shall be  
1958 provided to the Governor, the President of the Senate, and the  
1959 Speaker of the House of Representatives. Upon the first 5-year  
1960 review, a schedule, measureable milestones, and a target for  
1961 achieving water quality improvement consistent with the  
1962 provisions of this section shall be adopted into the plan  
1963 revisions to the basin management action plan shall be made by  
1964 the department in cooperation with basin stakeholders. Revisions  
1965 to the management strategies must follow the procedures set  
1966 forth in s. 403.067(7)(c)4. Revised basin management action  
1967 plans must be adopted pursuant to s. 403.067(7)(a)4. The  
1968 coordinating agencies shall facilitate the use ~~utilization~~ of  
1969 federal programs that offer opportunities for water quality  
1970 treatment, including preservation, restoration, or creation of  
1971 wetlands on agricultural lands.

1972 1.a. Nonpoint source best management practices consistent  
1973 with s. 403.067 ~~paragraph (3)(c)~~, designed to achieve the  
1974 objectives of the Caloosahatchee River Watershed Protection  
1975 Program, shall be implemented on an expedited basis. The  
1976 coordinating agencies may develop an intergovernmental agreement  
1977 with local governments to implement the nonagricultural,  
1978 nonpoint-source best management practices within their  
1979 respective geographic boundaries.

1980 2.b. This subsection does not preclude the department or  
1981 the district from requiring compliance with water quality  
1982 standards, adopted total maximum daily loads, or current best





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1983 management practices requirements set forth in any applicable  
1984 regulatory program authorized by law for the purpose of  
1985 protecting water quality. This subsection applies only to the  
1986 extent that it does not conflict with any rules adopted by the  
1987 department or district which are necessary to maintain a  
1988 federally delegated or approved program.

1989 ~~3.e.~~ Projects that make use of private lands, or lands held  
1990 in trust for Indian tribes, to reduce pollutant loadings or  
1991 concentrations within a basin, or that reduce the volume of  
1992 harmful discharges by one or more of the following methods:  
1993 restoring the natural hydrology of the basin, restoring wildlife  
1994 habitat or impacted wetlands, reducing peak flows after storm  
1995 events, or increasing aquifer recharge, are eligible for grants  
1996 available under this section from the coordinating agencies.

1997 ~~4.d.~~ The Caloosahatchee River Watershed Basin Management  
1998 Action Plans ~~Pollutant Control Program~~ shall require assessment  
1999 of current water management practices within the watershed and  
2000 shall require development of recommendations for structural,  
2001 nonstructural, and operational improvements. Such  
2002 recommendations shall consider and balance water supply, flood  
2003 control, estuarine salinity, aquatic habitat, and water quality  
2004 considerations.

2005 ~~5.e.~~ ~~After December 31, 2007,~~ The department may not  
2006 authorize the disposal of domestic wastewater biosolids  
2007 ~~residuals~~ within the Caloosahatchee River watershed unless the  
2008 applicant can affirmatively demonstrate that the nutrients in  
2009 the biosolids ~~residuals~~ will not add to nutrient loadings in the  
2010 watershed. This demonstration shall be based on achieving a net  
2011 balance between nutrient imports relative to exports on the



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2012 permitted application site. Exports shall include only nutrients  
2013 removed from the watershed through products generated on the  
2014 permitted application site. This prohibition does not apply to  
2015 Class AA biosolids ~~residuals~~ that are marketed and distributed  
2016 as fertilizer products in accordance with department rule.

2017 ~~6.f.~~ The Department of Health shall require all entities  
2018 disposing of septage within the Caloosahatchee River watershed  
2019 to develop and submit to that agency an agricultural use plan  
2020 that limits applications based upon nutrient loading consistent  
2021 with any basin management action plan adopted pursuant to s.  
2022 403.067. ~~By July 1, 2008, nutrient concentrations originating~~  
2023 ~~from these application sites may not exceed the limits~~  
2024 ~~established in the district's WOD program.~~

2025 ~~7.g.~~ The Department of Agriculture and Consumer Services  
2026 shall require ~~initiate rulemaking requiring~~ entities within the  
2027 Caloosahatchee River watershed which land-apply animal manure to  
2028 develop a resource management system level conservation plan,  
2029 according to United States Department of Agriculture criteria,  
2030 which limit such application. Such rules shall ~~may~~ include  
2031 criteria and thresholds for the requirement to develop a  
2032 conservation or nutrient management plan, requirements for plan  
2033 approval, site inspection requirements, and recordkeeping  
2034 requirements.

2035 8. ~~The district shall initiate rulemaking to provide for a~~  
2036 monitoring program for nonpoint source dischargers required to  
2037 monitor water quality pursuant to s. 403.067(7) (b)2.g. or s.  
2038 403.067(7) (c)3. ~~The results of such monitoring must be reported~~  
2039 to the coordinating agencies.

2040 ~~3. Caloosahatchee River Watershed Research and Water~~



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2041 ~~Quality Monitoring Program. The district, in cooperation with~~  
2042 ~~the other coordinating agencies and local governments, shall~~  
2043 ~~establish a Caloosahatchee River Watershed Research and Water~~  
2044 ~~Quality Monitoring Program that builds upon the district's~~  
2045 ~~existing research program and that is sufficient to carry out,~~  
2046 ~~comply with, or assess the plans, programs, and other~~  
2047 ~~responsibilities created by this subsection. The program shall~~  
2048 ~~also conduct an assessment of the water volumes and timing from~~  
2049 ~~the Lake Okeechobee and Caloosahatchee River watersheds and~~  
2050 ~~their relative contributions to the timing and volume of water~~  
2051 ~~delivered to the estuary.~~

2052 ~~(c)(b) St. Lucie River Watershed Protection Plan. No later~~  
2053 ~~than January 1, 2009, The district, in cooperation with the~~  
2054 ~~other coordinating agencies, Martin County, and affected~~  
2055 ~~counties and municipalities shall complete a plan in accordance~~  
2056 ~~with this subsection. The St. Lucie River Watershed Protection~~  
2057 ~~Plan shall identify the geographic extent of the watershed, be~~  
2058 ~~coordinated as needed with the plans developed pursuant to~~  
2059 ~~paragraph (3) (a) and paragraph (a) of this subsection, and~~  
2060 ~~contain an implementation schedule for pollutant load reductions~~  
2061 ~~consistent with any adopted total maximum daily loads and~~  
2062 ~~compliance with applicable state water quality standards. The~~  
2063 ~~plan shall include the St. Lucie River Watershed Construction~~  
2064 ~~Project and St. Lucie River Watershed Research and Water Quality~~  
2065 ~~Monitoring Program.~~+

2066 1. St. Lucie River Watershed Construction Project.—To  
2067 improve the hydrology, water quality, and aquatic habitats  
2068 within the watershed, the district shall, no later than January  
2069 1, 2012, plan, design, and construct the initial phase of the



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2070 Watershed Construction Project. In doing so, the district shall:

2071 a. Develop and designate the facilities to be constructed  
2072 to achieve stated goals and objectives of the St. Lucie River  
2073 Watershed Protection Plan.

2074 b. Identify the size and location of all such facilities.

2075 c. Provide a construction schedule for all such facilities,  
2076 including the sequencing and specific timeframe for construction  
2077 of each facility.

2078 d. Provide a schedule for the acquisition of lands or  
2079 sufficient interests necessary to achieve the construction  
2080 schedule.

2081 e. Provide a schedule of costs and benefits associated with  
2082 each construction project and identify funding sources.

2083 f. To ensure timely implementation, coordinate the design,  
2084 scheduling, and sequencing of project facilities with the  
2085 coordinating agencies, Martin County, St. Lucie County, other  
2086 interested parties, and other affected local governments.

2087 2. St. Lucie River Watershed Research and Water Quality  
2088 Monitoring Program.—The district, in cooperation with the other  
2089 coordinating agencies and local governments, shall establish a  
2090 St. Lucie River Watershed Research and Water Quality Monitoring  
2091 Program that builds upon the district's existing research  
2092 program and that is sufficient to carry out, comply with, or  
2093 assess the plans, programs, and other responsibilities created  
2094 by this subsection. The program shall also conduct an assessment  
2095 of the water volumes and timing from Lake Okeechobee and the St.  
2096 Lucie River watershed and their relative contributions to the  
2097 timing and volume of water delivered to the estuary.

2098 (d)2.— St. Lucie River Watershed Basin Management Action



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2099 Plans Pollutant Control Program.—Basin management action plans  
2100 for the St. Lucie River watershed adopted pursuant to s. 403.067  
2101 shall be the St. Lucie River Watershed Pollutant Control Program  
2102 and shall be is designed to be a multifaceted approach to  
2103 reducing pollutant loads by improving the management of  
2104 pollutant sources within the St. Lucie River watershed through  
2105 implementation of regulations and best management practices,  
2106 development and implementation of improved best management  
2107 practices, improvement and restoration of the hydrologic  
2108 function of natural and managed systems, and use utilization of  
2109 alternative technologies for pollutant reduction, such as cost-  
2110 effective biologically based, hybrid wetland/chemical and other  
2111 innovative nutrient control technologies. The plan shall contain  
2112 an implementation schedule for pollutant load reductions  
2113 consistent with the adopted total maximum daily load. As  
2114 provided in 403.067(7)(a)5., the St. Lucie Watershed Basin  
2115 Management Action Plan must include milestones for  
2116 implementation and water quality improvement, and an associated  
2117 water quality monitoring component sufficient to evaluate  
2118 whether reasonable progress in pollutant load reductions is  
2119 being achieved over time. The department shall develop a  
2120 schedule to establish 5-, 10-, and 15-year measurable milestones  
2121 and a target for achieving water quality improvement consistent  
2122 with the provisions of this section. The schedule shall be used  
2123 to provide guidance for planning and funding purposes and is  
2124 exempt from the provisions of s. 120.54(1)(a). An assessment of  
2125 progress toward these milestones shall be conducted every 5  
2126 years, and revisions to the plan shall be made, as appropriate,  
2127 as a result of each 5-year review. The assessment shall be



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2128 provided to the Governor, the President of the Senate, and the  
2129 Speaker of the House of Representatives. Upon the first 5-year  
2130 review, a schedule, measureable milestones, and a target for  
2131 achieving water quality improvement consistent with the  
2132 provisions of this section shall be adopted into the plan.  
2133 Revisions to the basin management action plan shall be made by  
2134 the department in cooperation with basin stakeholders. Revisions  
2135 to the management strategies must follow the procedures set  
2136 forth in s. 403.067(7)(c)4. Revised basin management action  
2137 plans must be adopted pursuant to s. 403.067(7)(a)4. The  
2138 coordinating agencies shall facilitate the use ~~utilization~~ of  
2139 federal programs that offer opportunities for water quality  
2140 treatment, including preservation, restoration, or creation of  
2141 wetlands on agricultural lands.

2142 ~~1.a.~~ Nonpoint source best management practices consistent  
2143 with s. 403.067 ~~paragraph (3)(c)~~, designed to achieve the  
2144 objectives of the St. Lucie River Watershed Protection Program,  
2145 shall be implemented on an expedited basis. The coordinating  
2146 agencies may develop an intergovernmental agreement with local  
2147 governments to implement the nonagricultural nonpoint source  
2148 best management practices within their respective geographic  
2149 boundaries.

2150 ~~2.b.~~ This subsection does not preclude the department or  
2151 the district from requiring compliance with water quality  
2152 standards, adopted total maximum daily loads, or current best  
2153 management practices requirements set forth in any applicable  
2154 regulatory program authorized by law for the purpose of  
2155 protecting water quality. This subsection applies only to the  
2156 extent that it does not conflict with any rules adopted by the



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2157 department or district which are necessary to maintain a  
2158 federally delegated or approved program.

2159 ~~3.e.~~ Projects that make use of private lands, or lands held  
2160 in trust for Indian tribes, to reduce pollutant loadings or  
2161 concentrations within a basin, or that reduce the volume of  
2162 harmful discharges by one or more of the following methods:  
2163 restoring the natural hydrology of the basin, restoring wildlife  
2164 habitat or impacted wetlands, reducing peak flows after storm  
2165 events, or increasing aquifer recharge, are eligible for grants  
2166 available under this section from the coordinating agencies.

2167 ~~4.d.~~ The St. Lucie River Watershed Basin Management Action  
2168 Plans ~~Pollutant Control Program~~ shall require assessment of  
2169 current water management practices within the watershed and  
2170 shall require development of recommendations for structural,  
2171 nonstructural, and operational improvements. Such  
2172 recommendations shall consider and balance water supply, flood  
2173 control, estuarine salinity, aquatic habitat, and water quality  
2174 considerations.

2175 ~~5.e. After December 31, 2007,~~ The department may not  
2176 authorize the disposal of domestic wastewater biosolids  
2177 ~~residuals~~ within the St. Lucie River watershed unless the  
2178 applicant can affirmatively demonstrate that the nutrients in  
2179 the biosolids ~~residuals~~ will not add to nutrient loadings in the  
2180 watershed. This demonstration shall be based on achieving a net  
2181 balance between nutrient imports relative to exports on the  
2182 permitted application site. Exports shall include only nutrients  
2183 removed from the St. Lucie River watershed through products  
2184 generated on the permitted application site. This prohibition  
2185 does not apply to Class AA biosolids ~~residuals~~ that are marketed



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2186 and distributed as fertilizer products in accordance with  
2187 department rule.

2188 ~~6.f.~~ The Department of Health shall require all entities  
2189 disposing of septage within the St. Lucie River watershed to  
2190 develop and submit to that agency an agricultural use plan that  
2191 limits applications based upon nutrient loading consistent with  
2192 any basin management action plan adopted pursuant to s. 403.067.  
2193 ~~By July 1, 2008, nutrient concentrations originating from these~~  
2194 ~~application sites may not exceed the limits established in the~~  
2195 ~~district's WOD program.~~

2196 ~~7.g.~~ The Department of Agriculture and Consumer Services  
2197 shall initiate rulemaking requiring entities within the St.  
2198 Lucie River watershed which land-apply animal manure to develop  
2199 a resource management system level conservation plan, according  
2200 to United States Department of Agriculture criteria, which limit  
2201 such application. Such rules shall ~~may~~ include criteria and  
2202 thresholds for the requirement to develop a conservation or  
2203 nutrient management plan, requirements for plan approval, site  
2204 inspection requirements, and recordkeeping requirements.

2205 8. The district shall initiate rulemaking to provide for a  
2206 monitoring program for nonpoint source dischargers required to  
2207 monitor water quality pursuant to s. 403.067(7)(b)2.g. or s.  
2208 403.067(7)(c)3. The results of such monitoring must be reported  
2209 to the coordinating agencies.

2210 ~~3. St. Lucie River Watershed Research and Water Quality~~  
2211 ~~Monitoring Program. The district, in cooperation with the other~~  
2212 ~~coordinating agencies and local governments, shall establish a~~  
2213 ~~St. Lucie River Watershed Research and Water Quality Monitoring~~  
2214 ~~Program that builds upon the district's existing research~~





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2215 ~~program and that is sufficient to carry out, comply with, or~~  
2216 ~~assess the plans, programs, and other responsibilities created~~  
2217 ~~by this subsection. The program shall also conduct an assessment~~  
2218 ~~of the water volumes and timing from the Lake Okeechobee and St.~~  
2219 ~~Lucie River watersheds and their relative contributions to the~~  
2220 ~~timing and volume of water delivered to the estuary.~~

2221 (e) ~~(e)~~ *River Watershed Protection Plan implementation.*—The  
2222 coordinating agencies shall be jointly responsible for  
2223 implementing the River Watershed Protection Plans, consistent  
2224 with the statutory authority and responsibility of each agency.  
2225 Annual funding priorities shall be jointly established, and the  
2226 highest priority shall be assigned to programs and projects that  
2227 have the greatest potential for achieving the goals and  
2228 objectives of the plans. In determining funding priorities, the  
2229 coordinating agencies shall also consider the need for  
2230 regulatory compliance, the extent to which the program or  
2231 project is ready to proceed, and the availability of federal or  
2232 local government matching funds. Federal and other nonstate  
2233 funding shall be maximized to the greatest extent practicable.

2234 (f) ~~(d)~~ *Evaluation.*—Beginning By March 1, 2020 2012, and  
2235 every 5 3 years thereafter, concurrent with the updates of the  
2236 basin management action plans adopted pursuant to s. 403.067,  
2237 the department, district in cooperation with the other  
2238 coordinating agencies, shall conduct an evaluation of any  
2239 pollutant load reduction goals, as well as any other specific  
2240 objectives and goals, as stated in the River Watershed  
2241 Protection Programs Plans. Additionally, The district shall  
2242 identify modifications to facilities of the River Watershed  
2243 Construction Projects, as appropriate, or any other elements of



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2244 the River Watershed Protection Programs Plans. The evaluation  
2245 shall be included in the annual progress report submitted  
2246 pursuant to this section.

2247 (g)~~(e)~~ *Priorities and implementation schedules.*—The  
2248 coordinating agencies are authorized and directed to establish  
2249 priorities and implementation schedules for the achievement of  
2250 total maximum daily loads, the requirements of s. 403.067, and  
2251 compliance with applicable water quality standards within the  
2252 waters and watersheds subject to this section.

2253 ~~(f) *Legislative ratification.* The coordinating agencies~~  
2254 ~~shall submit the River Watershed Protection Plans developed~~  
2255 ~~pursuant to paragraphs (a) and (b) to the President of the~~  
2256 ~~Senate and the Speaker of the House of Representatives prior to~~  
2257 ~~the 2009 legislative session for review. If the Legislature~~  
2258 ~~takes no action on the plan during the 2009 legislative session,~~  
2259 ~~the plan is deemed approved and may be implemented.~~

2260 (5) ADOPTION AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY  
2261 LOADS AND DEVELOPMENT OF BASIN MANAGEMENT ACTION PLANS.—The  
2262 department is directed to expedite development and adoption of  
2263 total maximum daily loads for the Caloosahatchee River and  
2264 estuary. The department is further directed to, ~~no later than~~  
2265 ~~December 31, 2008,~~ propose for final agency action total maximum  
2266 daily loads for nutrients in the tidal portions of the  
2267 Caloosahatchee River and estuary. The department shall initiate  
2268 development of basin management action plans for Lake  
2269 Okeechobee, the Caloosahatchee River watershed and estuary, and  
2270 the St. Lucie River watershed and estuary as provided in s.  
2271 403.067 ~~s. 403.067(7)(a)~~ as follows:

2272 (a) Basin management action plans shall be developed as



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2273 soon as practicable as determined necessary by the department to  
2274 achieve the total maximum daily loads established for the Lake  
2275 Okeechobee watershed and the estuaries.

2276 (b) The Phase II technical plan development pursuant to  
2277 paragraph (3) (a) ~~(3) (b)~~, and the River Watershed Protection  
2278 Plans developed pursuant to paragraphs (4) (a) and (c) (b), shall  
2279 provide the basis for basin management action plans developed by  
2280 the department.

2281 (c) As determined necessary by the department in order to  
2282 achieve the total maximum daily loads, additional or modified  
2283 projects or programs that complement those in the legislatively  
2284 ratified plans may be included during the development of the  
2285 basin management action plan.

2286 (d) As provided in s. 403.067, management strategies and  
2287 pollution reduction requirements set forth in a basin management  
2288 action plan subject to permitting by the department under  
2289 subsection (7) must be completed pursuant to the schedule set  
2290 forth in the basin management action plan, as amended. The  
2291 implementation schedule may extend beyond the 5-year permit  
2292 term.

2293 (e) As provided in s. 403.067, management strategies and  
2294 pollution reduction requirements set forth in a basin management  
2295 action plan for a specific pollutant of concern are not subject  
2296 to challenge under chapter 120 at the time they are  
2297 incorporated, in an identical form, into a department or  
2298 district issued permit or a permit modification issued in  
2299 accordance with subsection (7).

2300 ~~(d) Development of basin management action plans that~~  
2301 ~~implement the provisions of the legislatively ratified plans~~



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2302 ~~shall be initiated by the department no later than September 30~~  
2303 ~~of the year in which the applicable plan is ratified. Where a~~  
2304 ~~total maximum daily load has not been established at the time of~~  
2305 ~~plan ratification, development of basin management action plans~~  
2306 ~~shall be initiated no later than 90 days following adoption of~~  
2307 ~~the applicable total maximum daily load.~~

2308 (6) ANNUAL PROGRESS REPORT.—Each March 1 the district, in  
2309 cooperation with the other coordinating agencies, shall report  
2310 on implementation of this section as part of the consolidated  
2311 annual report required in s. 373.036(7). The annual report shall  
2312 include a summary of the conditions of the hydrology, water  
2313 quality, and aquatic habitat in the northern Everglades based on  
2314 the results of the Research and Water Quality Monitoring  
2315 Programs, the status of the Lake Okeechobee Watershed  
2316 Construction Project, the status of the Caloosahatchee River  
2317 Watershed Construction Project, and the status of the St. Lucie  
2318 River Watershed Construction Project. In addition, the report  
2319 shall contain an annual accounting of the expenditure of funds  
2320 from the Save Our Everglades Trust Fund. At a minimum, the  
2321 annual report shall provide detail by program and plan,  
2322 including specific information concerning the amount and use of  
2323 funds from federal, state, or local government sources. In  
2324 detailing the use of these funds, the district shall indicate  
2325 those designated to meet requirements for matching funds. The  
2326 district shall prepare the report in cooperation with the other  
2327 coordinating agencies and affected local governments. The  
2328 department shall report on the status of the Lake Okeechobee  
2329 Basin Management Action Plan, the Caloosahatchee River Watershed  
2330 Basin Management Action Plan, and the St. Lucie River Watershed



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2331 Basin Management Action Plan. The Department of Agriculture and  
2332 Consumer Services shall report on the status of the  
2333 implementation of the agricultural nonpoint source best  
2334 management practices, including an implementation assurance  
2335 report summarizing survey responses and response rates, site  
2336 inspections, and other methods used to verify implementation of  
2337 and compliance with best management practices in the Lake  
2338 Okeechobee, Caloosahatchee and St. Lucie watersheds.

2339 (7) LAKE OKEECHOBEE PROTECTION PERMITS.—

2340 (a) The Legislature finds that the Lake Okeechobee  
2341 Watershed Protection Program will benefit Lake Okeechobee and  
2342 downstream receiving waters and is in ~~consistent with~~ the public  
2343 interest. The Lake Okeechobee Watershed Construction Project and  
2344 structures discharging into or from Lake Okeechobee shall be  
2345 constructed, operated, and maintained in accordance with this  
2346 section.

2347 (b) Permits obtained pursuant to this section are in lieu  
2348 of all other permits under this chapter or chapter 403, except  
2349 those issued under s. 403.0885, if applicable. ~~No~~ Additional  
2350 permits are not required for the Lake Okeechobee Watershed  
2351 Construction Project, or structures discharging into or from  
2352 Lake Okeechobee, if such project or structures are permitted  
2353 under this section. Construction activities related to  
2354 implementation of the Lake Okeechobee Watershed Construction  
2355 Project may be initiated before ~~prior to~~ final agency action, or  
2356 notice of intended agency action, on any permit from the  
2357 department under this section.

2358 (c) 1. ~~Within 90 days of completion of the diversion plans~~  
2359 ~~set forth in Department Consent Orders 91-0694, 91-0707, 91-~~



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2360 ~~0706, 91-0705, and RT50-205564, Owners or operators of existing~~  
2361 ~~structures which discharge into or from Lake Okeechobee that~~  
2362 ~~were subject to Department Consent Orders 91-0694, 91-0705, 91-~~  
2363 ~~0706, 91-0707, and RT50-205564 and that are subject to the~~  
2364 ~~provisions of s. 373.4592(4) (a) do not require a permit under~~  
2365 ~~this section and shall be governed by permits issued under apply~~  
2366 ~~for a permit from the department to operate and maintain such~~  
2367 ~~structures. By September 1, 2000, owners or operators of all~~  
2368 ~~other existing structures which discharge into or from Lake~~  
2369 ~~Okeechobee shall apply for a permit from the department to~~  
2370 ~~operate and maintain such structures. The department shall issue~~  
2371 ~~one or more such permits for a term of 5 years upon the~~  
2372 ~~demonstration of reasonable assurance that schedules and~~  
2373 ~~strategies to achieve and maintain compliance with water quality~~  
2374 ~~standards have been provided for, to the maximum extent~~  
2375 ~~practicable, and that operation of the structures otherwise~~  
2376 ~~complies with provisions of ss. 373.413 and 373.416 and the Lake~~  
2377 ~~Okeechobee Basin Management Action Plan adopted pursuant to s.~~  
2378 ~~403.067.~~

2379 ~~1. Permits issued under this paragraph shall also contain~~  
2380 ~~reasonable conditions to ensure that discharges of waters~~  
2381 ~~through structures:~~

2382 ~~a. Are adequately and accurately monitored;~~

2383 ~~b. Will not degrade existing Lake Okeechobee water quality~~  
2384 ~~and will result in an overall reduction of phosphorus input into~~  
2385 ~~Lake Okeechobee, as set forth in the district's Technical~~  
2386 ~~Publication 81-2 and the total maximum daily load established in~~  
2387 ~~accordance with s. 403.067, to the maximum extent practicable;~~

2388 ~~and~~



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2389 ~~e. Do not pose a serious danger to public health, safety,~~  
2390 ~~or welfare.~~

2391 2. For the purposes of this paragraph, owners and operators  
2392 of existing structures which are subject to ~~the provisions of s.~~  
2393 373.4592(4) (a) and which discharge into or from Lake Okeechobee  
2394 shall be deemed in compliance with this paragraph ~~the term~~  
2395 ~~"maximum extent practicable"~~ if they are in full compliance with  
2396 the conditions of permits under chapter ~~chapters 40E-61 and 40E-~~  
2397 63, Florida Administrative Code.

2398 3. By January 1, 2016 ~~2004~~, the district shall submit to  
2399 the department a complete application for a permit modification  
2400 to the Lake Okeechobee structure permits to incorporate proposed  
2401 changes necessary to ensure that discharges through the  
2402 structures covered by this permit are consistent with the basin  
2403 management action plan adopted pursuant to ~~achieve state water~~  
2404 ~~quality standards, including the total maximum daily load~~  
2405 ~~established in accordance with s. 403.067. These changes shall~~  
2406 ~~be designed to achieve such compliance with state water quality~~  
2407 ~~standards no later than January 1, 2015.~~

2408 (d) The department shall require permits for district  
2409 regional projects that are part of the Lake Okeechobee Watershed  
2410 Construction Project facilities. However, projects ~~identified in~~  
2411 ~~sub-subparagraph (3)(b)1.b.~~ that qualify as exempt pursuant to  
2412 s. 373.406 do shall not require need permits under this section.  
2413 Such permits shall be issued for a term of 5 years upon the  
2414 demonstration of reasonable assurances that:

2415 1. District regional projects that are part of the Lake  
2416 Okeechobee Watershed Construction Project shall ~~facility,~~ based  
2417 ~~upon the conceptual design documents and any subsequent detailed~~



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2418 ~~design documents developed by the district, will~~ achieve the  
2419 design objectives for phosphorus required in subparagraph  
2420 (3) (a) 1. ~~paragraph (3) (b);~~

2421 2. For water quality standards other than phosphorus, the  
2422 quality of water discharged from the facility is of equal or  
2423 better quality than the inflows;

2424 3. Discharges from the facility do not pose a serious  
2425 danger to public health, safety, or welfare; and

2426 4. Any impacts on wetlands or state-listed species  
2427 resulting from implementation of that facility of the Lake  
2428 Okeechobee Construction Project are minimized and mitigated, as  
2429 appropriate.

2430 (e) At least 60 days before ~~prior to~~ the expiration of any  
2431 permit issued under this section, the permittee may apply for a  
2432 renewal thereof for a period of 5 years.

2433 (f) Permits issued under this section may include any  
2434 standard conditions provided by department rule which are  
2435 appropriate and consistent with this section.

2436 (g) Permits issued under ~~pursuant to~~ this section may be  
2437 modified, as appropriate, upon review and approval by the  
2438 department.

2439 Section 20. Paragraphs (a) and (b) of subsection (6) of  
2440 section 373.536, Florida Statutes, are amended to read:

2441 373.536 District budget and hearing thereon.—

2442 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;  
2443 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

2444 (a) Each district must, by the date specified for each  
2445 item, furnish copies of the following documents to the Governor,  
2446 the President of the Senate, the Speaker of the House of





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2447 Representatives, the chairs of all legislative committees and  
2448 subcommittees having substantive or fiscal jurisdiction over the  
2449 districts, as determined by the President of the Senate or the  
2450 Speaker of the House of Representatives as applicable, the  
2451 secretary of the department, and the governing board of each  
2452 county in which the district has jurisdiction or derives any  
2453 funds for the operations of the district:

2454 1. The adopted budget, to be furnished within 10 days after  
2455 its adoption.

2456 2. A financial audit of its accounts and records, to be  
2457 furnished within 10 days after its acceptance by the governing  
2458 board. The audit must be conducted in accordance with s. 11.45  
2459 and the rules adopted thereunder. In addition to the entities  
2460 named above, the district must provide a copy of the audit to  
2461 the Auditor General within 10 days after its acceptance by the  
2462 governing board.

2463 3. A 5-year capital improvements plan, to be included in  
2464 the consolidated annual report required by s. 373.036(7). The  
2465 plan must include expected sources of revenue for planned  
2466 improvements and must be prepared in a manner comparable to the  
2467 fixed capital outlay format set forth in s. 216.043.

2468 4. A 5-year water resource development work program to be  
2469 furnished within 30 days after the adoption of the final budget.  
2470 The program must describe the district's implementation strategy  
2471 and include an annual funding plan for each of the 5 years  
2472 included in the plan for the water resource and ~~water supply~~  
2473 development components, including ~~and~~ alternative water supply  
2474 development, ~~components~~ of each approved regional water supply  
2475 plan developed or revised under s. 373.709. The work program



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2476 must address all the elements of the water resource development  
2477 component in the district's approved regional water supply  
2478 plans, as well as the water supply projects proposed for  
2479 district funding and assistance. The annual funding plan shall  
2480 identify both anticipated available district funding and  
2481 additional funding needs for the second through fifth years of  
2482 the funding plan. Funding requests for projects submitted for  
2483 consideration for state funding pursuant to s. 403.0616 shall be  
2484 identified separately. The work program ~~and~~ must identify  
2485 projects in the work program which will provide water; explain  
2486 how each water resource and ~~water supply, and alternative water~~  
2487 ~~supply development~~ project will produce additional water  
2488 available for consumptive uses; estimate the quantity of water  
2489 to be produced by each project; ~~and~~ provide an assessment of the  
2490 contribution of the district's regional water supply plans in  
2491 supporting the implementation of minimum flows and minimum water  
2492 levels and water reservations; and ensure ~~providing~~ sufficient  
2493 water is available ~~needed~~ to timely meet the water supply needs  
2494 of existing and future reasonable-beneficial uses for a 1-in-10-  
2495 year drought event and to avoid the adverse effects of  
2496 competition for water supplies.

2497 (b) Within 30 days after its submittal, the department  
2498 shall review the proposed work program and submit its findings,  
2499 questions, and comments to the district. The review must include  
2500 a written evaluation of the program's consistency with the  
2501 furtherance of the district's approved regional water supply  
2502 plans, and the adequacy of proposed expenditures. As part of the  
2503 review, the department shall post the work program on its  
2504 website and give interested parties the opportunity to provide



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2505 written comments on each district's proposed work program.  
2506 Within 45 days after receipt of the department's evaluation, the  
2507 governing board shall state in writing to the department which  
2508 of the changes recommended in the evaluation it will incorporate  
2509 into its work program submitted as part of the March 1  
2510 consolidated annual report required by s. 373.036(7) or specify  
2511 the reasons for not incorporating the changes. The department  
2512 shall include the district's responses in a final evaluation  
2513 report and shall submit a copy of the report to the Governor,  
2514 the President of the Senate, and the Speaker of the House of  
2515 Representatives.

2516 Section 21. Subsection (9) of section 373.703, Florida  
2517 Statutes, is amended to read:

2518 373.703 Water production; general powers and duties.—In the  
2519 performance of, and in conjunction with, its other powers and  
2520 duties, the governing board of a water management district  
2521 existing pursuant to this chapter:

2522 (9) May join with one or more other water management  
2523 districts, counties, municipalities, special districts, publicly  
2524 owned or privately owned water utilities, multijurisdictional  
2525 water supply entities, regional water supply authorities,  
2526 private landowners, or self-suppliers for the purpose of  
2527 carrying out its powers, and may contract with such other  
2528 entities to finance acquisitions, construction, operation, and  
2529 maintenance, provided that such contracts are consistent with  
2530 the public interest. The contract may provide for contributions  
2531 to be made by each party to the contract for the division and  
2532 apportionment of the expenses of acquisitions, construction,  
2533 operation, and maintenance, and for the division and



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2534 apportionment of resulting benefits, services, and products. The  
2535 contracts may contain other covenants and agreements necessary  
2536 and appropriate to accomplish their purposes.

2537 Section 22. Paragraph (b) of subsection (2), subsection  
2538 (3), and paragraph (b) of subsection (4) of section 373.705,  
2539 Florida Statutes, are amended, and subsection (5) is added to  
2540 that section, to read:

2541 373.705 Water resource development; water supply  
2542 development.—

2543 (2) It is the intent of the Legislature that:

2544 (b) Water management districts take the lead in identifying  
2545 and implementing water resource development projects, and be  
2546 responsible for securing necessary funding for regionally  
2547 significant water resource development projects, including  
2548 regionally significant projects that prevent or limit adverse  
2549 water resource impacts, avoid competition among water users, or  
2550 support the provision of new water supplies in order to meet a  
2551 minimum flow or minimum water level, implement a recovery or  
2552 prevention strategy or water reservation.

2553 (3) (a) The water management districts shall fund and  
2554 implement water resource development as defined in s. 373.019.  
2555 The water management districts are encouraged to implement water  
2556 resource development as expeditiously as possible in areas  
2557 subject to regional water supply plans.

2558 (b) Each governing board shall include in its annual budget  
2559 submittals required under this chapter:

2560 1. The amount of funds for each project in the annual  
2561 funding plan developed pursuant to s. 373.536(6)(a)4.;

2562 2. The total amount needed for the fiscal year to implement



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2563 water resource development projects, as prioritized in its  
2564 regional water supply plans; and

2565 3. The amount of funds requested for each project submitted  
2566 for consideration for state funding pursuant to s. 403.0616.

2567 (4)

2568 (b) Water supply development projects that meet the  
2569 criteria in paragraph (a) and that meet one or more of the  
2570 following additional criteria shall be given first consideration  
2571 for state or water management district funding assistance:

2572 1. The project brings about replacement of existing sources  
2573 in order to help implement a minimum flow or minimum water  
2574 level; ~~or~~

2575 2. The project implements reuse that assists in the  
2576 elimination of domestic wastewater ocean outfalls as provided in  
2577 s. 403.086(9); or

2578 3. The project reduces or eliminates the adverse effects of  
2579 competition between legal users and the natural system.

2580 (5) The water management districts shall promote expanded  
2581 cost-share criteria for additional conservation practices, such  
2582 as soil and moisture sensors and other irrigation improvements,  
2583 water-saving equipment, and water-saving household fixtures.

2584 Section 23. Paragraph (f) of subsection (3), paragraph (a)  
2585 of subsection (6), and paragraph (e) of subsection (8) of  
2586 section 373.707, Florida Statutes, are amended to read:

2587 373.707 Alternative water supply development.—

2588 (3) The primary roles of the water management districts in  
2589 water resource development as it relates to supporting  
2590 alternative water supply development are:

2591 (f) The provision of technical and financial assistance to



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2592 local governments and publicly owned and privately owned water  
2593 utilities for alternative water supply projects and for self-  
2594 suppliers for alternative water supply projects to the extent  
2595 assistance for self-suppliers promotes the policies in paragraph  
2596 (1) (f).

2597 (6) (a) Where state ~~The statewide~~ funds are provided through  
2598 specific appropriation for a priority project of the water  
2599 resources work program pursuant to s. 403.0616, or pursuant to  
2600 the Water Protection and Sustainability Program, such funds  
2601 serve to supplement existing water management district or basin  
2602 board funding for alternative water supply development  
2603 assistance and should not result in a reduction of such funding.  
2604 For each project identified in the annual funding plans prepared  
2605 pursuant to s. 373.536(6) (a) 4. Therefore, the water management  
2606 districts shall include in the annual tentative and adopted  
2607 budget submittals required under this chapter the amount of  
2608 funds allocated for water resource development that supports  
2609 alternative water supply development and the funds allocated for  
2610 alternative water supply projects ~~selected for inclusion in the~~  
2611 ~~Water Protection and Sustainability Program.~~ It shall be the  
2612 goal of each water management district and basin boards that the  
2613 combined funds allocated annually for these purposes be, at a  
2614 minimum, the equivalent of 100 percent of the state funding  
2615 provided to the water management district for alternative water  
2616 supply development. If this goal is not achieved, the water  
2617 management district shall provide in the budget submittal an  
2618 explanation of the reasons or constraints that prevent this goal  
2619 from being met, an explanation of how the goal will be met in  
2620 future years, and affirmation of match is required during the



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2621 budget review process as established under s. 373.536(5). The  
2622 Suwannee River Water Management District and the Northwest  
2623 Florida Water Management District shall not be required to meet  
2624 the match requirements of this paragraph; however, they shall  
2625 try to achieve the match requirement to the greatest extent  
2626 practicable.

2627 (8)

2628 (e) Applicants for projects that may receive funding  
2629 assistance pursuant to the Water Protection and Sustainability  
2630 Program shall, at a minimum, be required to pay 60 percent of  
2631 the project's construction costs. The water management districts  
2632 may, at their discretion, totally or partially waive this  
2633 requirement for projects sponsored by:

2634 1. Financially disadvantaged small local governments as  
2635 defined in former s. 403.885(5); or

2636 2. Water users for projects determined by a water  
2637 management district governing board to be in the public interest  
2638 pursuant to paragraph (1)(f), if the projects are not otherwise  
2639 financially feasible.

2640  
2641 The water management districts or basin boards may, at their  
2642 discretion, use ad valorem or federal revenues to assist a  
2643 project applicant in meeting the requirements of this paragraph.

2644 Section 24. Paragraph (a) of subsection (2) and paragraphs  
2645 (a) and (e) of subsection (6) of section 373.709, Florida  
2646 Statutes, are amended to read:

2647 373.709 Regional water supply planning.—

2648 (2) Each regional water supply plan must be based on at  
2649 least a 20-year planning period and must include, but need not



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2650 be limited to:

2651 (a) A water supply development component for each water  
2652 supply planning region identified by the district which  
2653 includes:

2654 1. A quantification of the water supply needs for all  
2655 existing and future reasonable-beneficial uses within the  
2656 planning horizon. The level-of-certainty planning goal  
2657 associated with identifying the water supply needs of existing  
2658 and future reasonable-beneficial uses must be based upon meeting  
2659 those needs for a 1-in-10-year drought event.

2660 a. Population projections used for determining public water  
2661 supply needs must be based upon the best available data. In  
2662 determining the best available data, the district shall consider  
2663 the University of Florida ~~Florida's~~ Bureau of Economic and  
2664 Business Research (BEBR) medium population projections and  
2665 population projection data and analysis submitted by a local  
2666 government pursuant to the public workshop described in  
2667 subsection (1) if the data and analysis support the local  
2668 government's comprehensive plan. Any adjustment of or deviation  
2669 from the BEBR projections must be fully described, and the  
2670 original BEBR data must be presented along with the adjusted  
2671 data.

2672 b. Agricultural demand projections used for determining the  
2673 needs of agricultural self-suppliers must be based upon the best  
2674 available data. In determining the best available data for  
2675 agricultural self-supplied water needs, the district shall  
2676 consider the data indicative of future water supply demands  
2677 provided by the Department of Agriculture and Consumer Services  
2678 pursuant to s. 570.93 and agricultural demand projection data





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2679 and analysis submitted by a local government pursuant to the  
2680 public workshop described in subsection (1), if the data and  
2681 analysis support the local government's comprehensive plan. Any  
2682 adjustment of or deviation from the data provided by the  
2683 Department of Agriculture and Consumer Services must be fully  
2684 described, and the original data must be presented along with  
2685 the adjusted data.

2686         2. A list of water supply development project options,  
2687 including traditional and alternative water supply project  
2688 options that are technically and financially feasible, from  
2689 which local government, government-owned and privately owned  
2690 utilities, regional water supply authorities,  
2691 multijurisdictional water supply entities, self-suppliers, and  
2692 others may choose for water supply development. In addition to  
2693 projects listed by the district, such users may propose specific  
2694 projects for inclusion in the list of alternative water supply  
2695 projects. If such users propose a project to be listed as an  
2696 alternative water supply project, the district shall determine  
2697 whether it meets the goals of the plan, and, if so, it shall be  
2698 included in the list. The total capacity of the projects  
2699 included in the plan must exceed the needs identified in  
2700 subparagraph 1. and take into account water conservation and  
2701 other demand management measures, as well as water resources  
2702 constraints, including adopted minimum flows and minimum water  
2703 levels and water reservations. Where the district determines it  
2704 is appropriate, the plan should specifically identify the need  
2705 for multijurisdictional approaches to project options that,  
2706 based on planning level analysis, are appropriate to supply the  
2707 intended uses and that, based on such analysis, appear to be



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2708 permittable and financially and technically feasible. The list  
2709 of water supply development options must contain provisions that  
2710 recognize that alternative water supply options for agricultural  
2711 self-suppliers are limited.

2712 3. For each project option identified in subparagraph 2.,  
2713 the following must be provided:

2714 a. An estimate of the amount of water to become available  
2715 through the project.

2716 b. The timeframe in which the project option should be  
2717 implemented and the estimated planning-level costs for capital  
2718 investment and operating and maintaining the project.

2719 c. An analysis of funding needs and sources of possible  
2720 funding options. For alternative water supply projects, the  
2721 water management districts shall provide funding assistance  
2722 pursuant to s. 373.707(8).

2723 d. Identification of the entity that should implement each  
2724 project option and the current status of project implementation.

2725 (6) Annually and in conjunction with the reporting  
2726 requirements of s. 373.536(6)(a)4., the department shall submit  
2727 to the Governor and the Legislature a report on the status of  
2728 regional water supply planning in each district. The report  
2729 shall include:

2730 (a) A compilation of the estimated costs ~~of~~ and an analysis  
2731 of the sufficiency of potential sources of funding from all  
2732 sources for water resource development and water supply  
2733 development projects as identified in the water management  
2734 district regional water supply plans.

2735 (e) An overall assessment of the progress being made to  
2736 develop water supply in each district, including, but not



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2737 limited to, an explanation of how each project in the 5-year  
2738 water resource development work program developed pursuant to s.  
2739 373.536(6)(a)4., either alternative or traditional, will  
2740 produce, contribute to, or account for additional water being  
2741 made available for consumptive uses, minimum flows and minimum  
2742 water levels, or water reservations; an estimate of the quantity  
2743 of water to be produced by each project;7 and an assessment of  
2744 the contribution of the district's regional water supply plan in  
2745 providing sufficient water to meet the needs of existing and  
2746 future reasonable-beneficial uses for a 1-in-10-year drought  
2747 event, as well as the needs of the natural systems.

2748 Section 25. Part VIII of chapter 373, Florida Statutes,  
2749 consisting of sections 373.801, 373.802, 373.803, 373.805,  
2750 373.807, 373.811, and 373.813, Florida Statutes, is created and  
2751 entitled the "Florida Springs and Aquifer Protection Act."

2752 Section 26. Section 373.801, Florida Statutes, is created  
2753 to read:

2754 373.801 Legislative findings and intent.—

2755 (1) The Legislature finds that springs are a unique part of  
2756 this state's scenic beauty. Springs provide critical habitat for  
2757 plants and animals, including many endangered or threatened  
2758 species. Springs also provide immeasurable natural,  
2759 recreational, economic, and inherent value. Springs are of great  
2760 scientific importance in understanding the diverse functions of  
2761 aquatic ecosystems. Water quality of springs is an indicator of  
2762 local conditions of the Floridan Aquifer, which is a source of  
2763 drinking water for many residents of this state. Water flows in  
2764 springs may reflect regional aquifer conditions. In addition,  
2765 springs provide recreational opportunities for swimming,



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2766 canoeing, wildlife watching, fishing, cave diving, and many  
2767 other activities in this state. These recreational opportunities  
2768 and the accompanying tourism they provide are a benefit to local  
2769 economies and the economy of the state as a whole.

2770 (2) The Legislature finds that the water quantity and water  
2771 quality in springs may be related. For regulatory purposes, the  
2772 department has primary responsibility for water quality; the  
2773 water management districts have primary responsibility for water  
2774 quantity; and the Department of Agriculture and Consumer  
2775 Services has primary responsibility for the development and  
2776 implementation of agricultural best management practices. Local  
2777 governments have primary responsibility for providing wastewater  
2778 services and stormwater management. The foregoing responsible  
2779 entities must coordinate to restore and maintain the water  
2780 quantity and water quality of the Outstanding Florida Springs.

2781 (3) The Legislature recognizes that:

2782 (a) Springs are only as healthy as their springsheds. The  
2783 groundwater that supplies springs is derived from water that  
2784 recharges the aquifer system in the form of seepage from the  
2785 land surface and through direct conduits, such as sinkholes.  
2786 Springs may be adversely affected by polluted runoff from urban  
2787 and agricultural lands; discharges resulting from inadequate  
2788 wastewater and stormwater management practices; stormwater  
2789 runoff; and reduced water levels of the Floridan Aquifer. As a  
2790 result, the hydrologic and environmental conditions of a spring  
2791 or spring run are directly influenced by activities and land  
2792 uses within a springshed and by water withdrawals from the  
2793 Floridan Aquifer.

2794 (b) Springs, whether found in urban or rural settings, or



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2795 on public or private lands, may be threatened by actual or  
2796 potential flow reductions and declining water quality. Many of  
2797 this state's springs are demonstrating signs of significant  
2798 ecological imbalance, increased nutrient loading, and declining  
2799 flow. Without effective remedial action, further declines in  
2800 water quality and water quantity may occur.

2801 (c) Springshed boundaries and areas of high vulnerability  
2802 within a springshed need to be identified and delineated using  
2803 the best available data.

2804 (d) Springsheds typically cross water management district  
2805 boundaries and local government jurisdictional boundaries, so a  
2806 coordinated statewide springs protection plan is needed.

2807 (e) The aquifers and springs of this state are complex  
2808 systems affected by many variables and influences.

2809 (4) The Legislature recognizes that action is urgently  
2810 needed and, as additional data is acquired, action must be  
2811 modified.

2812 Section 27. Section 373.802, Florida Statutes, is created  
2813 to read:

2814 373.802 Definitions.—As used in this part, the term:

2815 (1) "Department" means the Department of Environmental  
2816 Protection, which includes the Florida Geological Survey or its  
2817 successor agencies.

2818 (2) "Local government" means a county or municipal  
2819 government the jurisdictional boundaries of which include an  
2820 Outstanding Florida Spring or any part of a springshed or  
2821 delineated priority focus area of an Outstanding Florida Spring.

2822 (3) "Onsite sewage treatment and disposal system" means a  
2823 system that contains a standard subsurface, filled, or mound



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2824 drainfield system; an aerobic treatment unit; a graywater system  
2825 tank; a laundry wastewater system tank; a septic tank; a grease  
2826 interceptor; a pump tank; a solids or effluent pump; a  
2827 waterless, incinerating, or organic waste-composting toilet; or  
2828 a sanitary pit privy that is installed or proposed to be  
2829 installed beyond the building sewer on land of the owner or on  
2830 other land on which the owner has the legal right to install  
2831 such system. The term includes any item placed within, or  
2832 intended to be used as a part of or in conjunction with, the  
2833 system. The term does not include package sewage treatment  
2834 facilities and other treatment works regulated under chapter  
2835 403.

2836 (4) "Outstanding Florida Spring" includes all historic  
2837 first magnitude springs, as determined by the department using  
2838 the most recent Florida Geological Survey springs bulletin, and  
2839 the following additional springs and associated spring runs:

- 2840 (a) De Leon Springs;
- 2841 (b) Peacock Springs;
- 2842 (c) Poe Springs;
- 2843 (d) Rock Springs;
- 2844 (e) Wekiwa Springs; and
- 2845 (f) Gemini Springs.

2846  
2847 The term does not include submarine springs.

2848 (5) "Priority focus area" means the area or areas of a  
2849 basin where the Floridan Aquifer is most vulnerable to  
2850 groundwater withdrawals or pollutant inputs, where the  
2851 groundwater travel times are the fastest, and where there is a  
2852 known connectivity between groundwater pathways and an



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2853 Outstanding Florida Spring, as determined by the department in  
2854 consultation with the appropriate water management districts,  
2855 and delineated in a basin management action plan.

2856 (6) "Springshed" means the areas within the groundwater and  
2857 surface water basins which contribute, based upon all relevant  
2858 facts, circumstances, and data, to the discharge of a spring as  
2859 defined by potentiometric surface maps and surface watershed  
2860 boundaries.

2861 (7) "Spring run" means a body of flowing water that  
2862 originates from a spring or whose primary source of water is a  
2863 spring or springs under average rainfall conditions.

2864 (8) "Spring vent" means a location where groundwater flows  
2865 out of a natural, discernible opening in the ground onto the  
2866 land surface or into a predominantly fresh surface water body.

2867 Section 28. Section 373.803, Florida Statutes, is created  
2868 to read:

2869 373.803 Delineation of priority focus areas for Outstanding  
2870 Florida Springs.—Using the best data available from the water  
2871 management districts and other credible sources, the department,  
2872 in coordination with the water management districts, shall  
2873 delineate priority focus areas for each Outstanding Florida  
2874 Spring or group of springs that contains one or more Outstanding  
2875 Florida Springs and is identified as impaired in accordance with  
2876 s. 373.807. In delineating priority focus areas, the department  
2877 shall consider groundwater travel time to the spring,  
2878 hydrogeology, nutrient load, and any other factors that may lead  
2879 to degradation of an Outstanding Florida Spring. The delineation  
2880 of priority focus areas must be completed by July 1, 2018, and  
2881 shall be effective upon incorporation in a basin management



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2882 action plan.

2883       Section 29. Section 373.805, Florida Statutes, is created  
2884 to read:

2885       373.805 Minimum flows and minimum water levels for  
2886 Outstanding Florida Springs.-

2887       (1) At the time a minimum flow or minimum water level is  
2888 adopted pursuant to s. 373.042 for an Outstanding Florida  
2889 Spring, if the spring is below or is projected within 20 years  
2890 to fall below the minimum flow or minimum water level, a water  
2891 management district or the department shall concurrently adopt a  
2892 recovery or prevention strategy.

2893       (2) When a minimum flow or minimum water level for an  
2894 Outstanding Florida Spring is revised pursuant to s.  
2895 373.0421(3), if the spring is below or is projected within 20  
2896 years to fall below the minimum flow or minimum water level, a  
2897 water management district or the department shall concurrently  
2898 adopt a recovery or prevention strategy or modify an existing  
2899 recovery or prevention strategy. A district or the department  
2900 may adopt the revised minimum flow or minimum water level before  
2901 the adoption of a recovery or prevention strategy if the revised  
2902 minimum flow or minimum water level is less constraining on  
2903 existing or projected future consumptive uses.

2904       (3) For an Outstanding Florida Spring without an adopted  
2905 recovery or prevention strategy, if a district or the department  
2906 determines the spring has fallen below, or is projected within  
2907 20 years to fall below, the adopted minimum flow or minimum  
2908 water level, a water management district or the department shall  
2909 expeditiously adopt a recovery or prevention strategy.

2910       (4) The recovery or prevention strategy for each





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2911 Outstanding Florida Spring must, at a minimum, include:  
2912 (a) A listing of all specific projects identified for  
2913 implementation of the plan;  
2914 (b) A priority listing of each project;  
2915 (c) For each listed project, the estimated cost of and the  
2916 estimated date of completion;  
2917 (d) The source and amount of financial assistance to be  
2918 made available by the water management district for each listed  
2919 project, which may not be less than 25 percent of the total  
2920 project cost unless a specific funding source or sources are  
2921 identified which will provide more than 75 percent of the total  
2922 project cost. The Northwest Florida Water Management District  
2923 and the Suwannee River Water Management District are not  
2924 required to provide matching funds pursuant to this paragraph;  
2925 (e) An estimate of each listed project's benefit to an  
2926 Outstanding Florida Spring; and  
2927 (f) An implementation plan designed with a target to  
2928 achieve the adopted minimum flow or minimum water level no more  
2929 than 20 years after the adoption of a recovery or prevention  
2930 strategy. The implementation plan must include a schedule of 5-,  
2931 10-, and 15-year measureable milestones intended to achieve the  
2932 adopted minimum flow or minimum water level. The schedule is not  
2933 a rule but is intended to provide guidance for planning and  
2934 funding purposes and is exempt from the provisions of s.  
2935 120.54(1)(a).  
2936 (5) A local government may apply to the department for an  
2937 extension of up to 5 years for any project in an adopted  
2938 recovery or prevention strategy. The department may grant the  
2939 extension if the local government provides to the department



2940 sufficient evidence that an extension is in the best interest of  
2941 the public. For a local government in a rural area of  
2942 opportunity, as defined in s. 288.0656, the department may grant  
2943 an extension of up to 10 years.

2944 Section 30. Section 373.807, Florida Statutes, is created  
2945 to read:

2946 373.807 Protection of water quality in Outstanding Florida  
2947 Springs.—By July 1, 2015, the department shall initiate  
2948 assessment, pursuant to s. 403.067(3), of each Outstanding  
2949 Florida Spring for which an impairment determination has not  
2950 been made under the numeric nutrient standards in effect for  
2951 spring vents. Assessments must be completed by July 1, 2018.

2952 (1) (a) Concurrently with the adoption of a nutrient total  
2953 maximum daily load for an Outstanding Florida Spring, the  
2954 department, or the department in conjunction with a water  
2955 management district, shall initiate development of a basin  
2956 management action plan, as specified in s. 403.067. For an  
2957 Outstanding Florida Spring with a nutrient total maximum daily  
2958 load adopted before July 1, 2015, the department, or the  
2959 department in conjunction with a water management district,  
2960 shall initiate development of a basin management action plan by  
2961 July 1, 2015. During the development of a basin management  
2962 action plan, if the department identifies onsite sewage  
2963 treatment and disposal systems as contributors of at least 20  
2964 percent of nonpoint source nutrient pollution which need to be  
2965 addressed within local government jurisdictions, the basin  
2966 management action plan shall include an onsite sewage treatment  
2967 and disposal system remediation plan pursuant to subsection (3)  
2968 for those systems identified as requiring remediation.



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2969           (b) A basin management action plan for an Outstanding  
2970 Florida Spring shall be adopted within 2 years after its  
2971 initiation and must include, at a minimum:  
2972           1. A list of all specific projects and programs identified  
2973 to implement a nutrient total maximum daily load;  
2974           2. A list of all specific projects identified in any  
2975 incorporated onsite sewage treatment and disposal system  
2976 remediation plan, if applicable;  
2977           3. A priority rank for each listed project;  
2978           4. For each listed project, a planning level cost  
2979 estimate and the estimated date of completion;  
2980           5. The source and amount of financial assistance to be made  
2981 available by the department, a water management district, or  
2982 other entity for each listed project;  
2983           6. An estimate of each listed project's nutrient load  
2984 reduction;  
2985           7. Identification of each point source or category of  
2986 nonpoint sources, including, but not limited to, urban turf  
2987 fertilizer, sports turf fertilizer, agricultural fertilizer,  
2988 onsite sewage treatment and disposal systems, wastewater  
2989 treatment facilities, animal wastes, and stormwater facilities.  
2990 An estimated allocation of the pollutant load must be provided  
2991 for each point source or category of nonpoint sources; and  
2992           8. An implementation plan designed with a target to achieve  
2993 the adopted nutrient total maximum daily load no more than 20  
2994 years after the adoption of a basin management action plan. The  
2995 plan must include a schedule of 5-, 10-, and 15-year measureable  
2996 milestones intended to achieve the adopted nutrient total  
2997 maximum daily load. The schedule is not a rule but is intended



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2998 to provide guidance for planning and funding purposes and is  
2999 exempt from the provisions of s. 120.54(1) (a).

3000 (c) For a basin management action plan adopted before July  
3001 1, 2015, which addresses an Outstanding Florida Spring, the  
3002 department or the department in conjunction with a water  
3003 management district must revise the plan if necessary to comply  
3004 with this section to this section by July 1, 2018.

3005 (d) Upon approval of an onsite sewage treatment and  
3006 disposal system remediation plan by the department, the plan  
3007 shall be deemed incorporated as part of the appropriate basin  
3008 management action plan pursuant to s. 403.067(7).

3009 (e) A local government may apply to the department for an  
3010 extension of up to 5 years for any project in an adopted basin  
3011 management action plan. A local government in a rural area of  
3012 opportunity, as defined in s. 288.0656, may apply for an  
3013 extension of up to 10 years for such a project. The department  
3014 may grant the extension if the local government provides to the  
3015 department sufficient evidence that an extension is in the best  
3016 interest of the public.

3017 (2) Within 12 months after the adoption of a basin  
3018 management action plan containing a priority focus area or areas  
3019 of an Outstanding Florida Spring that is fully or partially  
3020 within the jurisdiction of a local government, the local  
3021 government must develop, enact, and implement an ordinance that  
3022 meets or exceeds the requirements of the department's Model  
3023 Ordinance for Florida-Friendly Fertilizer Use on Urban  
3024 Landscapes. The department shall revise the model ordinance to  
3025 require that, within a priority focus area of an Outstanding  
3026 Florida Spring with an adopted nutrient total maximum daily



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3027 load, the nitrogen application rate of any fertilizer applied to  
3028 turf or landscape plants may not exceed the lowest basic  
3029 maintenance rate of the most recent recommendations by the  
3030 Institute of Food and Agricultural Sciences.

3031 (3) As part of a basin management action plan that includes  
3032 an Outstanding Florida Spring, the department, in consultation  
3033 with the Department of Health, relevant local governments, and  
3034 relevant local public and private wastewater utilities, shall  
3035 develop an onsite sewage treatment and disposal system  
3036 remediation plan for a spring for which the department  
3037 determines onsite sewage treatment and disposal systems within a  
3038 priority focus area contribute at least 20 percent of nonpoint  
3039 source nutrient pollution. This plan shall be completed and  
3040 adopted as part of the basin management action plan no later  
3041 than the first 5-year milestone required by s. 373.807(2)(b)8.  
3042 In preparing this plan, the department shall:

3043 (a) Collect and evaluate credible scientific information on  
3044 the effect of nutrients, particularly forms of nitrogen, on  
3045 springs and springs systems;

3046 (b) Develop and implement a public education plan to  
3047 provide area residents with reliable, understandable information  
3048 about onsite sewage treatment and disposal systems and springs;  
3049 and

3050 (c) Develop projects necessary to reduce the nutrient  
3051 impacts from onsite sewage treatment and disposal systems.

3052  
3053 The plan shall include options for repair, upgrade, replacement,  
3054 drainfield modification, addition of effective nitrogen reducing  
3055 features, connection to a central sewerage system or other



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3056 action for systems or groups of systems within a priority focus  
3057 area which contribute at least 20 percent of nonpoint source  
3058 nutrient pollution. The department shall include in the plan a  
3059 priority ranking for each system or group of systems that  
3060 require remediation and shall award funds to implement the  
3061 remediation projects identified in the basin management action  
3062 plan contingent on specific appropriation in the General  
3063 Appropriations Act, which may include all or part of the costs  
3064 necessary to match local funding for repair, upgrade,  
3065 replacement, drainfield modification, initial connection to a  
3066 central sewerage system, or other action. In awarding funds, the  
3067 department may consider expected nutrient reduction benefit per  
3068 unit cost, size and scope of project, relative local financial  
3069 contribution to the project, financial impact on property owners  
3070 and the community. The department may waive matching funding  
3071 requirements for proposed projects within an area designated as  
3072 a rural area of opportunity under s. 288.0656.

3073 (4) The department shall provide notice to a local  
3074 government of all permit applicants under s. 403.814(12) in a  
3075 priority focus area of an Outstanding Florida Spring over which  
3076 the local government has full or partial jurisdiction.

3077 Section 31. Section 373.811, Florida Statutes, is created  
3078 to read:

3079 373.811 Prohibited activities within a priority focus  
3080 area.—The following activities are prohibited within a priority  
3081 focus area in effect for an Outstanding Florida Spring:

3082 (1) New domestic wastewater disposal facilities, including  
3083 rapid infiltration basins, with permitted capacities of 100,000  
3084 gallons per day or more, except for those facilities that meet



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3085 an advanced wastewater treatment standard of no more than 3 mg/l  
3086 total nitrogen, expressed as N, on an annual permitted basis, or  
3087 a more stringent treatment standard if the department determines  
3088 the more stringent standard is necessary to attain a total  
3089 maximum daily load for the Outstanding Florida Spring.

3090 (2) New onsite sewage treatment and disposal systems on  
3091 lots of less than 1 acre, if the addition of the specific  
3092 systems conflicts with an onsite treatment and disposal system  
3093 remediation plan incorporated into a basin management action  
3094 plan in accordance with s. 373.807(3).

3095 (3) New facilities for the disposal of hazardous waste.

3096 (4) The land application of Class A or Class B domestic  
3097 wastewater biosolids not in accordance with a department  
3098 approved nutrient management plan establishing the rate at which  
3099 all biosolids, soil amendments, and sources of nutrients at the  
3100 land application site can be applied to the land for crop  
3101 production while minimizing the amount of pollutants and  
3102 nutrients discharged to groundwater or waters of the state.

3103 (5) New agriculture operations that do not implement best  
3104 management practices, measures necessary to achieve pollution  
3105 reduction levels established by the department, or groundwater  
3106 monitoring plans approved by a water management district or the  
3107 department.

3108 Section 32. Section 373.813, Florida Statutes, is created  
3109 to read:

3110 373.813 Rules.—

3111 (1) The department shall adopt rules to improve water  
3112 quantity and water quality to administer this part, as  
3113 applicable.



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3114           (2) (a) The Department of Agriculture and Consumer Services  
3115 is the lead agency coordinating the reduction of agricultural  
3116 nonpoint sources of pollution for the protection of Outstanding  
3117 Florida Springs. The Department of Agriculture and Consumer  
3118 Services and the department, pursuant to s. 403.067(7)(c)4.,  
3119 shall study new or revised agricultural best management  
3120 practices for improving and protecting Outstanding Florida  
3121 Springs and, if necessary, in cooperation with applicable local  
3122 governments and stakeholders, initiate rulemaking to require the  
3123 implementation of such practices within a reasonable period.

3124           (b) The department, the Department of Agriculture and  
3125 Consumer Services, and the University of Florida Institute of  
3126 Food and Agricultural Sciences shall cooperate in conducting the  
3127 necessary research and demonstration projects to develop  
3128 improved or additional nutrient management tools, including the  
3129 use of controlled release fertilizer that can be used by  
3130 agricultural producers as part of an agricultural best  
3131 management practices program. The development of such tools must  
3132 reflect a balance between water quality improvement and  
3133 agricultural productivity and, if applicable, must be  
3134 incorporated into the revised agricultural best management  
3135 practices adopted by rule by the Department of Agriculture and  
3136 Consumer Services.

3137           Section 33. Subsections (25) and (29) of section 403.061,  
3138 Florida Statutes, are amended, and subsection (45) is added to  
3139 that section, to read:

3140           403.061 Department; powers and duties.—The department shall  
3141 have the power and the duty to control and prohibit pollution of  
3142 air and water in accordance with the law and rules adopted and





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3143 promulgated by it and, for this purpose, to:

3144       (25) (a) Establish and administer a program for the  
3145 restoration and preservation of bodies of water within the  
3146 state. The department shall have the power to acquire lands, to  
3147 cooperate with other applicable state or local agencies to  
3148 enhance existing public access to such bodies of water, and to  
3149 adopt all rules necessary to accomplish this purpose.

3150       (b) Create a consolidated water resources work plan, in  
3151 consultation with state agencies, water management districts,  
3152 regional water supply authorities, and local governments, which  
3153 provides a geographic depiction of the total inventory of water  
3154 resources projects and regionally significant water supply  
3155 projects currently under construction, completed in the previous  
3156 5 years, or planned to begin construction in the next 5 years.  
3157 The consolidated work plan must include for each project a  
3158 description of the project, the total cost of the project, and  
3159 identification of the governmental entity financing the project.  
3160 This information together with the information provided pursuant  
3161 to paragraph (45) (a) is intended to facilitate the ability of  
3162 the Florida Water Resources Advisory Council, the Legislature,  
3163 and the public to consider the projects contained in the  
3164 tentative water resources work program developed pursuant to s.  
3165 403.0616 in relation to all projects undertaken within a 10-year  
3166 period and the existing condition of water resources in the  
3167 project area and in the state as a whole. The department may  
3168 adopt rules to accomplish this purpose.

3169       (29) (a) Adopt by rule special criteria to protect Class II  
3170 and Class III shellfish harvesting waters. Such rules may  
3171 include special criteria for approving docking facilities that



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3172 have 10 or fewer slips if the construction and operation of such  
3173 facilities will not result in the closure of shellfish waters.

3174 (b) Adopt by rule a specific surface water classification  
3175 to protect surface waters used for treated potable water supply.

3176 These designated surface waters shall have the same water  
3177 quality criteria protections as waters designated for fish  
3178 consumption, recreation, and the propagation and maintenance of  
3179 a healthy, well-balanced population of fish and wildlife, and  
3180 shall be free from discharged substances at a concentration  
3181 that, alone or in combination with other discharged substances,  
3182 would require significant alteration of permitted treatment  
3183 processes at the permitted treatment facility or that would  
3184 otherwise prevent compliance with applicable state drinking  
3185 water standards in the treated water. Notwithstanding this  
3186 classification or the inclusion of treated water supply as a  
3187 designated use of a surface water, a surface water used for  
3188 treated potable water supply may be reclassified to the potable  
3189 water supply classification.

3190 (45) (a) Create and maintain a web-based, interactive map  
3191 that includes, at a minimum:

3192 1. All watersheds and each water body within those  
3193 watersheds;

3194 2. The county or counties in which the watershed or water  
3195 body is located;

3196 3. The water management district or districts in which the  
3197 watershed or water body is located;

3198 4. Whether a minimum flow or minimum water level has been  
3199 adopted for the water body, and if such minimum flow or minimum  
3200 water level has not been adopted, the anticipated adoption date;



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3201           5. Whether a recovery or prevention strategy has been  
3202 adopted for the watershed or water body and, if such a plan has  
3203 not been adopted, the anticipated adoption date;

3204           6. The impairment status of each watershed or water body;

3205           7. Whether a total maximum daily load has been adopted if  
3206 the watershed or water body is listed as impaired and, if such  
3207 total maximum daily load has not been adopted, the anticipated  
3208 adoption date;

3209           8. Whether a basin management action plan has been adopted  
3210 for the watershed and, if such a plan has not been adopted, the  
3211 anticipated adoption date;

3212           9. Each project listed on the 5-year water resources work  
3213 program developed pursuant to s. 373.036(7);

3214           10. The agency or agencies and local sponsor, if any,  
3215 responsible for overseeing the project;

3216           11. The estimated cost and completion date of each project  
3217 and the financial contribution of each entity;

3218           12. The quantitative estimated benefit to the watershed or  
3219 water body; and

3220           13. The water projects completed within the last 5 years  
3221 within the watershed or water body.

3222           (b) The department and each water management district shall  
3223 prominently display on their respective websites a hyperlink to  
3224 the interactive map required by this subsection.

3225  
3226 The department shall implement such programs in conjunction with  
3227 its other powers and duties and shall place special emphasis on  
3228 reducing and eliminating contamination that presents a threat to  
3229 humans, animals or plants, or to the environment.



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3230 Section 34. Section 403.0616, Florida Statutes, is created  
3231 to read:

3232 403.0616 Florida Water Resources Advisory Council.—

3233 (1) The Florida Water Resources Advisory Council is hereby  
3234 created within the department for the purpose of evaluating  
3235 water resource projects prioritized and submitted by state  
3236 agencies, water management districts, regional water supply  
3237 authorities, or local governments. The council shall evaluate  
3238 and recommend projects that are eligible for state funding as  
3239 priority projects of statewide, regional, or critical local  
3240 importance under this chapter or chapter 373. The council must  
3241 review and evaluate all water resource projects that are  
3242 prioritized and reported by state agencies or water management  
3243 districts pursuant to s. 373.036(7)(b)8.c., or by local  
3244 governments, or regional supply projects, if applicable, in  
3245 order to provide the Legislature with recommendations for  
3246 projects that improve or restore the water resources of this  
3247 state. The council is also responsible for submitting a  
3248 prioritization of pilot projects that test the effectiveness of  
3249 innovative or existing nutrient reduction or water conservation  
3250 technologies or practices designed to minimize nutrient  
3251 pollution or restore flows in the water bodies of the state as  
3252 provided in s. 403.0617.

3253 (2) The Florida Water Resources Advisory Council consists  
3254 of five voting members and five ex officio, nonvoting members as  
3255 follows:

3256 (a) The Secretary of Environmental Protection, who shall  
3257 serve as chair of the council; the Commissioner of Agriculture;  
3258 the executive director of the Fish and Wildlife Conservation



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3259 Commission; one member with expertise in a scientific discipline  
3260 related to water resources, appointed by the President of the  
3261 Senate; and one member with expertise in a scientific discipline  
3262 related to water resources, appointed by the Speaker of the  
3263 House of Representatives, all of whom shall be voting members.

3264 (b) The executive directors of each of the five water  
3265 management districts, all of whom shall be nonvoting members.

3266 (3) Members appointed by the President of the Senate and  
3267 Speaker of the House of Representatives shall serve 2-year terms  
3268 but may not serve more than a total of 6 years. The President of  
3269 the Senate and the Speaker of the House of Representatives may  
3270 fill a vacancy at any time for an unexpired term of an appointed  
3271 member.

3272 (4) If a member of the council is disqualified from serving  
3273 because he or she no longer holds the position required to serve  
3274 under this section, the interim head of the agency shall serve  
3275 as the agency representative.

3276 (5) The two appointed council members shall receive  
3277 reimbursement for expenses and per diem for travel to attend  
3278 council meetings authorized pursuant to s. 112.061 while in the  
3279 performance of their duties.

3280 (6) The council shall hold periodic meetings at the request  
3281 of the chair but must hold at least two public meetings,  
3282 separately noticed, each year in which the public has the  
3283 opportunity to participate and comment. Unless otherwise  
3284 provided by law, notice for each meeting must be published in a  
3285 newspaper of general circulation in the area where the meeting  
3286 is to be held at least 5 days but no more than 15 days before  
3287 the meeting date.



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3288           (a) By July 15 of each year, the council shall release a  
3289 tentative water resources work program containing legislative  
3290 recommendations for water resource projects. The public has 30  
3291 days to submit comments regarding the tentative program.

3292           (b) The council shall adopt the tentative work program  
3293 containing its legislative recommendations and submit it to the  
3294 Governor, the President of the Senate, and the Speaker of the  
3295 House of Representatives by August 31 of each year. An  
3296 affirmative vote of three members of the council is required to  
3297 adopt the tentative work program.

3298           (7) The department shall provide primary staff support to  
3299 the council and shall ensure that council meetings are  
3300 electronically recorded. Such recordings must be preserved  
3301 pursuant to chapters 119 and 257.

3302           (8) The council shall recommend rules for adoption by the  
3303 department to competitively evaluate, select, and rank projects  
3304 for the tentative water resources work program. The council  
3305 shall develop specific criteria for the evaluation, selection,  
3306 and ranking of projects, including a preference for projects  
3307 that will have a significant, measurable impact on improving  
3308 water quantity or water quality; projects in areas of greatest  
3309 impairment; projects of state or regional significance; projects  
3310 recommended by multiple districts or multiple local governments  
3311 cooperatively; projects with a significant monetary commitment  
3312 by the local project sponsor or sponsors; projects in rural  
3313 areas of opportunity as defined in s. 288.0656; projects that  
3314 may be funded through appropriate loan programs; and projects  
3315 that have significant private contributions of time or money.

3316           (9) The department, in consultation with the Department of



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3317 Agriculture and Consumer Services, the Fish and Wildlife  
3318 Conservation Commission, and the water management districts,  
3319 shall adopt rules to implement this section.

3320 Section 35. Section 403.0617, Florida Statutes, is created  
3321 to read:

3322 403.0617 Innovative nutrient and sediment reduction and  
3323 conservation pilot project program.-

3324 (1) By December 31, 2015, the department shall adopt rules  
3325 to competitively evaluate and rank projects for selection and  
3326 prioritization by the Water Resources Advisory Council, pursuant  
3327 to s. 403.0616, for submission to the Legislature for funding.

3328 These pilot projects are intended to test the effectiveness of  
3329 innovative or existing nutrient reduction or water conservation  
3330 technologies, programs or practices designed to minimize  
3331 nutrient pollution or restore flows in the water bodies of the  
3332 state. The department must include in the evaluation criteria a  
3333 determination by the department that the pilot project will not  
3334 be harmful to the ecological resources in the study area.

3335 (2) In developing these rules, the department shall give  
3336 preference to the projects that will result in the greatest  
3337 improvement to water quality and water quantity for the dollars  
3338 to be expended for the project. At a minimum, the department  
3339 shall consider all of the following:

3340 (a) The level of nutrient impairment of the waterbody,  
3341 watershed, or water segment in which the project is located.

3342 (b) The quantity of pollutants, particularly total  
3343 nitrogen, which the project is estimated to remove from a water  
3344 body, watershed, or water segment with an adopted nutrient total  
3345 maximum daily load.



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3346       (c) The potential for the project to provide a cost-  
3347 effective solution to pollution caused by onsite sewage  
3348 treatment and disposal systems.

3349       (d) The flow necessary to restore a water resource to its  
3350 adopted minimum flow or minimum water level.

3351       (e) The anticipated impact the project will have on  
3352 restoring or increasing flow or water level.

3353       (f) The amount of matching funds for the project which will  
3354 be provided by the entities responsible for implementing the  
3355 project.

3356       (g) Whether the project is located in a rural area of  
3357 opportunity, as defined in s. 288.0656, with preference given to  
3358 the local government responsible for implementing the project.

3359       (h) For multiple-year projects, whether the project has  
3360 funding sources that are identified and assured through the  
3361 expected completion date of the project.

3362       (i) The cost of the project and the length of time it will  
3363 take to complete relative to its expected benefits.

3364       (j) Whether the entities responsible for implementing the  
3365 project have used their own funds for projects to improve water  
3366 quality or conserve water use with preference given to those  
3367 entities that have expended such funds.

3368       Section 36. Section 403.0623, Florida Statutes, is amended  
3369 to read:

3370       403.0623 Environmental data; quality assurance.-

3371       (1) The department must establish, by rule, appropriate  
3372 quality assurance requirements for environmental data submitted  
3373 to the department and the criteria by which environmental data  
3374 may be rejected by the department. The department may adopt and





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3375 enforce rules to establish data quality objectives and specify  
3376 requirements for training of laboratory and field staff, sample  
3377 collection methodology, proficiency testing, and audits of  
3378 laboratory and field sampling activities. Such rules may be in  
3379 addition to any laboratory certification provisions under ss.  
3380 403.0625 and 403.863.

3381 (2) (a) The department, in coordination with the water  
3382 management districts and regional water supply authorities,  
3383 shall establish standards for the collection of water quantity,  
3384 water quality, and related data to ensure quality, reliability,  
3385 and validity of the data and testing results. The water  
3386 management districts shall submit such data collected after June  
3387 30, 2015, to the department for analysis. The department shall  
3388 analyze the data to ensure statewide consistency. The department  
3389 shall maintain a centralized database for all testing results  
3390 and analyses, which must be accessible by the water management  
3391 districts.

3392 (b) To the extent practicable, the department shall  
3393 coordinate with federal agencies to ensure that its collection  
3394 and analysis of water quality, water quantity, and related data,  
3395 which may be used by any state agency, water management  
3396 district, or local government, is consistent with this  
3397 subsection.

3398 (c) In order to receive state funds for the acquisition of  
3399 lands or the financing of a water resource project, state  
3400 agencies and water management districts must use the  
3401 department's testing results and analysis, if available, as a  
3402 prerequisite for any such request for funding.

3403 (d) The department and the water management districts may



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3404 adopt rules to implement this subsection.

3405 Section 37. Subsection (7) of section 403.067, Florida  
3406 Statutes, is amended to read:

3407 403.067 Establishment and implementation of total maximum  
3408 daily loads.—

3409 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND  
3410 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

3411 (a) *Basin management action plans.*—

3412 1. In developing and implementing the total maximum daily  
3413 load for a water body, the department, or the department in  
3414 conjunction with a water management district, may develop a  
3415 basin management action plan that addresses some or all of the  
3416 watersheds and basins tributary to the water body. Such plan  
3417 must integrate the appropriate management strategies available  
3418 to the state through existing water quality protection programs  
3419 to achieve the total maximum daily loads and may provide for  
3420 phased implementation of these management strategies to promote  
3421 timely, cost-effective actions as provided for in s. 403.151.  
3422 The plan must establish a schedule implementing the management  
3423 strategies, establish a basis for evaluating the plan's  
3424 effectiveness, and identify feasible funding strategies for  
3425 implementing the plan's management strategies. The management  
3426 strategies may include regional treatment systems or other  
3427 public works, where appropriate, and voluntary trading of water  
3428 quality credits to achieve the needed pollutant load reductions.

3429 2. A basin management action plan must equitably allocate,  
3430 pursuant to paragraph (6) (b), pollutant reductions to individual  
3431 basins, as a whole to all basins, or to each identified point  
3432 source or category of nonpoint sources, as appropriate. For



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3433 nonpoint sources for which best management practices have been  
3434 adopted, the initial requirement specified by the plan must be  
3435 those practices developed pursuant to paragraph (c). Where  
3436 appropriate, the plan may take into account the benefits of  
3437 pollutant load reduction achieved by point or nonpoint sources  
3438 that have implemented management strategies to reduce pollutant  
3439 loads, including best management practices, before the  
3440 development of the basin management action plan. The plan must  
3441 also identify the mechanisms that will address potential future  
3442 increases in pollutant loading.

3443         3. The basin management action planning process is intended  
3444 to involve the broadest possible range of interested parties,  
3445 with the objective of encouraging the greatest amount of  
3446 cooperation and consensus possible. In developing a basin  
3447 management action plan, the department shall assure that key  
3448 stakeholders, including, but not limited to, applicable local  
3449 governments, water management districts, the Department of  
3450 Agriculture and Consumer Services, other appropriate state  
3451 agencies, local soil and water conservation districts,  
3452 environmental groups, regulated interests, and affected  
3453 pollution sources, are invited to participate in the process.  
3454 The department shall hold at least one public meeting in the  
3455 vicinity of the watershed or basin to discuss and receive  
3456 comments during the planning process and shall otherwise  
3457 encourage public participation to the greatest practicable  
3458 extent. Notice of the public meeting must be published in a  
3459 newspaper of general circulation in each county in which the  
3460 watershed or basin lies not less than 5 days nor more than 15  
3461 days before the public meeting. A basin management action plan



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3462 does not supplant or otherwise alter any assessment made under  
3463 subsection (3) or subsection (4) or any calculation or initial  
3464 allocation.

3465 4. Each new or revised basin management action plan shall  
3466 include:

3467 a. The appropriate management strategies available through  
3468 existing water quality protection programs to achieve total  
3469 maximum daily loads, which may provide for phased implementation  
3470 to promote timely, cost-effective actions as provided for in s.  
3471 403.151;

3472 b. A description of best management practices adopted by  
3473 rule;

3474 c. A list of projects in priority ranking with a planning-  
3475 level cost estimate and estimated date of completion for each  
3476 listed project;

3477 d. The source and amount of financial assistance to be made  
3478 available by the department, a water management district, or  
3479 other entity for each listed project, if applicable; and

3480 e. A planning-level estimate of each listed project's  
3481 expected load reduction, if applicable.

3482 5.4. The department shall adopt all or any part of a basin  
3483 management action plan and any amendment to such plan by  
3484 secretarial order pursuant to chapter 120 to implement the  
3485 provisions of this section.

3486 6.5. The basin management action plan must include  
3487 milestones for implementation and water quality improvement, and  
3488 an associated water quality monitoring component sufficient to  
3489 evaluate whether reasonable progress in pollutant load  
3490 reductions is being achieved over time. An assessment of



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3491 progress toward these milestones shall be conducted every 5  
3492 years, and revisions to the plan shall be made as appropriate.  
3493 Revisions to the basin management action plan shall be made by  
3494 the department in cooperation with basin stakeholders. Revisions  
3495 to the management strategies required for nonpoint sources must  
3496 follow the procedures set forth in subparagraph (c)4. Revised  
3497 basin management action plans must be adopted pursuant to  
3498 subparagraph 4.

3499 ~~7.6.~~ In accordance with procedures adopted by rule under  
3500 paragraph (9)(c), basin management action plans, and other  
3501 pollution control programs under local, state, or federal  
3502 authority as provided in subsection (4), may allow point or  
3503 nonpoint sources that will achieve greater pollutant reductions  
3504 than required by an adopted total maximum load or wasteload  
3505 allocation to generate, register, and trade water quality  
3506 credits for the excess reductions to enable other sources to  
3507 achieve their allocation; however, the generation of water  
3508 quality credits does not remove the obligation of a source or  
3509 activity to meet applicable technology requirements or adopted  
3510 best management practices. Such plans must allow trading between  
3511 NPDES permittees, and trading that may or may not involve NPDES  
3512 permittees, where the generation or use of the credits involve  
3513 an entity or activity not subject to department water discharge  
3514 permits whose owner voluntarily elects to obtain department  
3515 authorization for the generation and sale of credits.

3516 ~~8.7.~~ The provisions of the department's rule relating to  
3517 the equitable abatement of pollutants into surface waters do not  
3518 apply to water bodies or water body segments for which a basin  
3519 management plan that takes into account future new or expanded



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3520 activities or discharges has been adopted under this section.

3521 (b) *Total maximum daily load implementation.*—

3522 1. The department shall be the lead agency in coordinating  
3523 the implementation of the total maximum daily loads through  
3524 existing water quality protection programs. Application of a  
3525 total maximum daily load by a water management district must be  
3526 consistent with this section and does not require the issuance  
3527 of an order or a separate action pursuant to s. 120.536(1) or s.  
3528 120.54 for the adoption of the calculation and allocation  
3529 previously established by the department. Such programs may  
3530 include, but are not limited to:

3531 a. Permitting and other existing regulatory programs,  
3532 including water-quality-based effluent limitations;

3533 b. Nonregulatory and incentive-based programs, including  
3534 best management practices, cost sharing, waste minimization,  
3535 pollution prevention, agreements established pursuant to s.  
3536 403.061(21), and public education;

3537 c. Other water quality management and restoration  
3538 activities, for example surface water improvement and management  
3539 plans approved by water management districts or basin management  
3540 action plans developed pursuant to this subsection;

3541 d. Trading of water quality credits or other equitable  
3542 economically based agreements;

3543 e. Public works including capital facilities; or

3544 f. Land acquisition.

3545 2. For a basin management action plan adopted pursuant to  
3546 paragraph (a), any management strategies and pollutant reduction  
3547 requirements associated with a pollutant of concern for which a  
3548 total maximum daily load has been developed, including effluent



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3549 limits set forth for a discharger subject to NPDES permitting,  
3550 if any, must be included in a timely manner in subsequent NPDES  
3551 permits or permit modifications for that discharger. The  
3552 department may not impose limits or conditions implementing an  
3553 adopted total maximum daily load in an NPDES permit until the  
3554 permit expires, the discharge is modified, or the permit is  
3555 reopened pursuant to an adopted basin management action plan.

3556       a. Absent a detailed allocation, total maximum daily loads  
3557 must be implemented through NPDES permit conditions that provide  
3558 for a compliance schedule. In such instances, a facility's NPDES  
3559 permit must allow time for the issuance of an order adopting the  
3560 basin management action plan. The time allowed for the issuance  
3561 of an order adopting the plan may not exceed 5 years. Upon  
3562 issuance of an order adopting the plan, the permit must be  
3563 reopened or renewed, as necessary, and permit conditions  
3564 consistent with the plan must be established. Notwithstanding  
3565 the other provisions of this subparagraph, upon request by an  
3566 NPDES permittee, the department as part of a permit issuance,  
3567 renewal, or modification may establish individual allocations  
3568 before the adoption of a basin management action plan.

3569       b. For holders of NPDES municipal separate storm sewer  
3570 system permits and other stormwater sources, implementation of a  
3571 total maximum daily load or basin management action plan must be  
3572 achieved, to the maximum extent practicable, through the use of  
3573 best management practices or other management measures.

3574       c. The basin management action plan does not relieve the  
3575 discharger from any requirement to obtain, renew, or modify an  
3576 NPDES permit or to abide by other requirements of the permit.

3577       d. Management strategies set forth in a basin management



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3578 action plan to be implemented by a discharger subject to  
3579 permitting by the department must be completed pursuant to the  
3580 schedule set forth in the basin management action plan. This  
3581 implementation schedule may extend beyond the 5-year term of an  
3582 NPDES permit.

3583 e. Management strategies and pollution reduction  
3584 requirements set forth in a basin management action plan for a  
3585 specific pollutant of concern are not subject to challenge under  
3586 chapter 120 at the time they are incorporated, in an identical  
3587 form, into a subsequent NPDES permit or permit modification.

3588 f. For nonagricultural pollutant sources not subject to  
3589 NPDES permitting but permitted pursuant to other state,  
3590 regional, or local water quality programs, the pollutant  
3591 reduction actions adopted in a basin management action plan must  
3592 be implemented to the maximum extent practicable as part of  
3593 those permitting programs.

3594 g. A nonpoint source discharger included in a basin  
3595 management action plan must demonstrate compliance with the  
3596 pollutant reductions established under subsection (6) by  
3597 implementing the appropriate best management practices  
3598 established pursuant to paragraph (c) or conducting water  
3599 quality monitoring prescribed by the department or a water  
3600 management district. A nonpoint source discharger may, in  
3601 accordance with department rules, supplement the implementation  
3602 of best management practices with water quality credit trades in  
3603 order to demonstrate compliance with the pollutant reductions  
3604 established under subsection (6).

3605 h. A nonpoint source discharger included in a basin  
3606 management action plan may be subject to enforcement action by





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3607 the department or a water management district based upon a  
3608 failure to implement the responsibilities set forth in sub-  
3609 subparagraph g.

3610 i. A landowner, discharger, or other responsible person who  
3611 is implementing applicable management strategies specified in an  
3612 adopted basin management action plan may not be required by  
3613 permit, enforcement action, or otherwise to implement additional  
3614 management strategies, including water quality credit trading,  
3615 to reduce pollutant loads to attain the pollutant reductions  
3616 established pursuant to subsection (6) and shall be deemed to be  
3617 in compliance with this section. This subparagraph does not  
3618 limit the authority of the department to amend a basin  
3619 management action plan as specified in subparagraph (a)6. ~~(a)5.~~

3620 (c) *Best management practices.*—

3621 1. The department, in cooperation with the water management  
3622 districts and other interested parties, as appropriate, may  
3623 develop suitable interim measures, best management practices, or  
3624 other measures necessary to achieve the level of pollution  
3625 reduction established by the department for nonagricultural  
3626 nonpoint pollutant sources in allocations developed pursuant to  
3627 subsection (6) and this subsection. These practices and measures  
3628 may be adopted by rule by the department and the water  
3629 management districts and, where adopted by rule, shall be  
3630 implemented by those parties responsible for nonagricultural  
3631 nonpoint source pollution.

3632 2. The Department of Agriculture and Consumer Services may  
3633 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54  
3634 suitable interim measures, best management practices, or other  
3635 measures necessary to achieve the level of pollution reduction



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3636 established by the department for agricultural pollutant sources  
3637 in allocations developed pursuant to subsection (6) and this  
3638 subsection or for programs implemented pursuant to paragraph  
3639 (12) (b) ~~(13) (b)~~. These practices and measures may be implemented  
3640 by those parties responsible for agricultural pollutant sources  
3641 and the department, the water management districts, and the  
3642 Department of Agriculture and Consumer Services shall assist  
3643 with implementation. In the process of developing and adopting  
3644 rules for interim measures, best management practices, or other  
3645 measures, the Department of Agriculture and Consumer Services  
3646 shall consult with the department, the Department of Health, the  
3647 water management districts, representatives from affected  
3648 farming groups, and environmental group representatives. Such  
3649 rules must also incorporate provisions for a notice of intent to  
3650 implement the practices and a system to assure the  
3651 implementation of the practices, including site inspection and  
3652 recordkeeping requirements.

3653         3. Where interim measures, best management practices, or  
3654 other measures are adopted by rule, the effectiveness of such  
3655 practices in achieving the levels of pollution reduction  
3656 established in allocations developed by the department pursuant  
3657 to subsection (6) and this subsection or in programs implemented  
3658 pursuant to paragraph (12) (b) ~~(13) (b)~~ must be verified at  
3659 representative sites by the department. The department shall use  
3660 best professional judgment in making the initial verification  
3661 that the best management practices are reasonably expected to be  
3662 effective and, where applicable, must notify the appropriate  
3663 water management district or the Department of Agriculture and  
3664 Consumer Services of its initial verification before the



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3665 adoption of a rule proposed pursuant to this paragraph.  
3666 Implementation, in accordance with rules adopted under this  
3667 paragraph, of practices that have been initially verified to be  
3668 effective, or verified to be effective by monitoring at  
3669 representative sites, by the department, shall provide a  
3670 presumption of compliance with state water quality standards and  
3671 release from the provisions of s. 376.307(5) for those  
3672 pollutants addressed by the practices, and the department is not  
3673 authorized to institute proceedings against the owner of the  
3674 source of pollution to recover costs or damages associated with  
3675 the contamination of surface water or groundwater caused by  
3676 those pollutants. Research projects funded by the department, a  
3677 water management district, or the Department of Agriculture and  
3678 Consumer Services to develop or demonstrate interim measures or  
3679 best management practices shall be granted a presumption of  
3680 compliance with state water quality standards and a release from  
3681 the provisions of s. 376.307(5). The presumption of compliance  
3682 and release is limited to the research site and only for those  
3683 pollutants addressed by the interim measures or best management  
3684 practices. Eligibility for the presumption of compliance and  
3685 release is limited to research projects on sites where the owner  
3686 or operator of the research site and the department, a water  
3687 management district, or the Department of Agriculture and  
3688 Consumer Services have entered into a contract or other  
3689 agreement that, at a minimum, specifies the research objectives,  
3690 the cost-share responsibilities of the parties, and a schedule  
3691 that details the beginning and ending dates of the project.

3692 4. Where water quality problems are demonstrated, despite  
3693 the appropriate implementation, operation, and maintenance of



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3694 best management practices and other measures required by rules  
3695 adopted under this paragraph, the department, a water management  
3696 district, or the Department of Agriculture and Consumer  
3697 Services, in consultation with the department, shall institute a  
3698 reevaluation of the best management practice or other measure.  
3699 Should the reevaluation determine that the best management  
3700 practice or other measure requires modification, the department,  
3701 a water management district, or the Department of Agriculture  
3702 and Consumer Services, as appropriate, shall revise the rule to  
3703 require implementation of the modified practice within a  
3704 reasonable time period as specified in the rule.

3705         5. Agricultural records relating to processes or methods of  
3706 production, costs of production, profits, or other financial  
3707 information held by the Department of Agriculture and Consumer  
3708 Services pursuant to subparagraphs 3. and 4. or pursuant to any  
3709 rule adopted pursuant to subparagraph 2. are confidential and  
3710 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
3711 Constitution. Upon request, records made confidential and exempt  
3712 pursuant to this subparagraph shall be released to the  
3713 department or any water management district provided that the  
3714 confidentiality specified by this subparagraph for such records  
3715 is maintained.

3716         6. The provisions of subparagraphs 1. and 2. do not  
3717 preclude the department or water management district from  
3718 requiring compliance with water quality standards or with  
3719 current best management practice requirements set forth in any  
3720 applicable regulatory program authorized by law for the purpose  
3721 of protecting water quality. Additionally, subparagraphs 1. and  
3722 2. are applicable only to the extent that they do not conflict



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3723 with any rules adopted by the department that are necessary to  
3724 maintain a federally delegated or approved program.

3725 (d) Enforcement and verification of basin management action  
3726 plans and management strategies.-

3727 1. Basin management action plans are enforceable pursuant  
3728 to this section and ss. 403.121, 403.141, and 403.161.

3729 Management strategies, including best management practices and  
3730 water quality monitoring, are enforceable under this chapter.

3731 2. No later than January 1, 2016:

3732 a. The department, in consultation with the water  
3733 management districts and the Department of Agriculture and  
3734 Consumer Services, shall initiate rulemaking to adopt procedures  
3735 to verify implementation of water quality monitoring required in  
3736 lieu of implementation of best management practices or other  
3737 measures pursuant to s. 403.067(7)(b)2.g.;

3738 b. The department, in consultation with the water  
3739 management districts and the Department of Agriculture and  
3740 Consumer Services, shall initiate rulemaking to adopt procedures  
3741 to verify implementation of nonagricultural interim measures,  
3742 best management practices, or other measures adopted by rule  
3743 pursuant to s. 403.067(7)(c)1.; and

3744 c. The Department of Agriculture and Consumer Services, in  
3745 consultation with the water management districts and the  
3746 department, shall initiate rulemaking to adopt procedures to  
3747 verify implementation of agricultural interim measures, best  
3748 management practices, or other measures adopted by rule pursuant  
3749 to s. 403.067(7)(c)2.

3750  
3751 The above rules shall include enforcement procedures applicable



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3752 to the landowner, discharger, or other responsible person  
3753 required to implement applicable management strategies,  
3754 including best management practices, or water quality monitoring  
3755 as a result of noncompliance.

3756 Section 38. Section 403.0675, Florida Statutes, is created  
3757 to read:

3758 403.0675 Progress reports.-

3759 (1) On or before July 1, beginning July 1, 2017:

3760 (a) The department, in conjunction with the water  
3761 management districts, shall submit progress reports to the  
3762 Governor, the President of the Senate, and the Speaker of the  
3763 House of Representatives on the status of each total maximum  
3764 daily load, basin management action plan, minimum flow or  
3765 minimum water level, and recovery or prevention strategy adopted  
3766 pursuant to s. 403.067 or parts I and VIII of chapter 373. The  
3767 report must include the status of each project identified to  
3768 achieve an adopted total maximum daily load or an adopted or  
3769 minimum flow or minimum water level, as applicable. If a report  
3770 indicates that any of the 5-, 10-, or 15-year milestones, or the  
3771 20-year target date, if applicable, for achieving a total  
3772 maximum daily load or a minimum flow or minimum water level will  
3773 not be met, the report must include an explanation of the  
3774 possible causes and potential solutions. If applicable, the  
3775 report shall include project descriptions, estimated costs,  
3776 proposed priority ranking for project implementation, and  
3777 funding needed to achieve the total maximum daily load or the  
3778 minimum flow or minimum water level by the target date.

3779 (b) The Department of Agriculture and Consumer Services  
3780 shall report to the Governor, the President of the Senate, and



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3781 the Speaker of the House of Representatives on the status of the  
3782 implementation of the agricultural nonpoint source best  
3783 management practices including an implementation assurance  
3784 report summarizing survey responses and response rates, site  
3785 inspections and other methods used to verify implementation of  
3786 and compliance with best management practices pursuant to basin  
3787 management action plans.

3788 Section 39. Subsection (21) is added to section 403.861,  
3789 Florida Statutes, to read:

3790 403.861 Department; powers and duties.—The department shall  
3791 have the power and the duty to carry out the provisions and  
3792 purposes of this act and, for this purpose, to:

3793 (21) (a) Upon issuance of a construction permit to construct  
3794 a new public water system drinking water treatment facility to  
3795 provide potable water supply using a surface water of the state  
3796 that, at the time of the permit application, is not being used  
3797 as a potable water supply, and the classification of which does  
3798 not include potable water supply as a designated use, the  
3799 department shall add treated potable water supply as a  
3800 designated use of the surface water segment in accordance with  
3801 s. 403.061(29) (b).

3802 (b) For existing public water system drinking water  
3803 treatment facilities that use a surface water of the state as a  
3804 treated potable water supply, which surface water classification  
3805 does not include potable water as a designated use, the  
3806 department shall add treated potable water supply as a  
3807 designated use of the surface water segment in accordance with  
3808 s. 403.061(29) (b).

3809 Section 40. This act shall take effect July 1, 2015.



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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to environmental resources; amending  
s. 259.032, F.S.; requiring the Department of  
Environmental Protection to publish, update, and  
maintain a database of conservation lands; requiring  
the department to submit a report by a certain date  
each year to the Governor and the Legislature  
identifying the percentage of such lands which the  
public has access to and the efforts the department  
has undertaken to increase public access; amending ss.  
260.0144 and 335.065, F.S.; conforming provisions to  
changes made by the act; creating s. 339.81, F.S.;  
creating the Florida Shared-Use Nonmotorized Trail  
Network; specifying the composition of the network;  
requiring the network to be included in the Department  
of Transportation's work program; declaring the  
planning, development, operation, and maintenance of  
the network to be a public purpose; authorizing the  
department to transfer maintenance responsibilities to  
certain state agencies and contract with not-for-  
profit or private sector entities to provide  
maintenance services; authorizing the department to  
adopt rules; providing an appropriation; creating s.  
339.82, F.S.; requiring the department to develop a





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3839 network plan for the Florida Shared-Use Nonmotorized  
3840 Trail Network; creating s. 339.83, F.S.; authorizing  
3841 the department to enter into concession agreements  
3842 with not-for-profit or private sector entities for  
3843 certain commercial sponsorship signs, markings, and  
3844 exhibits; authorizing the department to contract for  
3845 the provision of certain services related to the trail  
3846 sponsorship program; authorizing the department to  
3847 adopt rules; amending s. 373.019, F.S.; revising the  
3848 definition of the term "water resource development" to  
3849 include technical assistance to self-suppliers under  
3850 certain circumstances; amending s. 373.036, F.S.;  
3851 requiring certain information to be included in the  
3852 consolidated annual report for all projects related to  
3853 water quality or water quantity; amending s. 373.042,  
3854 F.S.; requiring the Department of Environmental  
3855 Protection or the governing board of a water  
3856 management district to adopt a minimum flow or minimum  
3857 water level for an Outstanding Florida Spring using  
3858 emergency rulemaking authority; requiring  
3859 collaboration in the development and implementation of  
3860 recovery or prevention strategies under certain  
3861 circumstances; authorizing the department to use  
3862 emergency rulemaking procedures under certain  
3863 circumstances; amending s. 373.0421, F.S.; directing  
3864 the department or water management district governing  
3865 boards to adopt and implement certain recovery or  
3866 prevention strategies concurrent with the adoption of  
3867 minimum flows and minimum water levels; providing



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3868 criteria for such recovery or prevention strategies;  
3869 requiring certain amendments to regional water supply  
3870 plans to be concurrent with relevant portions of the  
3871 recovery or prevention strategy; directing water  
3872 management districts to notify the department when  
3873 water use permit applications are denied for a  
3874 specified reason; providing for the review and update  
3875 of regional water supply plans in such cases;  
3876 conforming cross-references; creating s. 373.0465,  
3877 F.S.; providing legislative intent; defining the term  
3878 "Central Florida Water Initiative Area"; requiring the  
3879 department, the St. Johns River Water Management  
3880 District, the South Florida Water Management District,  
3881 the Southwest Florida Water Management District, and  
3882 the Department of Agriculture and Consumer Services to  
3883 develop and implement a multidistrict regional water  
3884 supply plan; providing plan criteria and requirements;  
3885 providing applicability; requiring the department to  
3886 adopt rules; amending s. 373.1501, F.S.; specifying  
3887 authority of the South Florida Water Management  
3888 District to allocate quantities of, and assign  
3889 priorities for the use of, water within its  
3890 jurisdiction; directing the district to provide  
3891 recommendations to the United States Army Corps of  
3892 Engineers when developing or implementing certain  
3893 water control plans or regulation schedules; amending  
3894 s. 373.218, F.S.; requiring the department to adopt a  
3895 uniform definition of the term "harmful to the water  
3896 resources"; amending s. 373.223, F.S.; requiring



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3897 consumptive use permits authorizing over a certain  
3898 amount to be monitored on a specified basis; amending  
3899 s. 373.2234, F.S.; directing water management district  
3900 governing boards to consider the identification of  
3901 preferred water supply sources for certain water  
3902 users; amending s. 373.227, F.S.; prohibiting water  
3903 management districts from modifying permitted  
3904 allocation amounts under certain circumstances;  
3905 requiring the water management districts to adopt  
3906 rules to promote water conservation incentives;  
3907 amending s. 373.233, F.S.; providing conditions under  
3908 which the department and water management district  
3909 governing boards are directed to give preference to  
3910 certain applications; amending s. 373.4591, F.S.;  
3911 providing priority consideration to certain public-  
3912 private partnerships for water storage, groundwater  
3913 recharge, and water quality improvements on private  
3914 agricultural lands; amending s. 373.4595, F.S.;  
3915 revising and providing definitions relating to the  
3916 Northern Everglades and Estuaries Protection Program;  
3917 clarifying provisions of the Lake Okeechobee Watershed  
3918 Protection Program; directing the South Florida Water  
3919 Management District to revise certain rules and  
3920 provide for a watershed research and water quality  
3921 monitoring program; revising provisions for the  
3922 Caloosahatchee River Watershed Protection Program and  
3923 the St. Lucie River Watershed Protection Program;  
3924 revising permitting and annual reporting requirements  
3925 relating to the Northern Everglades and Estuaries



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3926 Protection Program; providing enforcement provisions  
3927 for certain basin management action plans; amending s.  
3928 373.536, F.S.; requiring a water management district  
3929 to include an annual funding plan in the water  
3930 resource development work program; directing the  
3931 department to post the work program on its website;  
3932 amending s. 373.703, F.S.; authorizing water  
3933 management districts to join with private landowners  
3934 for the purpose of carrying out its powers; amending  
3935 s. 373.705, F.S.; requiring governing boards to  
3936 include certain information in their annual budget  
3937 submittals; providing first consideration for funding  
3938 assistance to certain water supply development  
3939 projects; requiring water management districts to  
3940 promote expanded cost-share criteria for additional  
3941 conservation practices; amending s. 373.707, F.S.;  
3942 authorizing water management districts to provide  
3943 technical and financial assistance to certain self-  
3944 suppliers and to waive certain construction costs of  
3945 alternative water supply development projects  
3946 sponsored by certain water users; amending s. 373.709,  
3947 F.S.; requiring regional water supply plans to include  
3948 traditional and alternative water supply project  
3949 options that are technically and financially feasible;  
3950 directing the department to include certain funding  
3951 analyses and project explanations in regional water  
3952 supply planning reports; creating part VIII of ch.  
3953 373, F.S., entitled the "Florida Springs and Aquifer  
3954 Protection Act"; creating s. 373.801, F.S.; providing



3955 legislative findings and intent; creating s. 373.802,  
3956 F.S.; defining terms; creating s. 373.803, F.S.;  
3957 requiring the department to delineate a priority focus  
3958 area for each Outstanding Florida Spring by a certain  
3959 date; creating s. 373.805, F.S.; requiring a water  
3960 management district or the department to adopt or  
3961 revise various recovery or prevention strategies under  
3962 certain circumstances by a certain date; providing  
3963 minimum requirements for recovery or prevention  
3964 strategies for Outstanding Florida Springs;  
3965 authorizing local governments to apply for an  
3966 extension for projects in an adopted recovery or  
3967 prevention strategy; creating s. 373.807, F.S.;  
3968 requiring the department to initiate assessments of  
3969 Outstanding Florida Springs by a certain date;  
3970 requiring the department to develop basin management  
3971 action plans; authorizing local governments to apply  
3972 for an extension for projects in an adopted basin  
3973 management action plan; requiring local governments to  
3974 adopt an urban fertilizer ordinance by a certain date;  
3975 requiring the department, the Department of Health,  
3976 and local governments to identify onsite sewage  
3977 treatment and disposal systems within each priority  
3978 focus area; requiring local governments to develop  
3979 onsite sewage treatment and disposal system  
3980 remediation plans; prohibiting property owners with  
3981 identified onsite sewage treatment and disposal  
3982 systems from being required to pay certain costs;  
3983 creating s. 373.811, F.S.; specifying prohibited



3984 activities within a priority focus area of an  
3985 Outstanding Florida Spring; creating s. 373.813, F.S.;  
3986 providing rulemaking authority; amending s. 403.061,  
3987 F.S.; requiring the department to create a  
3988 consolidated water resources work plan; directing the  
3989 department to adopt by rule a specific surface water  
3990 classification to protect surface waters used for  
3991 treated potable water supply; providing criteria for  
3992 such rule; authorizing the reclassification of surface  
3993 waters used for treated potable water supply  
3994 notwithstanding such rule; requiring the department to  
3995 create and maintain a web-based interactive map;  
3996 creating s. 403.0616, F.S.; creating the Florida Water  
3997 Resources Advisory Council to provide the Legislature  
3998 with recommendations for projects submitted by  
3999 governmental entities; requiring the council to  
4000 consolidate various reports to enhance the water  
4001 resources of this state; requiring the department to  
4002 adopt rules; creating s. 403.0617, F.S.; requiring the  
4003 department to adopt rules to fund certain pilot  
4004 projects; amending s. 403.0623, F.S.; requiring the  
4005 department to establish certain standards to ensure  
4006 statewide consistency; requiring the department to  
4007 maintain a centralized database for testing results  
4008 and analysis of water quantity and quality data;  
4009 requiring state agencies and water management  
4010 districts to use the department's testing results and  
4011 analysis in order to receive certain funding; amending  
4012 s. 403.067, F.S.; providing requirements for new or



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4013 revised best management action plans; requiring the  
4014 department adopt rules relating to the enforcement and  
4015 verification of best management action plans and  
4016 management strategies; creating s. 403.0675, F.S.;  
4017 requiring the department to submit annual reports;  
4018 amending s. 403.861, F.S.; directing the department to  
4019 add treated potable water supply as a designated use  
4020 of a surface water segment under certain  
4021 circumstances; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Hays)  
recommended the following:

1       **Senate Amendment to Amendment (322890) (with title**  
2 **amendment)**

3  
4       Between lines 446 and 447  
5 insert:

6       Section 9. Section 373.037, Florida Statutes, is created to  
7 read:

8       373.037 Pilot program for alternative water supply  
9 development in restricted allocation areas.-

10       (1) As used in this section, the term:





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11           (a) "Central Florida Water Initiative Area" means all of  
12 Orange, Osceola, Polk, and Seminole Counties, and southern Lake  
13 County, as designated by the Central Florida Water Initiative  
14 Guiding Document of January 30, 2015.

15           (b) "Lower East Coast Regional Water Supply Planning Area"  
16 means the areas withdrawing surface and groundwater from Water  
17 Conservation Areas 1, 2A, 2B, 3A, and 3B, Grassy Waters  
18 Preserve/Water Catchment Area, Pal Mar, J.W. Corbett Wildlife  
19 Management Area, Loxahatchee Slough, Loxahatchee River,  
20 Riverbend Park, Dupuis Reserve, Jonathan Dickinson State Park,  
21 Kitching Creek, Moonshine Creek, Cypress Creek, Hobe Grove  
22 Ditch, the Holey Land and Rotenberger Wildlife Management Areas,  
23 and the freshwater portions of the Everglades National Park, as  
24 designated by the South Florida Water Management District.

25           (c) "Restricted allocation area" means an area within a  
26 water supply planning region of the Southwest Florida Water  
27 Management District, the South Florida Water Management  
28 District, or the St. Johns River Water Management District where  
29 the governing board of the water management district has  
30 determined that existing sources of water are not adequate to  
31 supply water for all existing and future reasonable-beneficial  
32 uses and to sustain the water resources and related natural  
33 systems for the planning period pursuant to ss. 373.036 and  
34 373.709 and where the governing board of the water management  
35 district has applied allocation restrictions with regard to the  
36 use of specific sources of water. For the purposes of this  
37 section, the term includes the Central Florida Water Initiative  
38 Area, the Lower East Coast Regional Water Supply Planning Area,  
39 the Southern Water Use Caution Area, and the Upper East Coast



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40 Regional Water Supply Planning Area.

41 (d) "Southern Water Use Caution Area" means all of Desoto,  
42 Hardee, Manatee, and Sarasota Counties and parts of Charlotte,  
43 Highlands, Hillsborough, and Polk Counties, as designated by the  
44 Southwest Florida Water Management District.

45 (e) "Upper East Coast Regional Water Supply Planning Area"  
46 means the areas withdrawing surface and groundwater from the  
47 Central and Southern Florida canals or the Floridan Aquifer, as  
48 designated by the South Florida Water Management District.

49 (2) The Legislature finds that:

50 (a) Local governments, regional water supply authorities,  
51 and government-owned and privately owned water utilities face  
52 significant challenges in securing funds for implementing large-  
53 scale alternative water supply projects in certain restricted  
54 allocation areas due to a variety of factors, such as the  
55 magnitude of the water resource challenges, the large number of  
56 water users, the difficulty of developing multijurisdictional  
57 solutions across district, county, and municipal boundaries, and  
58 the expense of developing large-scale alternative water supply  
59 projects identified in the regional water supply plans pursuant  
60 to s. 373.709.

61 (b) These challenges have resulted in some cases in failure  
62 to achieve minimum flows and minimum water levels, to mitigate  
63 and avoid harm to the water resource and related natural  
64 systems, to provide adequate water supply for all existing and  
65 projected reasonable-beneficial uses, and to sustain the water  
66 resources and related natural systems within certain restricted  
67 allocation areas.

68 (c) These factors make it necessary for the Southwest



69 Florida Water Management District, the South Florida Water  
70 Management District, and the St. Johns River Water Management  
71 District to each take the lead in developing and implementing  
72 one alternative water supply project within a restricted  
73 allocation area as a pilot alternative water supply development  
74 project.

75 (d) The traditional role of local governments, regional  
76 water supply authorities, and government-owned and privately  
77 owned water utilities will be maintained by requiring the water  
78 management districts to turn over ownership and control of a  
79 pilot project to the project participants if they can secure the  
80 funds to implement the pilot project and resolve any governance  
81 issues over the development, implementation, and operation of  
82 the pilot project.

83 (e) The development and implementation of one alternative  
84 water supply project each by the Southwest Florida Water  
85 Management District, the South Florida Water Management  
86 District, and the St. Johns River Water Management District  
87 within a restricted allocation area as a pilot project is for  
88 the benefit of the public health, safety, and welfare and is in  
89 the public interest. The pilot projects must provide water  
90 supply and environmental benefits. Consideration shall be given  
91 to projects that provide reductions in damaging discharges to  
92 tide or are part of a recovery or prevention strategy for  
93 minimum flows and minimum water levels.

94 (3) The Southwest Florida Water Management District, the  
95 South Florida Water Management District, and the St. Johns River  
96 Water Management District shall each designate and implement an  
97 existing alternative water supply project, identified in its



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98 regional water supply plan, as its one pilot project or amend  
99 its regional water supply plan to add a new alternative water  
100 supply project as its one pilot project. The pilot project  
101 designation shall be made no later than July 1, 2016, and is not  
102 subject to the rulemaking requirements of chapter 120 or subject  
103 to legal challenge pursuant to ss. 120.569 and 120.57. Once  
104 designated, the pilot project shall be considered a use  
105 resulting in an enhancement of the water resources of the area  
106 and entitled to a preference over other uses in the event of  
107 competing applications pursuant to s. 373.036(5). A water  
108 management district may designate an alternative water supply  
109 project located within another water management district if the  
110 project is located in a restricted allocation area designated by  
111 the other water management district and a substantial quantity  
112 of water provided by the alternative water supply project will  
113 be used within the designating water management district's  
114 boundaries.

115 (4) In addition to their other powers and duties under this  
116 chapter, the governing boards of the Southwest Florida Water  
117 Management District, the South Florida Water Management  
118 District, and the St. Johns River Water Management District have  
119 the following powers and are subject to the following  
120 restrictions in implementing their respective pilot projects  
121 pursuant to this section:

122 (a) May establish, design, construct, operate, and maintain  
123 water production, treatment and transmission, or other related  
124 facilities for the purpose of supplying water to counties,  
125 municipalities, special districts, publicly owned and privately  
126 owned water utilities, multijurisdictional water supply



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127 entities, other large water users, or regional water supply  
128 authorities.

129 (b) May not engage in local water supply distribution.

130 (c) May supply water at a cost not to exceed expenses  
131 directly related to the planning, design, development,  
132 implementation, operation, and maintenance of the pilot project.  
133 The cost of such water shall be established by the governing  
134 board only after a public hearing at which pilot project  
135 customers have an opportunity to be heard concerning the  
136 proposed cost.

137 (d) Must provide credit toward the pro rata cost of the  
138 water to be supplied from the pilot project to a customer equal  
139 to any expenses incurred by the customer toward the  
140 implementation of the pilot project before the water management  
141 district's designation and implementation of the pilot project.

142 (e) In addition to the power to issue revenue bonds  
143 pursuant to s. 373.584, may issue revenue bonds for the purpose  
144 of paying the costs and expenses incurred in carrying out the  
145 purposes of this section or refunding obligations of the water  
146 management district issued pursuant to this section. All  
147 provisions of s. 373.584 relating to the issuance of revenue  
148 bonds which are not inconsistent with this section apply to the  
149 issuance of revenue bonds pursuant to this section. The water  
150 management districts may also issue bond anticipation notes in  
151 accordance with s. 373.584.

152 (f) May join with one or more other water management  
153 districts, counties, municipalities, special districts, publicly  
154 owned or privately owned water utilities, multijurisdictional  
155 water supply entities, regional water supply authorities, self-



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156 suppliers, or other entities for the purpose of carrying out  
157 their powers, and may contract with any such other entities to  
158 finance or otherwise implement acquisitions, construction, and  
159 operation and maintenance, if such contracts are consistent with  
160 the public interest and based upon independent cost estimates,  
161 including comparisons with other alternative water supply  
162 projects. The contracts may provide for contributions to be made  
163 by each party to the contract for the division and apportionment  
164 of resulting costs, including capital, operations and  
165 maintenance, benefits, services, and products. The contracts may  
166 contain other covenants and agreements necessary and appropriate  
167 to accomplish their purposes.

168 (5) The water management districts may provide up to 50  
169 percent of funding assistance for the pilot project. If the  
170 pilot project selected by a water management district is the  
171 subject of a cooperative funding agreement, the water management  
172 district may not reduce the level of funding assistance  
173 previously committed.

174 (6) If the pilot project customers form a  
175 multijurisdictional water supply entity to implement and develop  
176 the pilot project selected by a water management district on or  
177 before July 1, 2017, and take substantive steps to develop and  
178 implement the project, such as entering into water supply  
179 contracts, issuing revenue bonds or bond anticipation notes to  
180 finance the project, or awarding construction contracts to  
181 construct the project in whole or in part, the water management  
182 district is prohibited from proceeding with implementation and  
183 development of the selected pilot project. The water management  
184 district may designate a new pilot project within 1 year after



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185 the creation of the multijurisdictional entity and the  
186 completion of at least one substantive step by the  
187 multijurisdictional entity to implement the project.

188 (7) If the pilot project customers form a  
189 multijurisdictional water supply entity to take over  
190 construction, operation, maintenance, and control of the pilot  
191 project at any time during the life of the pilot project, the  
192 water management district must transfer ownership and control of  
193 the pilot project to the pilot project customers upon repayment  
194 of any revenue bonds or other obligations issued by the water  
195 management district to develop and implement the pilot project  
196 and any outstanding expenses incurred by the water management  
197 district in constructing, operating, and maintaining the pilot  
198 project. Pilot project customers are not responsible for  
199 repayment of any cooperative funding provided by a water  
200 management district for the pilot project. In such an event, the  
201 water management district may develop and implement another  
202 pilot project within a restricted allocation area.

203 (8) No later than 3 years following designation of the  
204 pilot project pursuant to subsection (3), the Southwest Florida  
205 Water Management District, the South Florida Water Management  
206 District, and the St. Johns River Water Management District  
207 shall each submit a report to the Governor, the President of the  
208 Senate, and the Speaker of the House of Representatives on the  
209 effectiveness of the pilot project, including the following  
210 information:

211 (a) A description of the alternative water supply project  
212 selected as a pilot project by the respective water management  
213 districts, including the quantity of water the project has



214 produced or is expected to produce and the consumptive users who  
215 are expected to use the water produced by the pilot project to  
216 meet their existing and projected reasonable-beneficial need.

217 (b) Progress made in developing and implementing the pilot  
218 project in comparison to development and implementation of other  
219 alternative water supply projects in the restricted allocation  
220 area.

221 (c) The capital and operation costs to be expended by the  
222 water management district in implementing the pilot project in  
223 comparison to other alternative water supply projects being  
224 developed and implemented in the restricted allocation area.

225 (d) The source of funds used or to be used by the water  
226 management district in developing and implementing the pilot  
227 project.

228 (e) The unit cost of water produced from the pilot project  
229 in comparison to the unit cost of water from other alternative  
230 water supply projects being developed in the restricted  
231 allocation area.

232 (f) The benefits to the water resources and natural systems  
233 from implementation of the pilot project.

234 (g) A recommendation as to whether the traditional role of  
235 water management districts regarding the development and  
236 implementation of alternative water supply projects, as  
237 specified in ss. 373.705 and 373.707, should be revised and, if  
238 so, identification of the statutory changes necessary to expand  
239 the scope of the pilot program.

240  
241 ===== T I T L E A M E N D M E N T =====

242 And the title is amended as follows:





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243           Delete line 3853  
244 and insert:  
245           water quality or water quantity; creating s. 373.037,  
246           F.S.; defining terms; providing legislative findings;  
247           requiring certain water management districts to  
248           designate and implement certain pilot projects;  
249           providing powers and limitations for the governing  
250           boards of such water management districts; providing  
251           funding for certain pilot projects; requiring the  
252           districts to submit a report to the Governor and the  
253           Legislature on the effectiveness of the pilot program;  
254           amending s. 373.042,



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Hays)  
recommended the following:

1       **Senate Amendment to Amendment (322890) (with title**  
2 **amendment)**

3  
4       Between lines 2438 and 2439  
5 insert:

6       Section 20. Paragraph (a) of subsection (1) and subsection  
7 (3) of section 373.467, Florida Statutes, are amended, to read:

8       373.467 The Harris Chain of Lakes Restoration Council.—  
9 There is created within the St. Johns River Water Management  
10 District, with assistance from the Fish and Wildlife



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11 Conservation Commission and the Lake County Water Authority, the  
12 Harris Chain of Lakes Restoration Council.

13 (1) (a) The council shall consist of nine voting members,  
14 which shall include a representative of waterfront property  
15 owners, a representative of the sport fishing industry, a person  
16 with experience in an environmental science or regulation  
17 engineer, a person with training in biology or another  
18 scientific discipline, ~~a person with training as an attorney, a~~  
19 ~~physician, a person with training as an engineer,~~ and two  
20 residents of the county who are ~~do~~ not required to meet any  
21 additional of the other qualifications for membership ~~enumerated~~  
22 ~~in this paragraph~~, each to be appointed by the Lake County  
23 legislative delegation. The Lake County legislative delegation  
24 may waive the qualifications for membership on a case-by-case  
25 basis if good cause is shown. ~~A~~ ~~No~~ person serving on the council  
26 may not be appointed to a council, board, or commission of any  
27 council advisory group agency. The council members shall serve  
28 as advisors to the governing board of the St. Johns River Water  
29 Management District. The council is subject to ~~the provisions of~~  
30 chapters 119 and 120.

31 (3) The council shall meet at the call of its chair, at the  
32 request of six of its members, or at the request of the chair of  
33 the governing board of the St. Johns River Water Management  
34 District. Resignation by a council member, or failure by a  
35 council member to attend three consecutive meetings without an  
36 excuse approved by the chair, results in a vacancy on the  
37 council.

38  
39 ===== T I T L E A M E N D M E N T =====



152138

40 And the title is amended as follows:

41       Between lines 3927 and 3928

42 insert:

43       373.467, F.S.; revising the qualifications for  
44       membership on the Harris Chain of Lakes Restoration  
45       Council; authorizing the Lake County legislative  
46       delegation to waive such membership qualifications for  
47       good cause; providing for council vacancies; amending  
48       s.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Hays)  
recommended the following:

1           **Senate Amendment to Amendment (322890) (with directory and**  
2 **title amendments)**

3  
4           Delete lines 2537 - 2643  
5 and insert:

6           (10) This section does not apply to the development and  
7 implementation of pilot projects pursuant to s. 373.037.

8           Section 22. Paragraph (b) of subsection (2) and subsections  
9 (3) and (4) of section 373.705, Florida Statutes, are amended,  
10 and subsection (5) is added to that section, to read:



11 373.705 Water resource development; water supply  
12 development.—

13 (2) It is the intent of the Legislature that:

14 (b) Water management districts take the lead in identifying  
15 and implementing water resource development projects, and be  
16 responsible for securing necessary funding for regionally  
17 significant water resource development projects, including  
18 regional significant projects that prevent or limit adverse  
19 water resource impacts, avoid competition among water users, or  
20 support the provision of new water supplies in order to meet a  
21 minimum flow or minimum water level or to implement a recovery  
22 or prevention strategy or water reservation.

23 (3) (a) The water management districts shall fund and  
24 implement water resource development as defined in s. 373.019.  
25 The water management districts are encouraged to implement water  
26 resource development as expeditiously as possible in areas  
27 subject to regional water supply plans.

28 (b) Each governing board shall include in its annual budget  
29 submittals required under this chapter:

30 1. The amount of funds for each project in the annual  
31 funding plan developed pursuant to s. 373.536(6)(a)4.;

32 2. The total amount needed for the fiscal year to implement  
33 water resource development projects, as prioritized in its  
34 regional water supply plans; and

35 3. The amount of funds requested for each project submitted  
36 for consideration for state funding pursuant to s. 403.0616.

37 (4) (a) Water supply development projects that are  
38 consistent with the relevant regional water supply plans and  
39 that meet one or more of the following criteria shall receive



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40 priority consideration for state or water management district  
41 funding assistance:

42 1. The project supports establishment of a dependable,  
43 sustainable supply of water which is not otherwise financially  
44 feasible;

45 2. The project provides substantial environmental benefits  
46 by preventing or limiting adverse water resource impacts, but  
47 requires funding assistance to be economically competitive with  
48 other options; or

49 3. The project significantly implements reuse, storage,  
50 recharge, or conservation of water in a manner that contributes  
51 to the sustainability of regional water sources.

52 (b) Except for pilot projects identified in paragraph (c),  
53 water supply development projects that meet the criteria in  
54 paragraph (a) and that meet one or more of the following  
55 additional criteria shall be given first consideration for state  
56 or water management district funding assistance:

57 1. The project brings about replacement of existing sources  
58 in order to help implement a minimum flow or minimum water  
59 level; ~~or~~

60 2. The project implements reuse that assists in the  
61 elimination of domestic wastewater ocean outfalls as provided in  
62 s. 403.086(9); or

63 3. The project reduces or eliminates the adverse effects of  
64 competition between legal users and the natural system.

65 (c) First consideration for state or water management  
66 district funding for water supply development projects shall be  
67 given to pilot projects pursuant to s. 373.037 before  
68 consideration of water supply development projects identified in



69 paragraphs (a) and (b) within the restricted allocation area  
70 where the pilot project is located.

71 (5) The water management districts shall promote expanded  
72 cost-share criteria for additional conservation practices, such  
73 as soil and moisture sensors and other irrigation improvements,  
74 water-saving equipment, and water-saving household fixtures.

75 Section 23. Paragraph (f) of subsection (3), paragraph (a)  
76 of subsection (6), and paragraphs (e) and (f) of subsection (8)  
77 of section 373.707, Florida Statutes, are amended to read:

78 373.707 Alternative water supply development.—

79 (3) The primary roles of the water management districts in  
80 water resource development as it relates to supporting  
81 alternative water supply development are:

82 (f) The provision of technical and financial assistance to  
83 local governments and publicly owned and privately owned water  
84 utilities for alternative water supply projects and for self-  
85 suppliers for alternative water supply projects to the extent  
86 assistance for self-suppliers promotes the policies in paragraph  
87 (1) (f).

88 (6) (a) Where state ~~The statewide~~ funds are provided through  
89 specific appropriation for a priority project of the water  
90 resources work program pursuant to s. 403.0616, or pursuant to  
91 the Water Protection and Sustainability Program, such funds  
92 serve to supplement existing water management district or basin  
93 board funding for alternative water supply development  
94 assistance and should not result in a reduction of such funding.  
95 For each project identified in the annual funding plans prepared  
96 pursuant to s. 373.536(6) (a)4. Therefore, the water management  
97 districts shall include in the annual tentative and adopted





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98 budget submittals required under this chapter the amount of  
99 funds allocated for water resource development that supports  
100 alternative water supply development and the funds allocated for  
101 alternative water supply projects ~~selected for inclusion in the~~  
102 ~~Water Protection and Sustainability Program~~. It shall be the  
103 goal of each water management district and basin boards that the  
104 combined funds allocated annually for these purposes be, at a  
105 minimum, the equivalent of 100 percent of the state funding  
106 provided to the water management district for alternative water  
107 supply development. If this goal is not achieved, the water  
108 management district shall provide in the budget submittal an  
109 explanation of the reasons or constraints that prevent this goal  
110 from being met, an explanation of how the goal will be met in  
111 future years, and affirmation of match is required during the  
112 budget review process as established under s. 373.536(5). The  
113 Suwannee River Water Management District and the Northwest  
114 Florida Water Management District shall not be required to meet  
115 the match requirements of this paragraph; however, they shall  
116 try to achieve the match requirement to the greatest extent  
117 practicable.

118 (8)

119 (e) Applicants for projects that may receive funding  
120 assistance pursuant to the Water Protection and Sustainability  
121 Program shall, at a minimum, be required to pay 60 percent of  
122 the project's construction costs. The water management districts  
123 may, at their discretion, totally or partially waive this  
124 requirement for projects sponsored by:

125 1. Financially disadvantaged small local governments as  
126 defined in former s. 403.885(5); or



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127           2. Water users for projects determined by a water  
128 management district governing board to be in the public interest  
129 pursuant to paragraph (1) (f), if the projects are not otherwise  
130 financially feasible.

131  
132 The water management districts or basin boards may, at their  
133 discretion, use ad valorem or federal revenues to assist a  
134 project applicant in meeting the requirements of this paragraph.

135           (f) The governing boards shall determine those projects  
136 that will be selected for financial assistance. The governing  
137 boards may establish factors to determine project funding;  
138 however, significant weight shall be given to the following  
139 factors:

140           1. Whether the project provides substantial environmental  
141 benefits by preventing or limiting adverse water resource  
142 impacts.

143           2. Whether the project reduces competition for water  
144 supplies.

145           3. Whether the project brings about replacement of  
146 traditional sources in order to help implement a minimum flow or  
147 level or a reservation.

148           4. Whether the project will be implemented by a consumptive  
149 use permittee that has achieved the targets contained in a goal-  
150 based water conservation program approved pursuant to s.  
151 373.227.

152           5. The quantity of water supplied by the project as  
153 compared to its cost.

154           6. Projects in which the construction and delivery to end  
155 users of reuse water is a major component.



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156           7. Whether the project will be implemented by a  
157 multijurisdictional water supply entity or regional water supply  
158 authority.

159           8. Whether the project implements reuse that assists in the  
160 elimination of domestic wastewater ocean outfalls as provided in  
161 s. 403.086(9).

162           9. Whether the county or municipality, or the multiple  
163 counties or municipalities, in which the project is located has  
164 implemented a high-water recharge protection tax assessment  
165 program as provided in s. 193.625.

166           10. Whether the project is a pilot project under s.  
167 373.037.

168  
169 ===== D I R E C T O R Y   C L A U S E   A M E N D M E N T =====

170 And the directory clause is amended as follows:

171           Delete lines 2516 - 2517

172 and insert:

173           Section 21. Subsection (9) of section 373.703, Florida  
174 Statutes, is amended, and subsection (10) is added to that  
175 section, to read:

176  
177 ===== T I T L E   A M E N D M E N T =====

178 And the title is amended as follows:

179           Delete lines 3934 - 3946

180 and insert:

181           for the purpose of carrying out its powers; providing  
182 an exception for certain pilot projects; amending s.  
183 373.705, F.S.; revising the legislative intent;  
184 requiring water management district governing boards



129140

185 to include certain information in their annual budget  
186 submittals; providing first consideration for funding  
187 assistance to certain water supply development  
188 projects; requiring water management districts to  
189 promote expanded cost-share criteria for additional  
190 conservation practices; amending s. 373.707, F.S.;  
191 authorizing water management districts to provide  
192 technical and financial assistance to certain self-  
193 suppliers and to waive certain construction costs of  
194 alternative water supply development projects  
195 sponsored by certain water users; requiring the  
196 governing board to give significant weight for project  
197 funding to whether the project is a pilot project;  
198 amending s. 373.709,



229130

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

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Appropriations Subcommittee on General Government (Margolis)  
recommended the following:

**Senate Amendment to Amendment (322890)**

Delete line 2583  
and insert:  
water-saving equipment, and water-saving household fixtures, as  
well as software technologies that can achieve verifiable water  
conservation by providing water use information to utility  
customers.



869652

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2015	.	
	.	
	.	
	.	

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Appropriations Subcommittee on General Government (Braynon)  
recommended the following:

1           **Senate Amendment to Amendment (322890) (with title**  
2 **amendment)**

3  
4           Between lines 3404 and 3405  
5 insert:

6           Section 37. Subsection (17) is added to section 403.064,  
7 Florida Statutes, to read:

8           403.064 Reuse of reclaimed water.—

9           (17) The irrigation of edible crops that will not be  
10 peeled, skinned, cooked, or thermally processed before



869652

11 consumption and which allows for direct contact of reclaimed  
12 water on the crop is authorized for residential reclaimed water  
13 users.

14

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

16 And the title is amended as follows:

17       Delete line 4011

18 and insert:

19       analysis in order to receive certain funding; amending  
20       s. 403.064, F.S.; authorizing certain residents to  
21       reuse reclaimed water to irrigate specific edible  
22       crops; amending

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

592-02829B-15

2015918c1

1 A bill to be entitled  
2 An act relating to environmental resources; amending  
3 s. 259.032, F.S.; requiring the Department of  
4 Environmental Protection to publish, update, and  
5 maintain a database of conservation lands; requiring  
6 the department to submit a report to the Governor and  
7 the Legislature identifying the percentage of such  
8 lands which the public has access to and the efforts  
9 the department has undertaken to increase public  
10 access; amending ss. 260.0144 and 335.065, F.S.;  
11 conforming provisions to changes made by the act;  
12 creating s. 339.81, F.S.; creating the Florida Shared-  
13 Use Nonmotorized Trail Network; specifying the  
14 composition of the network; requiring the network to  
15 be included in the Department of Transportation's work  
16 program; declaring the planning, development,  
17 operation, and maintenance of the network to be a  
18 public purpose; authorizing the department to transfer  
19 maintenance responsibilities to certain state agencies  
20 and contract with not-for-profit or private sector  
21 entities to provide maintenance services; authorizing  
22 the department to adopt rules; creating s. 339.82,  
23 F.S.; requiring the department to develop a Shared-Use  
24 Nonmotorized Trail Network Plan; creating s. 339.83,  
25 F.S.; authorizing the department to enter into  
26 concession agreements with not-for-profit or private  
27 sector entities for certain commercial sponsorship  
28 signs, markings, and exhibits; authorizing the  
29 department to contract for the provision of certain

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30 services related to the trail sponsorship program;  
31 authorizing the department to adopt rules; amending s.  
32 373.019, F.S.; revising the definition of the term  
33 "water resource development" to include self-suppliers  
34 under certain circumstances; amending s. 373.036,  
35 F.S.; requiring certain information to be included in  
36 the consolidated annual report for each project  
37 related to water quality or water quantity; amending  
38 s. 373.042, F.S.; requiring the Department of  
39 Environmental Protection or the governing board of a  
40 water management district to establish a minimum flow  
41 or minimum water level for an Outstanding Florida  
42 Spring; requiring the establishment of interim minimum  
43 flows or minimum water levels if minimum flows or  
44 minimum levels have not been adopted; requiring the  
45 application of interim minimum flows or minimum water  
46 levels in water management districts that may affect  
47 an interim minimum flow or minimum water level  
48 established in another water management district;  
49 providing a deadline for development and  
50 implementation of recovery or prevention strategies  
51 under certain circumstances; authorizing the  
52 department to use emergency rulemaking procedures  
53 under certain circumstances; amending s. 373.0421,  
54 F.S.; directing the department and water management  
55 district governing boards to adopt and implement  
56 certain recovery or prevention strategies concurrent  
57 with the adoption of minimum flows and levels;  
58 providing criteria for such recovery or prevention

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59 strategies; requiring amendments to regional water  
60 supply plans to be concurrent with relevant portions  
61 of the recovery or prevention strategy; directing  
62 water management districts to notify the department  
63 when water use permit applications are denied for a  
64 specified reason; providing for the review and update  
65 of regional water supply plans in such cases;  
66 conforming cross-references; creating s. 373.0465,  
67 F.S.; providing legislative intent; defining the term  
68 "Central Florida Water Initiative Area"; requiring the  
69 department, the St. Johns River Water Management  
70 District, the South Florida Water Management District,  
71 the Southwest Florida Water Management District, and  
72 the Department of Agriculture and Consumer Services to  
73 develop and implement a multidistrict regional water  
74 supply plan; providing plan criteria and requirements;  
75 providing applicability; requiring the department to  
76 adopt rules; amending s. 373.1501, F.S.; specifying  
77 authority of the South Florida Water Management  
78 District to allocate quantities of, and assign  
79 priorities for the use of, water within its  
80 jurisdiction; directing the district to provide  
81 recommendations to the United States Army Corps of  
82 Engineers when developing or implementing certain  
83 water control plans or regulation schedules; amending  
84 s. 373.223, F.S.; requiring consumptive use permits  
85 authorizing over a certain amount to be monitored on a  
86 specified basis; requiring the costs of monitoring to  
87 be borne by the permittee; amending s. 373.2234, F.S.;

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88 directing water management district governing boards  
89 to consider the identification of preferred water  
90 supply sources for certain water users; amending s.  
91 373.227, F.S.; prohibiting water management districts  
92 from modifying permitted allocation amounts under  
93 certain circumstances; requiring the water management  
94 districts to adopt rules to promote water conservation  
95 incentives; amending s. 373.233, F.S.; providing  
96 conditions under which the department and water  
97 management district governing boards are directed to  
98 give preference to certain applications; amending s.  
99 373.4591, F.S.; providing priority consideration to  
100 certain public-private partnerships for water storage,  
101 groundwater recharge, and water quality improvements  
102 on private agricultural lands; amending s. 373.4595,  
103 F.S.; revising and providing definitions relating to  
104 the Northern Everglades and Estuaries Protection  
105 Program; clarifying provisions of the Lake Okeechobee  
106 Watershed Protection Program; directing the South  
107 Florida Water Management District to revise certain  
108 rules and provide for a watershed research and water  
109 quality monitoring program; revising provisions for  
110 the Caloosahatchee River Watershed Protection Program  
111 and the St. Lucie River Watershed Protection Program;  
112 revising permitting and annual reporting requirements  
113 relating to the Northern Everglades and Estuaries  
114 Protection Program; providing enforcement provisions  
115 for certain basin management action plans; amending s.  
116 373.536, F.S.; requiring a water management district

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117 to include an annual funding plan in the water  
 118 resource development work program; directing the  
 119 department to post the work program on its website;  
 120 amending s. 373.703, F.S.; authorizing water  
 121 management districts to contract with private  
 122 landowners for water production; amending s. 373.705,  
 123 F.S.; providing first consideration for funding  
 124 assistance to certain water supply development  
 125 projects; requiring governing boards to include  
 126 certain information in their annual budget submittals;  
 127 requiring water management districts to promote  
 128 expanded cost-share criteria for additional  
 129 conservation practices; amending s. 373.707, F.S.;  
 130 authorizing water management districts to provide  
 131 technical and financial assistance to self-suppliers  
 132 and to waive certain construction costs of alternative  
 133 water supply development projects by certain water  
 134 users; amending s. 373.709, F.S.; requiring water  
 135 supply plans to include traditional and alternative  
 136 water supply project options that are technically and  
 137 financially feasible; directing the department to  
 138 include certain funding analyses and project  
 139 explanations in regional water supply planning  
 140 reports; creating part VIII of ch. 373, F.S., entitled  
 141 the "Florida Springs and Aquifer Protection Act";  
 142 creating s. 373.801, F.S.; providing legislative  
 143 findings and intent; creating s. 373.802, F.S.;  
 144 defining terms; creating s. 373.803, F.S.; requiring  
 145 the department to delineate a priority focus area for

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146 each Outstanding Florida Spring by a certain date;  
 147 creating s. 373.805, F.S.; requiring the department or  
 148 a water management district to adopt or revise various  
 149 recovery or prevention strategies under certain  
 150 circumstances by a certain date; providing minimum  
 151 requirements for recovery or prevention strategies for  
 152 Outstanding Florida Springs; authorizing local  
 153 governments to apply for an extension for projects in  
 154 an adopted recovery or prevention strategy; creating  
 155 s. 373.807, F.S.; requiring the department to initiate  
 156 assessments of Outstanding Florida Springs by a  
 157 certain date; requiring the department to develop  
 158 basin management action plans; authorizing local  
 159 governments to apply for an extension for projects in  
 160 an adopted basin management action plan; requiring  
 161 local governments to adopt an urban fertilizer  
 162 ordinance by a certain date; requiring the department,  
 163 the Department of Health, and local governments to  
 164 identify onsite sewage treatment and disposal systems  
 165 within each priority focus area; requiring local  
 166 governments to develop onsite sewage treatment and  
 167 disposal system remediation plans; prohibiting  
 168 property owners with identified onsite sewage  
 169 treatment and disposal systems from being required to  
 170 pay certain costs; creating s. 373.811, F.S.;  
 171 specifying prohibited activities within a priority  
 172 focus area of an Outstanding Florida Spring; creating  
 173 s. 373.813, F.S.; providing rulemaking authority;  
 174 creating s. 373.815, F.S.; requiring the department to

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175 submit annual reports; amending s. 403.061, F.S.;

176 requiring the department to create a consolidated

177 water resources work plan; directing the department to

178 adopt by rule a specific surface water classification

179 to protect surface waters used for treated potable

180 water supply; providing criteria for such rule;

181 authorizing the reclassification of surface waters

182 used for treated potable water supply notwithstanding

183 such rule; requiring the department to create and

184 maintain a web-based interactive map; creating s.

185 403.0616, F.S.; creating the Florida Water Resources

186 Advisory Council to provide the Legislature with

187 recommendations for projects submitted by governmental

188 entities; requiring the council to consolidate various

189 reports to enhance the water resources of this state;

190 requiring the department to adopt rules; creating s.

191 403.0617, F.S.; requiring the department to adopt

192 rules to fund certain pilot projects; amending s.

193 403.0623, F.S.; requiring the department to establish

194 certain standards to ensure statewide consistency;

195 requiring the department to maintain a centralized

196 database for testing results and analysis of water

197 quantity and quality data; amending s. 403.861, F.S.;

198 directing the department to add treated potable water

199 supply as a designated use of a surface water segment

200 under certain circumstances; providing an effective

201 date.

202

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

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204

205 Section 1. Paragraph (g) is added to subsection (11) of

206 section 259.032, Florida Statutes, to read:

207 259.032 Conservation and Recreation Lands Trust Fund;

208 purpose.—

209 (11)

210 (g) In order to ensure that the public has knowledge of and

211 access to conservation lands, as defined in s. 253.034(2)(c),

212 the department shall publish, update, and maintain a database of

213 such lands where public access is compatible with conservation

214 and recreation purposes.

215 1. By July 1, 2016, the database must be available to the

216 public online and must include, at a minimum, the location,

217 types of allowable recreational opportunities, points of public

218 access, facilities or other amenities, restrictions, and any

219 other information the department deems appropriate to increase

220 public awareness of recreational opportunities on conservation

221 lands. Such data must be electronically accessible, searchable,

222 and downloadable in a generally acceptable format.

223 2. The department, through its own efforts or through

224 partnership with a third-party entity, shall create an

225 application downloadable on mobile devices to be used to locate

226 state lands available for public access using the user's

227 locational information or based upon an activity of interest.

228 3. The database and application must include information

229 for all state conservation lands to which the public has a right

230 of access for recreational purposes. Beginning January 1, 2018,

231 to the greatest extent practicable, the database shall include

232 similar information for lands owned by federal and local

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233 government entities that allow access for recreational purposes.

234 4. By January 1 of each year, the department shall provide  
 235 a report to the Governor, the President of the Senate, and the  
 236 Speaker of the House of Representatives describing the  
 237 percentage of public lands acquired under this chapter to which  
 238 the public has access and efforts undertaken by the department  
 239 to increase public access to such lands.

240 Section 2. Section 260.0144, Florida Statutes, is amended  
 241 to read:

242 260.0144 Sponsorship of state greenways and trails.—The  
 243 department may enter into a concession agreement with a not-for-  
 244 profit entity or private sector business or entity for  
 245 commercial sponsorship to be displayed on state greenway and  
 246 trail facilities not included within the Shared-Use Nonmotorized  
 247 Trail Network established in chapter 339 or property specified  
 248 in this section. The department may establish the cost for  
 249 entering into a concession agreement.

250 (1) A concession agreement shall be administered by the  
 251 department and must include the requirements found in this  
 252 section.

253 (2) (a) Space for a commercial sponsorship display may be  
 254 provided through a concession agreement on certain state-owned  
 255 greenway or trail facilities or property.

256 (b) Signage or displays erected under this section shall  
 257 comply with the provisions of s. 337.407 and chapter 479, and  
 258 shall be limited as follows:

259 1. One large sign or display, not to exceed 16 square feet  
 260 in area, may be located at each trailhead or parking area.

261 2. One small sign or display, not to exceed 4 square feet

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262 in area, may be located at each designated trail public access  
 263 point.

264 (c) Before installation, each name or sponsorship display  
 265 must be approved by the department.

266 (d) The department shall ensure that the size, color,  
 267 materials, construction, and location of all signs are  
 268 consistent with the management plan for the property and the  
 269 standards of the department, do not intrude on natural and  
 270 historic settings, and contain only a logo selected by the  
 271 sponsor and the following sponsorship wording:

272 ... (Name of the sponsor) ... proudly sponsors the costs  
 273 of maintaining the ... (Name of the greenway or  
 274 trail) ...

275  
 276  
 277 ~~(e) Sponsored state greenways and trails are authorized at~~  
 278 ~~the following facilities or property:~~

279 1. ~~Florida Keys Overseas Heritage Trail.~~

280 2. ~~Blackwater Heritage Trail.~~

281 3. ~~Tallahassee-St. Marks Historic Railroad State Trail.~~

282 4. ~~Nature Coast State Trail.~~

283 5. ~~Withlacoochee State Trail.~~

284 6. ~~General James A. Van Fleet State Trail.~~

285 7. ~~Palatka-Lake Butler State Trail.~~

286 (e)-(f) The department may enter into commercial sponsorship  
 287 agreements for other state greenways or trails as authorized in  
 288 this section. A qualified entity that desires to enter into a  
 289 commercial sponsorship agreement shall apply to the department  
 290 on forms adopted by department rule.

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291 (f)~~(g)~~ All costs of a display, including development,  
292 construction, installation, operation, maintenance, and removal  
293 costs, shall be paid by the concessionaire.

294 (3) A concession agreement shall be for a minimum of 1  
295 year, but may be for a longer period under a multiyear  
296 agreement, and may be terminated for just cause by the  
297 department upon 60 days' advance notice. Just cause for  
298 termination of a concession agreement includes, but is not  
299 limited to, violation of the terms of the concession agreement  
300 or any provision of this section.

301 (4) Commercial sponsorship pursuant to a concession  
302 agreement is for public relations or advertising purposes of the  
303 not-for-profit entity or private sector business or entity, and  
304 may not be construed by that not-for-profit entity or private  
305 sector business or entity as having a relationship to any other  
306 actions of the department.

307 (5) This section does not create a proprietary or  
308 compensable interest in any sign, display site, or location.

309 (6) Proceeds from concession agreements shall be  
310 distributed as follows:

311 (a) Eighty-five percent shall be deposited into the  
312 appropriate department trust fund that is the source of funding  
313 for management and operation of state greenway and trail  
314 facilities and properties.

315 (b) Fifteen percent shall be deposited into the State  
316 Transportation Trust Fund for use in the Traffic and Bicycle  
317 Safety Education Program and the Safe Paths to School Program  
318 administered by the Department of Transportation.

319 (7) The department may adopt rules to administer this

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320 section.

321 Section 3. Subsections (3) and (4) of section 335.065,  
322 Florida Statutes, are amended to read:

323 335.065 Bicycle and pedestrian ways along state roads and  
324 transportation facilities.—

325 (3) The department, in cooperation with the Department of  
326 Environmental Protection, shall establish a statewide integrated  
327 system of bicycle and pedestrian ways in such a manner as to  
328 take full advantage of any such ways which are maintained by any  
329 governmental entity. ~~The department may enter into a concession~~  
330 ~~agreement with a not-for-profit entity or private sector~~  
331 ~~business or entity for commercial sponsorship displays on~~  
332 ~~multiuse trails and related facilities and use any concession~~  
333 ~~agreement revenues for the maintenance of the multiuse trails~~  
334 ~~and related facilities. Commercial sponsorship displays are~~  
335 ~~subject to the requirements of the Highway Beautification Act of~~  
336 ~~1965 and all federal laws and agreements, when applicable. For~~  
337 ~~the purposes of this section, bicycle facilities may be~~  
338 ~~established as part of or separate from the actual roadway and~~  
339 ~~may utilize existing road rights-of-way or other rights-of-way~~  
340 ~~or easements acquired for public use.~~

341 ~~(a) A concession agreement shall be administered by the~~  
342 ~~department and must include the requirements of this section.~~

343 ~~(b)1. Signage or displays erected under this section shall~~  
344 ~~comply with s. 337.407 and chapter 479 and shall be limited as~~  
345 ~~follows:~~

346 ~~a. One large sign or display, not to exceed 16 square feet~~  
347 ~~in area, may be located at each trailhead or parking area.~~

348 ~~b. One small sign or display, not to exceed 4 square feet~~

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349 in area, may be located at each designated trail public access  
350 point.

351 ~~2. Before installation, each name or sponsorship display~~  
352 ~~must be approved by the department.~~

353 ~~3. The department shall ensure that the size, color,~~  
354 ~~materials, construction, and location of all signs are~~  
355 ~~consistent with the management plan for the property and the~~  
356 ~~standards of the department, do not intrude on natural and~~  
357 ~~historic settings, and contain only a logo selected by the~~  
358 ~~sponsor and the following sponsorship wording:~~

359  
360 ~~...(Name of the sponsor)... proudly sponsors the costs~~  
361 ~~of maintaining the ...(Name of the greenway or~~  
362 ~~trail)....~~

363  
364 ~~4. All costs of a display, including development,~~  
365 ~~construction, installation, operation, maintenance, and removal~~  
366 ~~costs, shall be paid by the concessionaire.~~

367 ~~(c) A concession agreement shall be for a minimum of 1~~  
368 ~~year, but may be for a longer period under a multiyear~~  
369 ~~agreement, and may be terminated for just cause by the~~  
370 ~~department upon 60 days' advance notice. Just cause for~~  
371 ~~termination of a concession agreement includes, but is not~~  
372 ~~limited to, violation of the terms of the concession agreement~~  
373 ~~or this section.~~

374 ~~(4)(a) The department may use appropriated funds to support~~  
375 ~~the establishment of a statewide system of interconnected~~  
376 ~~multiuse trails and to pay the costs of planning, land~~  
377 ~~acquisition, design, and construction of such trails and related~~

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378 facilities. The department shall give funding priority to  
379 projects that:

380 ~~1. Are identified by the Florida Greenways and Trails~~  
381 ~~Council as a priority within the Florida Greenways and Trails~~  
382 ~~System under chapter 260.~~

383 ~~2. Support the transportation needs of bicyclists and~~  
384 ~~pedestrians.~~

385 ~~3. Have national, statewide, or regional importance.~~

386 ~~4. Facilitate an interconnected system of trails by~~  
387 ~~completing gaps between existing trails.~~

388 ~~(b) A project funded under this subsection shall:~~

389 ~~1. Be included in the department's work program developed~~  
390 ~~in accordance with s. 339.135.~~

391 ~~2. Be operated and maintained by an entity other than the~~  
392 ~~department upon completion of construction. The department is~~  
393 ~~not obligated to provide funds for the operation and maintenance~~  
394 ~~of the project.~~

395 Section 4. Section 339.81, Florida Statutes, is created to  
396 read:

397 339.81 Florida Shared-Use Nonmotorized Trail Network.—

398 (1) The Legislature finds that increasing demands continue  
399 to be placed on the state's transportation system by a growing  
400 economy, continued population growth, and increasing tourism.  
401 The Legislature also finds that significant challenges exist in  
402 providing additional capacity to the conventional transportation  
403 system and will require enhanced accommodation of alternative  
404 travel modes to meet the needs of residents and visitors. The  
405 Legislature further finds that improving bicyclist and  
406 pedestrian safety for both residents and visitors remains a high

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407 priority. Therefore, the Legislature declares that the  
 408 development of a nonmotorized trail network will increase  
 409 mobility and recreational alternatives for residents and  
 410 visitors of this state, enhance economic prosperity, enrich  
 411 quality of life, enhance safety, and reflect responsible  
 412 environmental stewardship. To that end, it is the intent of the  
 413 Legislature that the department make use of its expertise in  
 414 efficiently providing transportation projects to develop the  
 415 Florida Shared-Use Nonmotorized Trail Network, consisting of a  
 416 statewide network of nonmotorized trails which allows  
 417 nonmotorized vehicles and pedestrians to access a variety of  
 418 origins and destinations with limited exposure to motorized  
 419 vehicles.

420 (2) The Florida Shared-Use Nonmotorized Trail Network is  
 421 created as a component of the Florida Greenways and Trails  
 422 System established in chapter 260. The statewide network  
 423 consists of multiuse trails or shared-use paths physically  
 424 separated from motor vehicle traffic and constructed with  
 425 asphalt, concrete, or another hard surface which, by virtue of  
 426 design, location, extent of connectivity or potential  
 427 connectivity, and allowable uses, provides nonmotorized  
 428 transportation opportunities for bicyclists and pedestrians  
 429 statewide between and within a wide range of points of origin  
 430 and destinations, including, but not limited to, communities,  
 431 conservation areas, state parks, beaches, and other natural or  
 432 cultural attractions for a variety of trip purposes, including  
 433 work, school, shopping, and other personal business, as well as  
 434 social, recreational, and personal fitness purposes.

435 (3) Network components do not include sidewalks, nature

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436 trails, loop trails wholly within a single park or natural area,  
 437 or on-road facilities, such as bicycle lanes or routes other  
 438 than:

439 (a) On-road facilities that are no longer than one-half  
 440 mile connecting two or more nonmotorized trails, if the  
 441 provision of a non-motorized trail without the use of the on-  
 442 road facility is not feasible, and if such on-road facilities  
 443 are signed and marked for nonmotorized use; or

444 (b) On-road components of the Florida Keys Overseas  
 445 Heritage Trail.

446 (4) The planning, development, operation, and maintenance  
 447 of the Florida Shared-Use Nonmotorized Trail Network is declared  
 448 to be a public purpose, and the department, together with other  
 449 agencies of this state and all counties, municipalities, and  
 450 special districts of this state, may spend public funds for such  
 451 purposes and accept gifts and grants of funds, property, or  
 452 property rights from public or private sources to be used for  
 453 such purposes.

454 (5) The department shall include the Florida Shared-Use  
 455 Nonmotorized Trail Network in its work program developed  
 456 pursuant to s. 339.135. For purposes of funding and maintaining  
 457 projects within the network, the department shall allocate in  
 458 its program and resource plan a minimum of \$50 million annually,  
 459 beginning in the 2015-2016 fiscal year.

460 (6) The department may enter into a memorandum of agreement  
 461 with a local government or other agency of the state to transfer  
 462 maintenance responsibilities of an individual network component.  
 463 The department may contract with a not-for-profit entity or  
 464 private sector business or entity to provide maintenance

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465 services on an individual network component.

466 (7) The department may adopt rules to aid in the  
467 development and maintenance of components of the network.

468 Section 5. Section 339.82, Florida Statutes, is created to  
469 read:

470 339.82 Shared-Use Nonmotorized Trail Network Plan.—

471 (1) The department shall develop a Shared-Use Nonmotorized  
472 Trail Network Plan in coordination with the Department of  
473 Environmental Protection, metropolitan planning organizations,  
474 affected local governments and public agencies, and the Florida  
475 Greenways and Trails Council. The plan must be consistent with  
476 the Florida Greenways and Trails Plan developed under s. 260.014  
477 and must be updated at least once every 5 years.

478 (2) The Shared-Use Nonmotorized Trail Network Plan must  
479 include all of the following:

480 (a) A needs assessment, including, but not limited to, a  
481 comprehensive inventory and analysis of existing trails that may  
482 be considered for inclusion in the Shared-Use Nonmotorized Trail  
483 Network.

484 (b) A project prioritization process that includes  
485 assigning funding priority to projects that:

486 1. Are identified by the Florida Greenways and Trails  
487 Council as a priority within the Florida Greenways and Trails  
488 System under chapter 260;

489 2. Facilitate an interconnected network of trails by  
490 completing gaps between existing facilities; and

491 3. Maximize use of federal, local, and private funding and  
492 support mechanisms, including, but not limited to, donation of  
493 funds, real property, and maintenance responsibilities.

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494 (c) A map illustrating existing and planned facilities and  
495 identifying critical gaps between facilities.

496 (d) A finance plan based on reasonable projections of  
497 anticipated revenues, including both 5-year and 10-year cost-  
498 feasible components.

499 (e) Performance measures that include quantifiable  
500 increases in trail network access and connectivity.

501 (f) A timeline for the completion of the base network using  
502 new and existing data from the department, the Department of  
503 Environmental Protection, and other sources.

504 (g) A marketing plan prepared in consultation with the  
505 Florida Tourism Industry Marketing Corporation.

506 Section 6. Section 339.83, Florida Statutes, is created to  
507 read:

508 339.83 Sponsorship of Shared-Use Nonmotorized Trails.—

509 (1) The department may enter into a concession agreement  
510 with a not-for-profit entity or private sector business or  
511 entity for commercial sponsorship signs, pavement markings, and  
512 exhibits on nonmotorized trails and related facilities  
513 constructed as part of the Shared-Use Nonmotorized Trail  
514 Network. The concession agreement may also provide for  
515 recognition of trail sponsors in any brochure, map, or website  
516 providing trail information. Trail websites may provide links to  
517 sponsors. Revenue from such agreements may be used for the  
518 maintenance of the nonmotorized trails and related facilities.

519 (a) A concession agreement shall be administered by the  
520 department.

521 (b)1. Signage, pavement markings, or exhibits erected  
522 pursuant to this section must comply with s. 337.407 and chapter



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523 479 and are limited as follows:

524 a. One large sign, pavement marking, or exhibit, not to  
525 exceed 16 square feet in area, may be located at each trailhead  
526 or parking area.

527 b. One small sign, pavement marking, or exhibit, not to  
528 exceed 4 square feet in area, may be located at each designated  
529 trail public access point where parking is not provided.

530 c. Pavement markings denoting specified distances must be  
531 located at least 1 mile apart.

532 2. Before installation, each sign, pavement marking, or  
533 exhibit must be approved by the department.

534 3. The department shall ensure that the size, color,  
535 materials, construction, and location of all signs, pavement  
536 markings, and exhibits are consistent with the management plan  
537 for the property and the standards of the department, do not  
538 intrude on natural and historic settings, and contain a logo  
539 selected by the sponsor and the following sponsorship wording:

540 ... (Name of the sponsor) ... proudly sponsors the costs  
541 of maintaining the ... (Name of the greenway or  
542 trail) ...

543 4. Exhibits may provide additional information and  
544 materials, including, but not limited to, maps and brochures for  
545 trail user services related or proximate to the trail. Pavement  
546 markings may display mile marker information.

547 5. The costs of a sign, pavement marking, or exhibit,  
548 including development, construction, installation, operation,  
549 maintenance, and removal costs, shall be paid by the  
550   
551

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552 concessionaire.

553 (c) A concession agreement shall be for a minimum of 1  
554 year, but may be for a longer period under a multiyear  
555 agreement, and may be terminated for just cause by the  
556 department upon 60 days' advance notice. Just cause for  
557 termination of a concession agreement includes, but is not  
558 limited to, violation of the terms of the concession agreement  
559 or this section.

560 (2) Pursuant to s. 287.057, the department may contract for  
561 the provision of services related to the trail sponsorship  
562 program, including recruitment and qualification of businesses,  
563 review of applications, permit issuance, and fabrication,  
564 installation, and maintenance of signs, pavement markings, and  
565 exhibits. The department may reject all proposals and seek  
566 another request for proposals or otherwise perform the work. The  
567 contract may allow the contractor to retain a portion of the  
568 annual fees as compensation for its services.

569 (3) This section does not create a proprietary or  
570 compensable interest in any sponsorship site or location for any  
571 permittee, and the department may terminate permits or change  
572 locations of sponsorship sites as it determines necessary for  
573 construction or improvement of facilities.

574 (4) The department may adopt rules to establish  
575 requirements for qualification of businesses, qualification and  
576 location of sponsorship sites, and permit applications and  
577 processing. The department may adopt rules to establish other  
578 criteria necessary to implement this section and to provide for  
579 variances when necessary to serve the interest of the public or  
580 when required to ensure equitable treatment of program

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581 participants.

582 Section 7. Subsection (24) of section 373.019, Florida  
583 Statutes, is amended to read:

584 373.019 Definitions.—When appearing in this chapter or in  
585 any rule, regulation, or order adopted pursuant thereto, the  
586 term:

587 (24) “Water resource development” means the formulation and  
588 implementation of regional water resource management strategies,  
589 including the collection and evaluation of surface water and  
590 groundwater data; structural and nonstructural programs to  
591 protect and manage water resources; the development of regional  
592 water resource implementation programs; the construction,  
593 operation, and maintenance of major public works facilities to  
594 provide for flood control, surface and underground water  
595 storage, and groundwater recharge augmentation; and related  
596 technical assistance to local governments, ~~and to~~ government-  
597 owned and privately owned water utilities, and self-suppliers to  
598 the extent assistance to self-suppliers promotes the policies as  
599 set forth in s. 373.016.

600 Section 8. Paragraph (b) of subsection (7) of section  
601 373.036, Florida Statutes, is amended, present paragraphs (d)  
602 and (e) of subsection (7) are redesignated as paragraphs (e) and  
603 (f), respectively, and a new paragraph (d) is added to that  
604 subsection, to read:

605 373.036 Florida water plan; district water management  
606 plans.—

607 (7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

608 (b) The consolidated annual report shall contain the  
609 following elements, as appropriate to that water management

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610 district:

611 1. A district water management plan annual report or the  
612 annual work plan report allowed in subparagraph (2) (e) 4.

613 2. The department-approved minimum flows and levels annual  
614 priority list and schedule required by s. 373.042(3) ~~or~~  
615 ~~373.042(2)~~.

616 3. The annual 5-year capital improvements plan required by  
617 s. 373.536(6) (a) 3.

618 4. The alternative water supplies annual report required by  
619 s. 373.707(8) (n) .

620 5. The final annual 5-year water resource development work  
621 program required by s. 373.536(6) (a) 4.

622 6. The Florida Forever Water Management District Work Plan  
623 annual report required by s. 373.199(7) .

624 7. The mitigation donation annual report required by s.  
625 373.414(1) (b) 2.

626 (d) The consolidated annual report must contain information  
627 on all projects related to water quality or water quantity as  
628 part of a 5-year work program, including:

629 1. A list of all specific projects identified to implement  
630 a basin management action plan or a recovery or prevention  
631 strategy;

632 2. A grade for each watershed, water body, or water segment  
633 in which a project is located representing the level of  
634 impairment and violations of adopted or interim minimum flow or  
635 minimum water level. The grading system must reflect the  
636 severity of the impairment of the watershed, waterbody, or water  
637 segment;

638 3. A priority ranking for each listed project for which

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639 state funding through the water resources work program is  
 640 requested, which must be made available to the public for  
 641 comment at least 30 days before submission of the consolidated  
 642 annual report;

643 4. The estimated cost for each listed project;  
 644 5. The estimated completion date for each listed project;  
 645 6. The source and amount of financial assistance to be made  
 646 available by the department, a water management district, or  
 647 other entity for each listed project; and

648 7. A quantitative estimate of each listed project's benefit  
 649 to the watershed, water body, or water segment in which it is  
 650 located.

651 Section 9. Subsection (1) and present subsections (2) and  
 652 (6) of section 373.042, Florida Statutes, are amended, present  
 653 subsections (2) through (6) of that section are redesignated as  
 654 subsections (3) through (7), respectively, and a new subsection  
 655 (2) is added to that section, to read:

656 373.042 Minimum flows and levels.—

657 (1) Within each section, or within the water management  
 658 district as a whole, the department or the governing board shall  
 659 establish the following:

660 (a) Minimum flow for all surface watercourses in the area.  
 661 The minimum flow for a given watercourse ~~is shall be~~ the limit  
 662 at which further withdrawals would be significantly harmful to  
 663 the water resources or ecology of the area.

664 (b) Minimum water level. The minimum water level ~~is shall~~  
 665 ~~be~~ the level of groundwater in an aquifer and the level of  
 666 surface water at which further withdrawals would be  
 667 significantly harmful to the water resources or ecology of the

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668 area.

669 (c) Minimum flow or minimum water level for an Outstanding  
 670 Florida Spring, as defined in s. 373.802. The minimum flow or  
 671 minimum water level are the limit and level, respectively, at  
 672 which further withdrawals would be harmful to the water  
 673 resources or ecology of the area.

674  
 675 The minimum flow and minimum water level shall be calculated by  
 676 the department and the governing board using the best  
 677 information available. When appropriate, minimum flows and  
 678 minimum water levels may be calculated to reflect seasonal  
 679 variations. The department and the governing board shall ~~also~~  
 680 consider, and at their discretion may provide for, the  
 681 protection of nonconsumptive uses in the establishment of  
 682 minimum flows and minimum water levels.

683 (2) (a) Until such time as a minimum flow or minimum water  
 684 level is adopted for an Outstanding Florida Spring, the interim  
 685 minimum flow or minimum water level for such spring shall be  
 686 determined by using the best existing and available information.  
 687 The interim minimum flow or minimum water level is the flow or  
 688 water level exceeded 67 percent of the time based upon an  
 689 analysis of estimated long-term conditions. By July 1, 2016, the  
 690 districts shall use reasonable calculations to estimate the  
 691 long-term median flow or water level and the flow or water level  
 692 that would be exceeded 67 percent of the time. The analysis may  
 693 include construction of a flow or water level duration curve, an  
 694 analysis of the flow or water level at any point in the spring,  
 695 and historic data to extrapolate the values or other statistical  
 696 methods to estimate the long-term median flow or water level

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697 that would be exceeded 67 percent of the time.

698 (b) If a minimum flow or minimum water level has been  
 699 established but not yet adopted for an Outstanding Florida  
 700 Spring, a water management district shall use the established  
 701 minimum flow or minimum water level, instead of the minimum flow  
 702 or minimum water level established by the procedure in paragraph  
 703 (a), as the interim minimum flow or minimum water level until  
 704 the adoption of a minimum flow or minimum water level. Long-term  
 705 or short-term seasonal or annual variations in flows or water  
 706 levels of an Outstanding Florida Spring due to factors other  
 707 than water withdrawals are not considered violations of an  
 708 interim minimum flow or minimum water level.

709 (c) For Outstanding Florida Springs identified on a water  
 710 management district's priority list developed pursuant to  
 711 subsection (3) which have the potential to be affected by  
 712 withdrawals in an adjacent district, the interim minimum flow or  
 713 minimum water level shall be applied by the adjacent district or  
 714 districts. By July 1, 2017, the adjacent districts and the  
 715 department shall collaboratively develop and implement a  
 716 recovery or prevention strategy for an Outstanding Florida  
 717 Spring not meeting an adopted or interim minimum flow or minimum  
 718 water level.

719 (d) The Legislature finds that the failure to adopt minimum  
 720 flows and minimum water levels or recovery or prevention  
 721 strategies for Outstanding Florida Springs has resulted in an  
 722 immediate danger to the public health, safety, and welfare and  
 723 that immediate action must be taken to address the condition of  
 724 Outstanding Florida Springs. The department may use emergency  
 725 rulemaking provisions pursuant to s. 120.54(4) to adopt interim

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726 minimum flows and minimum water levels under this subsection and  
 727 recovery or prevention strategies concurrent with an interim  
 728 minimum flow or minimum water level pursuant to s.  
 729 373.805(2) (b). For purposes of this section, an interim minimum  
 730 flow or minimum water level and a recovery or prevention  
 731 strategy shall remain in effect until January 1, 2018, and may  
 732 not be renewable, except as otherwise provided in s.  
 733 120.54(4) (c).

734 (3)-(2) By November 15, 1997, and annually thereafter, each  
 735 water management district shall submit to the department for  
 736 review and approval a priority list and schedule for the  
 737 establishment of minimum flows and levels for surface  
 738 watercourses, aquifers, and surface waters within the district.  
 739 The priority list and schedule shall identify those listed water  
 740 bodies for which the district will voluntarily undertake  
 741 independent scientific peer review; any reservations proposed by  
 742 the district to be established pursuant to s. 373.223(4); and  
 743 those listed water bodies that have the potential to be affected  
 744 by withdrawals in an adjacent district for which the  
 745 department's adoption of a reservation pursuant to s. 373.223(4)  
 746 or a minimum flow or level pursuant to subsection (1) may be  
 747 appropriate. By March 1, 2006, and annually thereafter, each  
 748 water management district shall include its approved priority  
 749 list and schedule in the consolidated annual report required by  
 750 s. 373.036(7). The priority list shall be based upon the  
 751 importance of the waters to the state or region and the  
 752 existence of or potential for significant harm to the water  
 753 resources or ecology of the state or region, and shall include  
 754 those waters which are experiencing or may reasonably be

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755 expected to experience adverse impacts. Each water management  
 756 district's priority list and schedule shall include all first  
 757 magnitude springs, and all second magnitude springs within state  
 758 or federally owned lands purchased for conservation purposes.  
 759 The specific schedule for establishment of spring minimum flows  
 760 and levels shall be commensurate with the existing or potential  
 761 threat to spring flow from consumptive uses. Springs within the  
 762 Suwannee River Water Management District, or second magnitude  
 763 springs in other areas of the state, need not be included on the  
 764 priority list if the water management district submits a report  
 765 to the Department of Environmental Protection demonstrating that  
 766 adverse impacts are not now occurring nor are reasonably  
 767 expected to occur from consumptive uses during the next 20  
 768 years. The priority list and schedule is not subject to any  
 769 proceeding pursuant to chapter 120. Except as provided in  
 770 subsection (4) ~~(3)~~, the development of a priority list and  
 771 compliance with the schedule for the establishment of minimum  
 772 flows and levels pursuant to this subsection satisfies the  
 773 requirements of subsection (1).

774 (7) ~~(6)~~ If a petition for administrative hearing is filed  
 775 under chapter 120 challenging the establishment of a minimum  
 776 flow or level, the report of an independent scientific peer  
 777 review conducted under subsection (5) ~~(4)~~ is admissible as  
 778 evidence in the final hearing, and the administrative law judge  
 779 must render the order within 120 days after the filing of the  
 780 petition. The time limit for rendering the order shall not be  
 781 extended except by agreement of all the parties. To the extent  
 782 that the parties agree to the findings of the peer review, they  
 783 may stipulate that those findings be incorporated as findings of

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784 fact in the final order.

785 Section 10. Section 373.0421, Florida Statutes, is amended  
 786 to read:

787 373.0421 Establishment and implementation of minimum flows  
 788 and levels.—

789 (1) ESTABLISHMENT.—

790 (a) *Considerations.*—When establishing minimum flows and  
 791 minimum water levels pursuant to s. 373.042, the department or  
 792 governing board shall consider changes and structural  
 793 alterations to watersheds, surface waters, and aquifers and the  
 794 effects such changes or alterations have had, and the  
 795 constraints such changes or alterations have placed, on the  
 796 hydrology of an affected watershed, surface water, or aquifer,  
 797 provided that nothing in this paragraph shall allow significant  
 798 harm as provided by s. 373.042(1)(a) and (b), or harm as  
 799 provided by s. 373.042(1)(c), caused by withdrawals.

800 (b) *Exclusions.*—

801 1. The Legislature recognizes that certain water bodies no  
 802 longer serve their historical hydrologic functions. The  
 803 Legislature also recognizes that recovery of these water bodies  
 804 to historical hydrologic conditions may not be economically or  
 805 technically feasible, and that such recovery effort could cause  
 806 adverse environmental or hydrologic impacts. Accordingly, the  
 807 department or governing board may determine that setting a  
 808 minimum flow or level for such a water body based on its  
 809 historical condition is not appropriate.

810 2. The department or the governing board is not required to  
 811 establish minimum flows or levels pursuant to s. 373.042 for  
 812 surface water bodies less than 25 acres in area, unless the

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813 water body or bodies, individually or cumulatively, have  
814 significant economic, environmental, or hydrologic value.

815 3. The department or the governing board shall not set  
816 minimum flows or levels pursuant to s. 373.042 for surface water  
817 bodies constructed prior to the requirement for a permit, or  
818 pursuant to an exemption, a permit, or a reclamation plan which  
819 regulates the size, depth, or function of the surface water body  
820 under the provisions of this chapter, chapter 378, or chapter  
821 403, unless the constructed surface water body is of significant  
822 hydrologic value or is an essential element of the water  
823 resources of the area.

824

825 The exclusions of this paragraph shall not apply to the  
826 Everglades Protection Area, as defined in s. 373.4592(2)(i).

827 (2) If the existing flow or level in a water body is below,  
828 or is projected to fall within 20 years below, the applicable  
829 minimum flow or level established pursuant to s. 373.042, the  
830 department or governing board, concurrent with the adoption of  
831 the minimum flow or level and as part of the regional water  
832 supply plan described in s. 373.709, shall adopt and  
833 ~~expeditiously~~ implement a recovery or prevention strategy, which  
834 includes the development of additional water supplies and other  
835 actions, consistent with the authority granted by this chapter,  
836 to:

837 (a) Achieve recovery to the established minimum flow or  
838 level as soon as practicable; or

839 (b) Prevent the existing flow or level from falling below  
840 the established minimum flow or level.

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842 The recovery or prevention strategy shall include phasing or a  
843 timetable which will allow for the provision of sufficient water  
844 supplies for all existing and projected reasonable-beneficial  
845 uses, including development of additional water supplies and  
846 implementation of conservation and other efficiency measures  
847 concurrent with, to the maximum extent practical, and to offset,  
848 reductions in permitted withdrawals, consistent with ~~the~~  
849 ~~provisions of~~ this chapter. The recovery or prevention strategy  
850 may not depend solely on water shortage restrictions declared  
851 pursuant to s. 373.175 or s. 373.246.

852 (3) In order to ensure that sufficient water is available  
853 for all existing and future reasonable-beneficial uses and the  
854 natural systems, the applicable regional water supply plan  
855 prepared pursuant to s. 373.709 shall be amended to include any  
856 water supply development projects and water resource development  
857 projects identified in a recovery or prevention strategy. Such  
858 amendment shall be approved concurrently with relevant portions  
859 of the recovery or prevention strategy.

860 (4) The water management district shall notify the  
861 department if an application for a water use permit is denied  
862 based upon the impact that the use will have on an adopted  
863 minimum flow or minimum water level. Upon receipt of such  
864 notice, the department shall, as soon as practicable and in  
865 cooperation with the water management district, conduct a review  
866 of the applicable regional water supply plan prepared pursuant  
867 to s. 373.709. Such review shall include an assessment by the  
868 department of the adequacy of the plan to meet the legislative  
869 intent of s. 373.705(2)(b) that sufficient water be available  
870 for all existing and future reasonable-beneficial uses and the

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871 natural systems and that the adverse effects of competition for  
 872 water supplies be avoided. If the department determines, based  
 873 upon this review, that the regional water supply plan does not  
 874 adequately address the legislative intent of s. 373.705(2)(b),  
 875 the water management district shall immediately initiate an  
 876 update of the plan consistent with s. 373.709.

877 ~~(5)(3)~~ The provisions of this section are supplemental to  
 878 any other specific requirements or authority provided by law.  
 879 Minimum flows and levels shall be reevaluated periodically and  
 880 revised as needed.

881 Section 11. Section 373.0465, Florida Statutes, is created  
 882 to read:

883 373.0465 Central Florida Water Initiative.-

884 (1) The Legislature finds that:

885 (a) Historically, the Floridan Aquifer system has supplied  
 886 the vast majority of the water used in the Central Florida  
 887 Coordination Area.

888 (b) Because the boundaries of the St. Johns River Water  
 889 Management District, the South Florida Water Management  
 890 District, and the Southwest Florida Water Management District  
 891 meet within the Central Florida Coordination Area, the three  
 892 districts and the Department of Environmental Protection have  
 893 worked cooperatively to determine that the Floridan Aquifer  
 894 system is locally approaching the sustainable limits of use and  
 895 are exploring the need to develop sources of water to meet the  
 896 long-term water needs of the area.

897 (c) The Central Florida Water Initiative, a collaborative  
 898 process involving the Department of Environmental Protection,  
 899 the St. Johns River Water Management District, the South Florida

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900 Water Management District, the Southwest Florida Water  
 901 Management District, the Department of Agriculture and Consumer  
 902 Services, regional public water supply utilities, and other  
 903 stakeholders, has developed an initial framework, as set forth  
 904 in the Central Florida Water Initiative Guiding Document of  
 905 January 30, 2015, for a unified process to address the current  
 906 and long-term water supply needs of Central Florida without  
 907 causing harm to the water resources and associated natural  
 908 systems.

909 (d) Developing water sources as an alternative to continued  
 910 reliance on the Floridan Aquifer will benefit existing and  
 911 future water users and natural systems beyond the boundaries of  
 912 the Central Florida Water Initiative.

913 (2) (a) As used in this section, the term "Central Florida  
 914 Water Initiative Area" means all of Orange, Osceola, Polk, and  
 915 Seminole Counties, and southern Lake County, as designated by  
 916 the Central Florida Water Initiative Guiding Document of January  
 917 30, 2015.

918 (b) The department, the St. Johns River Water Management  
 919 District, the South Florida Water Management District, the  
 920 Southwest Florida Water Management District, and the Department  
 921 of Agriculture and Consumer Services shall:

922 1. Provide for a continuation of the collaborative process  
 923 in the Central Florida Water Initiative Area among the state  
 924 agencies, affected water management districts, regional public  
 925 water supply utilities, and other stakeholders.

926 2. Build upon the guiding principles and goals set forth in  
 927 the Central Florida Water Initiative Guiding Document of January  
 928 30, 2015, and the work that has already been accomplished by the

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929 Central Florida Water Initiative participants.

930 3. Develop and implement, as set forth in the Central  
 931 Florida Water Initiative Guiding Document of January 30, 2015, a  
 932 single multidistrict regional water supply plan, including any  
 933 needed recovery or prevention strategies and a list of water  
 934 resource or water supply development projects.

935 4. Provide for a single hydrologic planning model to assess  
 936 the availability of groundwater in the Central Florida Water  
 937 Initiative Area.

938 (c) In developing the water supply planning program  
 939 consistent with the goals set forth in this subsection, the  
 940 department, the South Florida Water Management District, the  
 941 Southwest Florida Water Management District, the St. Johns River  
 942 Water Management District, and the Department of Agriculture and  
 943 Consumer Services shall:

944 1. Consider limitations on groundwater use together with  
 945 opportunities for new, increased, or redistributed groundwater  
 946 uses that are based on the conditions established under s.  
 947 373.223.

948 2. Establish a coordinated process for the identification  
 949 of water resources requiring new or revised conditions  
 950 established under s. 373.223.

951 3. Consider existing recovery or prevention strategies.

952 4. Include a list of water supply options sufficient to  
 953 meet the water needs of all existing and future reasonable-  
 954 beneficial uses which meet conditions established under s.  
 955 373.223.

956 5. Identify, as necessary, which of the water supply  
 957 sources are preferred water supply sources pursuant to s.

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958 373.2234.

959 (d) The department, in consultation with the St. Johns  
 960 River Water Management District, the South Florida Water  
 961 Management District, the Southwest Florida Water Management  
 962 District, and the Department of Agriculture and Consumer  
 963 Services, shall adopt uniform rules for application within the  
 964 Central Florida Water Initiative Area that include:

965 1. A single, uniform definition of "harmful to the water  
 966 resources" consistent with the term's usage in s. 373.219;

967 2. A single method for calculating residential per capita  
 968 water use;

969 3. A single process for permit reviews;

970 4. A single, consistent process, as appropriate, to set  
 971 minimum flows and minimum water levels and water reservations;

972 5. A goal for residential per capita water use for each  
 973 consumptive use permit; and

974 6. An annual conservation goal for each consumptive use  
 975 permit consistent with the regional water supply plan.

976  
 977 The uniform rules shall include existing recovery strategies  
 978 within the Central Florida Water Initiative Area adopted before  
 979 July 1, 2015. The department may grant variances to the uniform  
 980 rules if there are unique circumstances or hydrogeological  
 981 factors that make application of the uniform rules unrealistic  
 982 or impractical.

983 (e) The department shall initiate rulemaking for the  
 984 uniform rules by December 31, 2015. The department's uniform  
 985 rules shall be applied by the water management districts only  
 986 within the Central Florida Water Initiative Area. Upon adoption



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987 of the rules, the water management districts shall implement the  
 988 rules without further rulemaking pursuant to s. 120.54. The  
 989 rules adopted by the department pursuant to this section are  
 990 considered the rules of the water management districts.

991 (f) Water management district planning programs developed  
 992 pursuant this subsection shall be approved or adopted as  
 993 required under this chapter. However, such planning programs may  
 994 not serve to modify planning programs in areas of the affected  
 995 districts that are not within the Central Florida Water  
 996 Initiative Area, but may include interregional projects located  
 997 outside the Central Florida Water Initiative Area which are  
 998 consistent with planning and regulatory programs in the areas in  
 999 which they are located.

1000 Section 12. Subsection (4) of section 373.1501, Florida  
 1001 Statutes, is amended, subsections (7) and (8) are renumbered as  
 1002 subsections (8) and (9), respectively, and a new subsection (7)  
 1003 is added to that section, to read:

1004 373.1501 South Florida Water Management District as local  
 1005 sponsor.—

1006 (4) The district is authorized to act as local sponsor of  
 1007 the project for those project features within the district as  
 1008 provided in this subsection and subject to the oversight of the  
 1009 department as further provided in s. 373.026. The district shall  
 1010 exercise the authority of the state to allocate quantities of  
 1011 water within its jurisdiction, including the water supply in  
 1012 relation to the project, and be responsible for allocating water  
 1013 and assigning priorities among the other water uses served by  
 1014 the project pursuant to state law. The district may:

1015 (a) Act as local sponsor for all project features

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1016 previously authorized by Congress.~~†~~

1017 (b) Continue data gathering, analysis, research, and design  
 1018 of project components, participate in preconstruction  
 1019 engineering and design documents for project components, and  
 1020 further refine the Comprehensive Plan of the restudy as a guide  
 1021 and framework for identifying other project components.~~†~~

1022 (c) Construct pilot projects that will assist in  
 1023 determining the feasibility of technology included in the  
 1024 Comprehensive Plan of the restudy.~~†~~ ~~and~~

1025 (d) Act as local sponsor for project components.

1026 (7) When developing or implementing water control plans or  
 1027 regulation schedules required for the operation of the project,  
 1028 the district shall provide recommendations to the United States  
 1029 Army Corps of Engineers which are consistent with all district  
 1030 programs and plans.

1031 Section 13. Subsection (6) is added to section 373.223,  
 1032 Florida Statutes, to read:

1033 373.223 Conditions for a permit.—

1034 (6) A consumptive use permit authorizing more than 100,000  
 1035 gallons per day shall be monitored on a yearly basis, with the  
 1036 cost of such monitoring to be borne by the permittee.

1037 Section 14. Section 373.2234, Florida Statutes, is amended  
 1038 to read:

1039 373.2234 Preferred water supply sources.—

1040 (1) The governing board of a water management district is  
 1041 authorized to adopt rules that identify preferred water supply  
 1042 sources for consumptive uses for which there is sufficient data  
 1043 to establish that a preferred source will provide a substantial  
 1044 new water supply to meet the existing and projected reasonable-

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1045 beneficial uses of a water supply planning region identified  
 1046 pursuant to s. 373.709(1), while sustaining existing water  
 1047 resources and natural systems. At a minimum, such rules must  
 1048 contain a description of the preferred water supply source and  
 1049 an assessment of the water the preferred source is projected to  
 1050 produce.

1051 (2) (a) If an applicant proposes to use a preferred water  
 1052 supply source, that applicant's proposed water use is subject to  
 1053 s. 373.223(1), except that the proposed use of a preferred water  
 1054 supply source must be considered by a water management district  
 1055 when determining whether a permit applicant's proposed use of  
 1056 water is consistent with the public interest pursuant to s.  
 1057 373.223(1) (c).

1058 (b) The governing board of a water management district  
 1059 shall consider the identification of preferred water supply  
 1060 sources for water users for whom access to or development of new  
 1061 water supplies is not technically or financially feasible.  
 1062 Identification of preferred water supply sources for such water  
 1063 users must be consistent with s. 373.016.

1064 (c) A consumptive use permit issued for the use of a  
 1065 preferred water supply source must be granted, when requested by  
 1066 the applicant, for at least a 20-year period and may be subject  
 1067 to the compliance reporting provisions of s. 373.236(4).

1068 (3) (a) ~~Nothing in~~ This section does not; ~~shall be construed~~  
 1069 ~~to~~

1070 1. Exempt the use of preferred water supply sources from  
 1071 ~~the provisions of ss. 373.016(4) and 373.223(2) and (3);~~ ~~or be~~  
 1072 ~~construed to~~

1073 2. Provide that permits issued for the use of a

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1074 nonpreferred water supply source must be issued for a duration  
 1075 of less than 20 years or that the use of a nonpreferred water  
 1076 supply source is not consistent with the public interest; ~~or-~~  
 1077 3. ~~Additionally, nothing in this section shall be~~  
 1078 ~~interpreted to~~ Require the use of a preferred water supply  
 1079 source or to restrict or prohibit the use of a nonpreferred  
 1080 water supply source.

1081 (b) Rules adopted by the governing board of a water  
 1082 management district to implement this section shall specify that  
 1083 the use of a preferred water supply source is not required and  
 1084 that the use of a nonpreferred water supply source is not  
 1085 restricted or prohibited.

1086 Section 15. Present subsection (5) of section 373.227,  
 1087 Florida Statutes, is redesignated as subsection (7), and new  
 1088 subsections (5) and (6) are added to that section, to read:  
 1089 373.227 Water conservation; legislative findings and  
 1090 intent; objectives; comprehensive statewide water conservation  
 1091 program requirements.-

1092 (5) In order to incentivize water conservation, if actual  
 1093 water use is less than permitted water use due to documented  
 1094 implementation of water conservation measures, including, but  
 1095 not limited to, those measures identified in best management  
 1096 practices pursuant to s. 570.93, the permitted allocation may  
 1097 not be modified due to such water conservation during the term  
 1098 of the permit. In order to promote water conservation and the  
 1099 implementation of measures that produce significant water  
 1100 savings beyond that required in a consumptive use permit, each  
 1101 water management district shall adopt rules providing water  
 1102 conservation incentives, including permit extensions.

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1103 (6) For consumptive use permits for agricultural  
 1104 irrigation, if actual water use is less than permitted water use  
 1105 due to weather events, crop diseases, nursery stock  
 1106 availability, or changes in crop type, a district may not as a  
 1107 result reduce permitted allocation amounts during the term of  
 1108 the permit.

1109 Section 16. Subsection (2) of section 373.233, Florida  
 1110 Statutes, is amended to read:

1111 373.233 Competing applications.—

1112 (2) (a) ~~If in the event that~~ two or more competing  
 1113 applications qualify equally under ~~the provisions of~~ subsection  
 1114 (1), the governing board or the department shall give preference  
 1115 to a renewal application over an initial application.

1116 (b) If two or more competing applications qualify equally  
 1117 under subsection (1) and none of the competing applications is a  
 1118 renewal application, the governing board or the department shall  
 1119 give preference to the use where the source is nearest to the  
 1120 area of use or application in a manner consistent with s.  
 1121 373.016(4) (a) .

1122 Section 17. Section 373.4591, Florida Statutes, is amended  
 1123 to read:

1124 373.4591 Improvements on private agricultural lands.—

1125 (1) The Legislature encourages public-private partnerships  
 1126 to accomplish water storage, groundwater recharge, and water  
 1127 quality improvements on private agricultural lands. Priority  
 1128 consideration shall be given to public-private partnerships  
 1129 that:

1130 (a) Store or treat water on private lands for purposes of  
 1131 enhancing hydrologic improvement, improving water quality, or

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1132 assisting in water supply;

1133 (b) Provide critical ground water recharge; or

1134 (c) Provide for changes in land use to activities that  
 1135 minimize nutrient loads and maximize water conservation.

1136 (2) (a) When an agreement is entered into between the  
 1137 department, a water management district, or the Department of  
 1138 Agriculture and Consumer Services and a private landowner to  
 1139 establish ~~such a public-private~~ partnership that may create or  
 1140 impact wetlands or other surface waters, a baseline condition  
 1141 determining the extent of wetlands and other surface waters on  
 1142 the property shall be established and documented in the  
 1143 agreement before improvements are constructed.

1144 (b) When an agreement is entered into between the  
 1145 Department of Agriculture and Consumer Services and a private  
 1146 landowner to implement best management practices pursuant to s.  
 1147 403.067(7) (c), a baseline condition determining the extent of  
 1148 wetlands and other surface water on the property may be  
 1149 established at the option and expense of the private landowner  
 1150 and documented in the agreement before improvements are  
 1151 constructed. The Department of Agriculture and Consumer Services  
 1152 shall submit the landowner's proposed baseline condition  
 1153 documentation to the lead agency for review and approval, and  
 1154 the agency shall use its best efforts to complete the review  
 1155 within 45 days.

1156 (3) The Department of Agriculture and Consumer Services,  
 1157 the department, and the water management districts shall provide  
 1158 a process for reviewing these requests in the timeframe  
 1159 specified. The determination of a baseline condition shall be  
 1160 conducted using the methods set forth in the rules adopted

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1161 pursuant to s. 373.421. The baseline condition documented in an  
 1162 agreement shall be considered the extent of wetlands and other  
 1163 surface waters on the property for the purpose of regulation  
 1164 under this chapter for the duration of the agreement and after  
 1165 its expiration.

1166 Section 18. Paragraph (h) of subsection (1) and subsections  
 1167 (2) through (7) of section 373.4595, Florida Statutes, are  
 1168 amended, and present subsections (8) through (13) are  
 1169 redesignated as subsections (9) through (14), respectively, and  
 1170 a new subsection (8) is added, to read:

1171 373.4595 Northern Everglades and Estuaries Protection  
 1172 Program.—

1173 (1) FINDINGS AND INTENT.—

1174 (h) The Legislature finds that the expeditious  
 1175 implementation of the Lake Okeechobee Watershed Protection  
 1176 Program, the Caloosahatchee River Watershed Protection Program,  
 1177 ~~Plan~~ and the St. Lucie River Watershed Protection Program ~~Plans~~  
 1178 is needed to improve the quality, quantity, timing, and  
 1179 distribution of water in the northern Everglades ecosystem and  
 1180 that this section, in conjunction with s. 403.067, including the  
 1181 implementation of the plans developed and approved pursuant to  
 1182 subsections (3) and (4), and any related basin management action  
 1183 plan developed and implemented pursuant to s. 403.067(7) (a),  
 1184 provide a reasonable means of achieving the total maximum daily  
 1185 load requirements and achieving and maintaining compliance with  
 1186 state water quality standards.

1187 (2) DEFINITIONS.—As used in this section, the term:

1188 (a) "Best management practice" means a practice or  
 1189 combination of practices determined by the coordinating

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1190 agencies, based on research, field-testing, and expert review,  
 1191 to be the most effective and practicable on-location means,  
 1192 including economic and technological considerations, for  
 1193 improving water quality in agricultural and urban discharges.  
 1194 Best management practices for agricultural discharges shall  
 1195 reflect a balance between water quality improvements and  
 1196 agricultural productivity.

1197 (b) "Biosolids" means the solid, semisolid, or liquid  
 1198 residue generated during the treatment of domestic wastewater in  
 1199 a domestic wastewater treatment facility, formerly known as  
 1200 "domestic wastewater residuals" or "residuals," and includes  
 1201 products and treated material from biosolids treatment  
 1202 facilities and septage management facilities regulated by the  
 1203 department. The term does not include the treated effluent or  
 1204 reclaimed water from a domestic wastewater treatment facility,  
 1205 solids removed from pump stations and lift stations, screenings  
 1206 and grit removed from the preliminary treatment components of  
 1207 domestic wastewater treatment facilities, or ash generated  
 1208 during the incineration of biosolids.

1209 (c) ~~(b)~~ "Caloosahatchee River watershed" means the  
 1210 Caloosahatchee River, its tributaries, its estuary, and the area  
 1211 within Charlotte, Glades, Hendry, and Lee Counties from which  
 1212 surface water flow is directed or drains, naturally or by  
 1213 constructed works, to the river, its tributaries, or its  
 1214 estuary.

1215 (d) ~~(e)~~ "Coordinating agencies" means the Department of  
 1216 Agriculture and Consumer Services, the Department of  
 1217 Environmental Protection, and the South Florida Water Management  
 1218 District.

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1219 ~~(e)(d)~~ "Corps of Engineers" means the United States Army  
 1220 Corps of Engineers.  
 1221 ~~(f)(e)~~ "Department" means the Department of Environmental  
 1222 Protection.  
 1223 ~~(g)(f)~~ "District" means the South Florida Water Management  
 1224 District.  
 1225 ~~(g) "District's WOD program" means the program implemented~~  
 1226 ~~pursuant to rules adopted as authorized by this section and ss.~~  
 1227 ~~373.016, 373.044, 373.085, 373.086, 373.109, 373.113, 373.118,~~  
 1228 ~~373.451, and 373.453, entitled "Works of the District Basin."~~  
 1229 (h) "Lake Okeechobee Watershed Construction Project" means  
 1230 the construction project developed pursuant to this section  
 1231 paragraph (3)(b).  
 1232 (i) "Lake Okeechobee Watershed Protection Plan" means the  
 1233 Lake Okeechobee Watershed Construction Project and the Lake  
 1234 Okeechobee Watershed Research and Water Quality Monitoring  
 1235 Program plan developed pursuant to this section and ss. 373.451-  
 1236 373.459.  
 1237 (j) "Lake Okeechobee watershed" means Lake Okeechobee, its  
 1238 tributaries, and the area within which surface water flow is  
 1239 directed or drains, naturally or by constructed works, to the  
 1240 lake or its tributaries.  
 1241 ~~(k) "Lake Okeechobee Watershed Phosphorus Control Program"~~  
 1242 ~~means the program developed pursuant to paragraph (3)(e).~~  
 1243 ~~(k)(l)~~ "Northern Everglades" means the Lake Okeechobee  
 1244 watershed, the Caloosahatchee River watershed, and the St. Lucie  
 1245 River watershed.  
 1246 ~~(l)(m)~~ "Project component" means any structural or  
 1247 operational change, resulting from the Restudy, to the Central

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1248 and Southern Florida Project as it existed and was operated as  
 1249 of January 1, 1999.  
 1250 ~~(m)(n)~~ "Restudy" means the Comprehensive Review Study of  
 1251 the Central and Southern Florida Project, for which federal  
 1252 participation was authorized by the Federal Water Resources  
 1253 Development Acts of 1992 and 1996 together with related  
 1254 Congressional resolutions and for which participation by the  
 1255 South Florida Water Management District is authorized by s.  
 1256 373.1501. The term includes all actions undertaken pursuant to  
 1257 the aforementioned authorizations which will result in  
 1258 recommendations for modifications or additions to the Central  
 1259 and Southern Florida Project.  
 1260 ~~(n)(o)~~ "River Watershed Protection Plans" means the  
 1261 Caloosahatchee River Watershed Protection Plan and the St. Lucie  
 1262 River Watershed Protection Plan developed pursuant to this  
 1263 section.  
 1264 ~~(o)~~ "Soil amendment" means any substance or mixture of  
 1265 substances sold or offered for sale for soil enriching or  
 1266 corrective purposes, intended or claimed to be effective in  
 1267 promoting or stimulating plant growth, increasing soil or plant  
 1268 productivity, improving the quality of crops, or producing any  
 1269 chemical or physical change in the soil, except amendments,  
 1270 conditioners, additives, and related products that are derived  
 1271 solely from inorganic sources and that contain no recognized  
 1272 plant nutrients.  
 1273 (p) "St. Lucie River watershed" means the St. Lucie River,  
 1274 its tributaries, its estuary, and the area within Martin,  
 1275 Okeechobee, and St. Lucie Counties from which surface water flow  
 1276 is directed or drains, naturally or by constructed works, to the

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1277 river, its tributaries, or its estuary.

1278 (q) "Total maximum daily load" means the sum of the  
1279 individual wasteload allocations for point sources and the load  
1280 allocations for nonpoint sources and natural background adopted  
1281 pursuant to s. 403.067. ~~Before~~ ~~Prior to~~ determining individual  
1282 wasteload allocations and load allocations, the maximum amount  
1283 of a pollutant that a water body or water segment can assimilate  
1284 from all sources without exceeding water quality standards must  
1285 first be calculated.

1286 (3) LAKE OKEECHOBEE WATERSHED PROTECTION PROGRAM.—~~The Lake~~  
1287 Okeechobee Watershed Protection Program shall consist of the  
1288 Lake Okeechobee Watershed Protection Plan, the Lake Okeechobee  
1289 Basin Management Action Plan adopted pursuant to s. 403.067, the  
1290 Lake Okeechobee Exotic Species Control Program, and the Lake  
1291 Okeechobee Internal Phosphorus Management Program. The Lake  
1292 Okeechobee Basin Management Action Plan adopted pursuant to s.  
1293 403.067 shall be the component of the Lake Okeechobee Watershed  
1294 Protection A protection Program for Lake Okeechobee that  
1295 achieves phosphorus load reductions for Lake Okeechobee shall be  
1296 immediately implemented as specified in this subsection. The  
1297 Lake Okeechobee Watershed Protection Program shall address the  
1298 reduction of phosphorus loading to the lake from both internal  
1299 and external sources. Phosphorus load reductions shall be  
1300 achieved through a phased program of implementation. Initial  
1301 implementation actions shall be technology-based, based upon a  
1302 consideration of both the availability of appropriate technology  
1303 and the cost of such technology, and shall include phosphorus  
1304 reduction measures at both the source and the regional level.  
1305 ~~The initial phase of phosphorus load reductions shall be based~~

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1306 ~~upon the district's Technical Publication 81-2 and the~~  
1307 ~~district's WOD program, with subsequent phases of phosphorus~~  
1308 ~~load reductions based upon the total maximum daily loads~~  
1309 ~~established in accordance with s. 403.067.~~ In the development  
1310 and administration of the Lake Okeechobee Watershed Protection  
1311 Program, the coordinating agencies shall maximize opportunities  
1312 provided by federal cost-sharing programs and opportunities for  
1313 partnerships with the private sector.

1314 (a) Lake Okeechobee Watershed Protection Plan.—In order to  
1315 protect and restore surface water resources, the district, in  
1316 cooperation with the other coordinating agencies, shall complete  
1317 a Lake Okeechobee Watershed Protection Plan in accordance with  
1318 this section and ss. 373.451-373.459. Beginning March 1, 2020,  
1319 and every 5 years thereafter, the district shall update the Lake  
1320 Okeechobee Watershed Protection Plan to ensure that it is  
1321 consistent with the Lake Okeechobee Basin Management Action Plan  
1322 adopted pursuant to s. 403.067. The Lake Okeechobee Watershed  
1323 Protection Plan shall identify the geographic extent of the  
1324 watershed, be coordinated with the plans developed pursuant to  
1325 paragraphs (4) (a) and (c) ~~(b)~~, and include the Lake Okeechobee  
1326 Watershed Construction Project and the Lake Okeechobee Watershed  
1327 Research and Water Quality Monitoring Program contain an  
1328 implementation schedule for subsequent phases of phosphorus load  
1329 reduction consistent with the total maximum daily loads  
1330 established in accordance with s. 403.067. The plan shall  
1331 consider and build upon a review and analysis of the following:  
1332 ± the performance of projects constructed during Phase I  
1333 and Phase II of the Lake Okeechobee Watershed Construction  
1334 Project, pursuant to subparagraph 1.; paragraph (b).

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1335 ~~2-~~ relevant information resulting from the Lake Okeechobee  
1336 Basin Management Action Plan Watershed Phosphorus Control  
1337 Program, pursuant to paragraph (b); ~~(e)-~~

1338 ~~3-~~ relevant information resulting from the Lake Okeechobee  
1339 Watershed Research and Water Quality Monitoring Program,  
1340 pursuant to subparagraph 2.; ~~paragraph (d)-~~

1341 ~~4-~~ relevant information resulting from the Lake Okeechobee  
1342 Exotic Species Control Program, pursuant to paragraph (c); and  
1343 ~~(e)-~~

1344 ~~5-~~ relevant information resulting from the Lake Okeechobee  
1345 Internal Phosphorus Management Program, pursuant to paragraph  
1346 (d) (f)-.

1347 ~~1. (b)~~ Lake Okeechobee Watershed Construction Project.—To  
1348 improve the hydrology and water quality of Lake Okeechobee and  
1349 downstream receiving waters, including the Caloosahatchee and  
1350 St. Lucie Rivers and their estuaries, the district, in  
1351 cooperation with the other coordinating agencies, shall design  
1352 and construct the Lake Okeechobee Watershed Construction  
1353 Project. The project shall include:

1354 ~~a.1-~~ Phase I.—Phase I of the Lake Okeechobee Watershed  
1355 Construction Project shall consist of a series of project  
1356 features consistent with the recommendations of the South  
1357 Florida Ecosystem Restoration Working Group's Lake Okeechobee  
1358 Action Plan. Priority basins for such projects include S-191, S-  
1359 154, and Pools D and E in the Lower Kissimmee River. In order to  
1360 obtain phosphorus load reductions to Lake Okeechobee as soon as  
1361 possible, the following actions shall be implemented:

1362 ~~(I)a-~~ The district shall serve as a full partner with the  
1363 Corps of Engineers in the design and construction of the Grassy

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1364 Island Ranch and New Palm Dairy stormwater treatment facilities  
1365 as components of the Lake Okeechobee Water Retention/Phosphorus  
1366 Removal Critical Project. The Corps of Engineers shall have the  
1367 lead in design and construction of these facilities. Should  
1368 delays be encountered in the implementation of either of these  
1369 facilities, the district shall notify the department and  
1370 recommend corrective actions.

1371 ~~(II)b-~~ The district shall obtain permits and complete  
1372 construction of two of the isolated wetland restoration projects  
1373 that are part of the Lake Okeechobee Water Retention/Phosphorus  
1374 Removal Critical Project. The additional isolated wetland  
1375 projects included in this critical project shall further reduce  
1376 phosphorus loading to Lake Okeechobee.

1377 ~~(III)e-~~ The district shall work with the Corps of Engineers  
1378 to expedite initiation of the design process for the Taylor  
1379 Creek/Nubbins Slough Reservoir Assisted Stormwater Treatment  
1380 Area, a project component of the Comprehensive Everglades  
1381 Restoration Plan. The district shall propose to the Corps of  
1382 Engineers that the district take the lead in the design and  
1383 construction of the Reservoir Assisted Stormwater Treatment Area  
1384 and receive credit towards the local share of the total cost of  
1385 the Comprehensive Everglades Restoration Plan.

1386 ~~b.2-~~ Phase II technical plan and construction. ~~By February~~  
1387 ~~1, 2008,~~ The district, in cooperation with the other  
1388 coordinating agencies, shall develop a detailed technical plan  
1389 for Phase II of the Lake Okeechobee Watershed Construction  
1390 Project which provides the basis for the Lake Okeechobee Basin  
1391 Management Action Plan adopted by the department pursuant to s.  
1392 403.067. The detailed technical plan shall include measures for

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1393 the improvement of the quality, quantity, timing, and  
 1394 distribution of water in the northern Everglades ecosystem,  
 1395 including the Lake Okeechobee watershed and the estuaries, and  
 1396 for facilitating the achievement of water quality standards. Use  
 1397 of cost-effective biologically based, hybrid wetland/chemical  
 1398 and other innovative nutrient control technologies shall be  
 1399 incorporated in the plan where appropriate. The detailed  
 1400 technical plan shall also include a Process Development and  
 1401 Engineering component to finalize the detail and design of Phase  
 1402 II projects and identify additional measures needed to increase  
 1403 the certainty that the overall objectives for improving water  
 1404 quality and quantity can be met. Based on information and  
 1405 recommendations from the Process Development and Engineering  
 1406 component, the Phase II detailed technical plan shall be  
 1407 periodically updated. Phase II shall include construction of  
 1408 additional facilities in the priority basins identified in sub-  
 1409 subparagraph a. subparagraph 1., as well as facilities for other  
 1410 basins in the Lake Okeechobee watershed. ~~This detailed technical~~  
 1411 ~~plan will require legislative ratification pursuant to paragraph~~  
 1412 ~~(4).~~ The technical plan shall:

1413 (I)a- Identify Lake Okeechobee Watershed Construction  
 1414 Project facilities designed to contribute to achieving all  
 1415 applicable total maximum daily loads established pursuant to s.  
 1416 403.067 within the Lake Okeechobee watershed.

1417 (II)b- Identify the size and location of all such Lake  
 1418 Okeechobee Watershed Construction Project facilities.

1419 (III)c- Provide a construction schedule for all such Lake  
 1420 Okeechobee Watershed Construction Project facilities, including  
 1421 the sequencing and specific timeframe for construction of each

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1422 Lake Okeechobee Watershed Construction Project facility.

1423 (IV)d- Provide a schedule for the acquisition of lands or  
 1424 sufficient interests necessary to achieve the construction  
 1425 schedule.

1426 (V)e- Provide a detailed schedule of costs associated with  
 1427 the construction schedule.

1428 (VI)f- Identify, to the maximum extent practicable, impacts  
 1429 on wetlands and state-listed species expected to be associated  
 1430 with construction of such facilities, including potential  
 1431 alternatives to minimize and mitigate such impacts, as  
 1432 appropriate.

1433 (VII)g- Provide for additional measures, including  
 1434 voluntary water storage and quality improvements on private  
 1435 land, to increase water storage and reduce excess water levels  
 1436 in Lake Okeechobee and to reduce excess discharges to the  
 1437 estuaries.

1438 (VIII) ~~The technical plan shall also~~ Develop the  
 1439 appropriate water quantity storage goal to achieve the desired  
 1440 Lake Okeechobee range of lake levels and inflow volumes to the  
 1441 Caloosahatchee and St. Lucie estuaries while meeting the other  
 1442 water-related needs of the region, including water supply and  
 1443 flood protection.

1444 (IX)h- Provide for additional source controls needed to  
 1445 enhance performance of the Lake Okeechobee Watershed  
 1446 Construction Project facilities. Such additional source controls  
 1447 shall be incorporated into the Lake Okeechobee Basin Management  
 1448 Action Plan ~~Watershed Phosphorous Control Program~~ pursuant to  
 1449 paragraph (b) (e).

1450 c.3- Evaluation. ~~Within 5 years after the adoption of the~~

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1451 Lake Okeechobee Basin Management Action Plan pursuant to s.  
 1452 403.067 and every 5 ~~By January 1, 2004, and every 3~~ years  
 1453 thereafter, the ~~department district~~, in cooperation with the  
 1454 ~~other~~ coordinating agencies, shall conduct an evaluation of the  
 1455 Lake Okeechobee Watershed Construction Project and identify any  
 1456 further load reductions necessary to achieve compliance with the  
 1457 ~~all~~ Lake Okeechobee ~~watershed~~ total maximum daily loads  
 1458 established pursuant to s. 403.067. ~~Additionally,~~ The district  
 1459 shall identify modifications to facilities of the Lake  
 1460 Okeechobee Watershed Construction Project as appropriate to meet  
 1461 the total maximum daily loads. Modifications to the Lake  
 1462 Okeechobee Watershed Construction Project resulting from this  
 1463 evaluation shall be incorporated into the Lake Okeechobee Basin  
 1464 Management Action Plan and ~~The evaluation shall be included in~~  
 1465 the applicable annual progress report submitted pursuant to  
 1466 subsection (6).

1467 d.4. Coordination and review.—To ensure the timely  
 1468 implementation of the Lake Okeechobee Watershed Construction  
 1469 Project, the design of project facilities shall be coordinated  
 1470 with the department and other interested parties, including  
 1471 affected local governments, to the maximum extent practicable.  
 1472 Lake Okeechobee Watershed Construction Project facilities shall  
 1473 be reviewed and commented upon by the department ~~before~~ prior to  
 1474 the execution of a construction contract by the district for  
 1475 that facility.

1476 2. Lake Okeechobee Watershed Research and Water Quality  
 1477 Monitoring Program.—The coordinating agencies shall implement a  
 1478 Lake Okeechobee Watershed Research and Water Quality Monitoring  
 1479 Program. Results from the program shall be used by the

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1480 department, in cooperation with the other coordinating agencies,  
 1481 to make modifications to the Lake Okeechobee Basin Management  
 1482 Action Plan adopted pursuant to s. 403.067, as appropriate. The  
 1483 program shall:

1484 a. Evaluate all available existing water quality data  
 1485 concerning total phosphorus in the Lake Okeechobee watershed,  
 1486 develop a water quality baseline to represent existing  
 1487 conditions for total phosphorus, monitor long-term ecological  
 1488 changes, including water quality for total phosphorus, and  
 1489 measure compliance with water quality standards for total  
 1490 phosphorus, including any applicable total maximum daily load  
 1491 for the Lake Okeechobee watershed as established pursuant to s.  
 1492 403.067. Beginning March 1, 2020, and every 5 years thereafter,  
 1493 the department shall reevaluate water quality and quantity data  
 1494 to ensure that the appropriate projects are being designated and  
 1495 incorporated into the Lake Okeechobee Basin Management Action  
 1496 Plan adopted pursuant to s. 403.067. The district shall  
 1497 implement a total phosphorus monitoring program at appropriate  
 1498 structures owned or operated by the district and within the Lake  
 1499 Okeechobee watershed.

1500 b. Develop a Lake Okeechobee water quality model that  
 1501 reasonably represents the phosphorus dynamics of Lake Okeechobee  
 1502 and incorporates an uncertainty analysis associated with model  
 1503 predictions.

1504 c. Determine the relative contribution of phosphorus from  
 1505 all identifiable sources and all primary and secondary land  
 1506 uses.

1507 d. Conduct an assessment of the sources of phosphorus from  
 1508 the Upper Kissimmee Chain-of-Lakes and Lake Istokpoga, and their

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1509 relative contribution to the water quality of Lake Okeechobee.  
 1510 The results of this assessment shall be used by the coordinating  
 1511 agencies as part of the Lake Okeechobee Basin Management Action  
 1512 Plan adopted pursuant to s. 403.067 to develop interim measures,  
 1513 best management practices, or regulations, as applicable.

1514 e. Assess current water management practices within the  
 1515 Lake Okeechobee watershed and develop recommendations for  
 1516 structural and operational improvements. Such recommendations  
 1517 shall balance water supply, flood control, estuarine salinity,  
 1518 maintenance of a healthy lake littoral zone, and water quality  
 1519 considerations.

1520 f. Evaluate the feasibility of alternative nutrient  
 1521 reduction technologies, including sediment traps, canal and  
 1522 ditch maintenance, fish production or other aquaculture,  
 1523 bioenergy conversion processes, and algal or other biological  
 1524 treatment technologies and include any alternative nutrient  
 1525 reduction technologies determined to be feasible in the Lake  
 1526 Okeechobee Basin Management Action Plan adopted pursuant to s.  
 1527 403.067.

1528 g. Conduct an assessment of the water volumes and timing  
 1529 from the Lake Okeechobee watershed and their relative  
 1530 contribution to the water level changes in Lake Okeechobee and  
 1531 to the timing and volume of water delivered to the estuaries.

1532 (b)(e) Lake Okeechobee Basin Management Action Plan  
 1533 Watershed Phosphorus Control Program.—The Lake Okeechobee Basin  
 1534 Management Action Plan adopted pursuant to s. 403.067 shall be  
 1535 the watershed phosphorus control component for Lake Okeechobee  
 1536 and shall be Program is designed to be a multifaceted approach  
 1537 to reducing phosphorus loads by improving the management of

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1538 phosphorus sources within the Lake Okeechobee watershed through  
 1539 implementation of regulations and best management practices,  
 1540 continued development and continued implementation of improved  
 1541 best management practices, improvement and restoration of the  
 1542 hydrologic function of natural and managed systems, and use  
 1543 ~~utilization~~ of alternative technologies for nutrient reduction.  
 1544 The plan shall contain an implementation schedule for pollutant  
 1545 load reductions consistent with the adopted total maximum daily  
 1546 load. The coordinating agencies shall develop an interagency  
 1547 agreement pursuant to ss. 373.046 and 373.406 which is  
 1548 consistent with the department taking the lead on water quality  
 1549 protection measures through the Lake Okeechobee Basin Management  
 1550 Action Plan adopted pursuant to s. 403.067; the district taking  
 1551 the lead on hydrologic improvements pursuant to paragraph (a);  
 1552 and the Department of Agriculture and Consumer Services taking  
 1553 the lead on agricultural interim measures, best management  
 1554 practices, and other measures adopted pursuant to s. 403.067.  
 1555 The interagency agreement shall specify how best management  
 1556 practices for nonagricultural nonpoint sources are developed and  
 1557 how all best management practices are implemented and verified  
 1558 consistent with s. 403.067 and this section. The interagency  
 1559 agreement shall address measures to be taken by the coordinating  
 1560 agencies during any best management practice reevaluation  
 1561 performed pursuant to subparagraphs 5. and 10. The department  
 1562 shall use best professional judgment in making the initial  
 1563 determination of best management practice effectiveness. The  
 1564 coordinating agencies may develop an intergovernmental agreement  
 1565 with local governments to implement nonagricultural nonpoint  
 1566 source best management practices within their respective

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1567 geographic boundaries. The coordinating agencies shall  
 1568 facilitate the application of federal programs that offer  
 1569 opportunities for water quality treatment, including  
 1570 preservation, restoration, or creation of wetlands on  
 1571 agricultural lands.

1572 1. Agricultural nonpoint source best management practices,  
 1573 developed in accordance with s. 403.067 and designed to achieve  
 1574 the objectives of the Lake Okeechobee Watershed Protection  
 1575 Program as part of a phased approach of management strategies  
 1576 within the Lake Okeechobee Basin Management Action Plan, shall  
 1577 be implemented on an expedited basis. ~~The coordinating agencies~~  
 1578 ~~shall develop an interagency agreement pursuant to ss. 373.046~~  
 1579 ~~and 373.406(5) that assures the development of best management~~  
 1580 ~~practices that complement existing regulatory programs and~~  
 1581 ~~specifies how those best management practices are implemented~~  
 1582 ~~and verified. The interagency agreement shall address measures~~  
 1583 ~~to be taken by the coordinating agencies during any best~~  
 1584 ~~management practice reevaluation performed pursuant to sub-~~  
 1585 ~~paragraph d. The department shall use best professional~~  
 1586 ~~judgment in making the initial determination of best management~~  
 1587 ~~practice effectiveness.~~

1588 2.a. As provided in s. 403.067 ~~s. 403.067(7)(c)~~, the  
 1589 Department of Agriculture and Consumer Services, in consultation  
 1590 with the department, the district, and affected parties, shall  
 1591 initiate rule development for interim measures, best management  
 1592 practices, conservation plans, nutrient management plans, or  
 1593 other measures necessary for Lake Okeechobee watershed total  
 1594 maximum daily load reduction. The rule shall include thresholds  
 1595 for requiring conservation and nutrient management plans and

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1596 criteria for the contents of such plans. Development of  
 1597 agricultural nonpoint source best management practices shall  
 1598 initially focus on those priority basins listed in sub-  
 1599 paragraph (a)1.a. ~~paragraph (b)1.~~ The Department of  
 1600 Agriculture and Consumer Services, in consultation with the  
 1601 department, the district, and affected parties, shall conduct an  
 1602 ongoing program for improvement of existing and development of  
 1603 new agricultural nonpoint source interim measures and ~~or~~ best  
 1604 management practices. The Department of Agriculture and Consumer  
 1605 Services shall adopt for the purpose of adoption of such  
 1606 practices by rule. The Department of Agriculture and Consumer  
 1607 Services shall work with the University of Florida ~~Florida's~~  
 1608 Institute of Food and Agriculture Sciences to review and, where  
 1609 appropriate, develop revised nutrient application rates for all  
 1610 agricultural soil amendments in the watershed.

1611 3.b. As provided in s. 403.067, where agricultural nonpoint  
 1612 source best management practices or interim measures have been  
 1613 adopted by rule of the Department of Agriculture and Consumer  
 1614 Services, the owner or operator of an agricultural nonpoint  
 1615 source addressed by such rule shall either implement interim  
 1616 measures or best management practices or demonstrate compliance  
 1617 with state water quality standards addressed by the Lake  
 1618 Okeechobee Basin Management Action Plan adopted pursuant to s.  
 1619 403.067 ~~the district's WOD program~~ by conducting monitoring  
 1620 prescribed by the department or the district. Owners or  
 1621 operators of agricultural nonpoint sources who implement interim  
 1622 measures or best management practices adopted by rule of the  
 1623 Department of Agriculture and Consumer Services shall be subject  
 1624 to ~~the provisions of s. 403.067(7).~~ ~~The Department of~~

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1625 ~~Agriculture and Consumer Services, in cooperation with the~~  
 1626 ~~department and the district, shall provide technical and~~  
 1627 ~~financial assistance for implementation of agricultural best~~  
 1628 ~~management practices, subject to the availability of funds.~~

1629 ~~4.e.~~ The district or department shall conduct monitoring at  
 1630 representative sites to verify the effectiveness of agricultural  
 1631 nonpoint source best management practices.

1632 ~~5.d.~~ Where water quality problems are detected for  
 1633 agricultural nonpoint sources despite the appropriate  
 1634 implementation of adopted best management practices, the  
 1635 ~~Department of Agriculture and Consumer Services, in consultation~~  
 1636 ~~with the other coordinating agencies and affected parties, shall~~  
 1637 ~~institute a reevaluation and revision of the best management~~  
 1638 ~~practices shall be conducted pursuant to s. 403.067(7)(c)4. and~~  
 1639 ~~make appropriate changes to the rule adopting best management~~  
 1640 ~~practices.~~

1641 ~~6.2.~~ As provided in s. 403.067, nonagricultural nonpoint  
 1642 source best management practices, developed in accordance with  
 1643 s. 403.067 and designed to achieve the objectives of the Lake  
 1644 Okeechobee Watershed Protection Program as part of a phased  
 1645 approach of management strategies within the Lake Okeechobee  
 1646 Basin Management Action Plan, shall be implemented on an  
 1647 expedited basis. ~~The department and the district shall develop~~  
 1648 ~~an interagency agreement pursuant to ss. 373.046 and 373.406(5)~~  
 1649 ~~that assures the development of best management practices that~~  
 1650 ~~complement existing regulatory programs and specifies how those~~  
 1651 ~~best management practices are implemented and verified. The~~  
 1652 ~~interagency agreement shall address measures to be taken by the~~  
 1653 ~~department and the district during any best management practice~~

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1654 ~~reevaluation performed pursuant to sub-subparagraph d.~~

1655 ~~7.a.~~ The department and the district are directed to work  
 1656 with the University of Florida ~~Florida's~~ Institute of Food and  
 1657 Agricultural Sciences to develop appropriate nutrient  
 1658 application rates for all nonagricultural soil amendments in the  
 1659 watershed. As provided in s. 403.067 ~~s. 403.067(7)(e)~~, the  
 1660 department, in consultation with the district and affected  
 1661 parties, shall develop nonagricultural nonpoint source interim  
 1662 measures, best management practices, or other measures necessary  
 1663 for Lake Okeechobee watershed total maximum daily load  
 1664 reduction. Development of nonagricultural nonpoint source best  
 1665 management practices shall initially focus on those priority  
 1666 basins listed in sub-subparagraph (a)1.a. ~~subparagraph (b)1.~~ The  
 1667 department, the district, and affected parties shall conduct an  
 1668 ongoing program for improvement of existing and development of  
 1669 new interim measures and ~~or~~ best management practices. The  
 1670 department or the district shall adopt such practices by rule  
 1671 ~~The district shall adopt technology-based standards under the~~  
 1672 ~~district's WOD program for nonagricultural nonpoint sources of~~  
 1673 ~~phosphorus. Nothing in this sub-subparagraph shall affect the~~  
 1674 ~~authority of the department or the district to adopt basin-~~  
 1675 ~~specific criteria under this part to prevent harm to the water~~  
 1676 ~~resources of the district.~~

1677 ~~8.b.~~ Where nonagricultural nonpoint source best management  
 1678 practices or interim measures have been developed by the  
 1679 department and adopted by the district, the owner or operator of  
 1680 a nonagricultural nonpoint source shall implement interim  
 1681 measures or best management practices and be subject to the  
 1682 ~~provisions of s. 403.067(7). The department and district shall~~

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1683 ~~provide technical and financial assistance for implementation of~~  
 1684 ~~nonagricultural nonpoint source best management practices,~~  
 1685 ~~subject to the availability of funds.~~

1686 9.e. As provided in s. 403.067, the district or the  
 1687 department shall conduct monitoring at representative sites to  
 1688 verify the effectiveness of nonagricultural nonpoint source best  
 1689 management practices.

1690 ~~10.d.~~ Where water quality problems are detected for  
 1691 nonagricultural nonpoint sources despite the appropriate  
 1692 implementation of adopted best management practices, ~~the~~  
 1693 ~~department and the district shall institute a reevaluation and~~  
 1694 revision of the best management practices shall be conducted  
 1695 pursuant to s. 403.067(7)(c)4.

1696 ~~11.3.~~ ~~The provisions of Subparagraphs 1. and 2. and 7. do~~  
 1697 ~~may not preclude the department or the district from requiring~~  
 1698 ~~compliance with water quality standards or with current best~~  
 1699 ~~management practices requirements set forth in any applicable~~  
 1700 ~~regulatory program authorized by law for the purpose of~~  
 1701 ~~protecting water quality. Additionally, Subparagraphs 1. and 2.~~  
 1702 ~~and 7. are applicable only to the extent that they do not~~  
 1703 ~~conflict with any rules adopted by the department that are~~  
 1704 ~~necessary to maintain a federally delegated or approved program.~~

1705 12. The program of agricultural best management practices  
 1706 set forth in the Everglades Program of the district, meets the  
 1707 requirements of this paragraph and s. 403.067(7) for the Lake  
 1708 Okeechobee watershed. An entity in compliance with best  
 1709 management practices set forth in the Everglades Program of the  
 1710 district, may elect to use that permit in lieu of the  
 1711 requirements of this paragraph. The provisions of s.

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1712 373.4595(3)(b)5. apply to this subparagraph.

1713 13. The Department of Agriculture and Consumer Services, in  
 1714 cooperation with the department and the district, shall provide  
 1715 technical and financial assistance for implementation of  
 1716 agricultural best management practices, subject to the  
 1717 availability of funds. The department and district shall provide  
 1718 technical and financial assistance for implementation of  
 1719 nonagricultural nonpoint source best management practices,  
 1720 subject to the availability of funds.

1721 ~~14.4.~~ Projects that reduce the phosphorus load originating  
 1722 from domestic wastewater systems within the Lake Okeechobee  
 1723 watershed shall be given funding priority in the department's  
 1724 revolving loan program under s. 403.1835. The department shall  
 1725 coordinate and provide assistance to those local governments  
 1726 seeking financial assistance for such priority projects.

1727 ~~15.5.~~ Projects that make use of private lands, or lands  
 1728 held in trust for Indian tribes, to reduce nutrient loadings or  
 1729 concentrations within a basin by one or more of the following  
 1730 methods: restoring the natural hydrology of the basin, restoring  
 1731 wildlife habitat or impacted wetlands, reducing peak flows after  
 1732 storm events, increasing aquifer recharge, or protecting range  
 1733 and timberland from conversion to development, are eligible for  
 1734 grants available under this section from the coordinating  
 1735 agencies. For projects of otherwise equal priority, special  
 1736 funding priority will be given to those projects that make best  
 1737 use of the methods outlined above that involve public-private  
 1738 partnerships or that obtain federal match money. Preference  
 1739 ranking above the special funding priority will be given to  
 1740 projects located in a rural area of opportunity designated by

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1741 the Governor. Grant applications may be submitted by any person  
 1742 or tribal entity, and eligible projects may include, but are not  
 1743 limited to, the purchase of conservation and flowage easements,  
 1744 hydrologic restoration of wetlands, creating treatment wetlands,  
 1745 development of a management plan for natural resources, and  
 1746 financial support to implement a management plan.

1747 ~~16.6.a.~~ The department shall require all entities disposing  
 1748 of domestic wastewater biosolids residuals within the Lake  
 1749 Okeechobee watershed and the remaining areas of Okeechobee,  
 1750 Glades, and Hendry Counties to develop and submit to the  
 1751 department an agricultural use plan that limits applications  
 1752 based upon phosphorus loading consistent with the Lake  
 1753 Okeechobee Basin Management Action Plan adopted pursuant to s.  
 1754 403.067. By July 1, 2005, phosphorus concentrations originating  
 1755 from these application sites may not exceed the limits  
 1756 established in the district's WOD program. After December 31,  
 1757 2007, The department may not authorize the disposal of domestic  
 1758 wastewater biosolids residuals within the Lake Okeechobee  
 1759 watershed unless the applicant can affirmatively demonstrate  
 1760 that the phosphorus in the biosolids residuals will not add to  
 1761 phosphorus loadings in Lake Okeechobee or its tributaries. This  
 1762 demonstration shall be based on achieving a net balance between  
 1763 phosphorus imports relative to exports on the permitted  
 1764 application site. Exports shall include only phosphorus removed  
 1765 from the Lake Okeechobee watershed through products generated on  
 1766 the permitted application site. This prohibition does not apply  
 1767 to Class AA biosolids residuals that are marketed and  
 1768 distributed as fertilizer products in accordance with department  
 1769 rule.

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1770 ~~17.b.~~ Private and government-owned utilities within Monroe,  
 1771 Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian  
 1772 River, Okeechobee, Highlands, Hendry, and Glades Counties that  
 1773 dispose of wastewater biosolids residual sludge from utility  
 1774 operations and septic removal by land spreading in the Lake  
 1775 Okeechobee watershed may use a line item on local sewer rates to  
 1776 cover wastewater biosolids residual treatment and disposal if  
 1777 such disposal and treatment is done by approved alternative  
 1778 treatment methodology at a facility located within the areas  
 1779 designated by the Governor as rural areas of opportunity  
 1780 pursuant to s. 288.0656. This additional line item is an  
 1781 environmental protection disposal fee above the present sewer  
 1782 rate and may not be considered a part of the present sewer rate  
 1783 to customers, notwithstanding provisions to the contrary in  
 1784 chapter 367. The fee shall be established by the county  
 1785 commission or its designated assignee in the county in which the  
 1786 alternative method treatment facility is located. The fee shall  
 1787 be calculated to be no higher than that necessary to recover the  
 1788 facility's prudent cost of providing the service. Upon request  
 1789 by an affected county commission, the Florida Public Service  
 1790 Commission will provide assistance in establishing the fee.  
 1791 Further, for utilities and utility authorities that use the  
 1792 additional line item environmental protection disposal fee, such  
 1793 fee may not be considered a rate increase under the rules of the  
 1794 Public Service Commission and shall be exempt from such rules.  
 1795 Utilities using ~~the provisions of~~ this section may immediately  
 1796 include in their sewer invoicing the new environmental  
 1797 protection disposal fee. Proceeds from this environmental  
 1798 protection disposal fee shall be used for treatment and disposal

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1799 of wastewater ~~biosolids residuals~~, including any treatment  
 1800 technology that helps reduce the volume of ~~biosolids residuals~~  
 1801 that require final disposal, but such proceeds may not be used  
 1802 for transportation or shipment costs for disposal or any costs  
 1803 relating to the land application of ~~biosolids residuals~~ in the  
 1804 Lake Okeechobee watershed.

1805 ~~18.e-~~ No less frequently than once every 3 years, the  
 1806 Florida Public Service Commission or the county commission  
 1807 through the services of an independent auditor shall perform a  
 1808 financial audit of all facilities receiving compensation from an  
 1809 environmental protection disposal fee. The Florida Public  
 1810 Service Commission or the county commission through the services  
 1811 of an independent auditor shall also perform an audit of the  
 1812 methodology used in establishing the environmental protection  
 1813 disposal fee. The Florida Public Service Commission or the  
 1814 county commission shall, within 120 days after completion of an  
 1815 audit, file the audit report with the President of the Senate  
 1816 and the Speaker of the House of Representatives and shall  
 1817 provide copies to the county commissions of the counties set  
 1818 forth in subparagraph 17 ~~sub-subparagraph b~~. The books and  
 1819 records of any facilities receiving compensation from an  
 1820 environmental protection disposal fee shall be open to the  
 1821 Florida Public Service Commission and the Auditor General for  
 1822 review upon request.

1823 ~~19.7-~~ The Department of Health shall require all entities  
 1824 disposing of septage within the Lake Okeechobee watershed to  
 1825 develop and submit to that agency an agricultural use plan that  
 1826 limits applications based upon phosphorus loading consistent  
 1827 with the Lake Okeechobee Basin Management Action Plan adopted

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1828 ~~pursuant to s. 403.067. By July 1, 2005, phosphorus~~  
 1829 ~~concentrations originating from these application sites may not~~  
 1830 ~~exceed the limits established in the district's WOD program.~~

1831 ~~20.8-~~ The Department of Agriculture and Consumer Services  
 1832 shall initiate rulemaking requiring entities within the Lake  
 1833 Okeechobee watershed which land-apply animal manure to develop  
 1834 resource management system level conservation plans, according  
 1835 to United States Department of Agriculture criteria, which limit  
 1836 such application. Such rules may include criteria and thresholds  
 1837 for the requirement to develop a conservation or nutrient  
 1838 management plan, requirements for plan approval, and  
 1839 recordkeeping requirements.

1840 21. The district shall revise chapter 40E-61, Florida  
 1841 Administrative Code, to be consistent with this section and s.  
 1842 403.067; provide for a monitoring program for nonpoint source  
 1843 dischargers required to monitor water quality by s. 403.067; and  
 1844 provide for the results of such monitoring to be reported to the  
 1845 coordinating agencies.

1846 ~~9. The district, the department, or the Department of~~  
 1847 ~~Agriculture and Consumer Services, as appropriate, shall~~  
 1848 ~~implement those alternative nutrient reduction technologies~~  
 1849 ~~determined to be feasible pursuant to subparagraph (d)6-~~

1850 ~~(d) Lake Okeechobee Watershed Research and Water Quality~~  
 1851 ~~Monitoring Program. The district, in cooperation with the other~~  
 1852 ~~coordinating agencies, shall establish a Lake Okeechobee~~  
 1853 ~~Watershed Research and Water Quality Monitoring Program that~~  
 1854 ~~builds upon the district's existing Lake Okeechobee research~~  
 1855 ~~program. The program shall:~~

1856 ~~1. Evaluate all available existing water quality data~~

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1857 concerning total phosphorus in the Lake Okeechobee watershed,  
 1858 develop a water quality baseline to represent existing  
 1859 conditions for total phosphorus, monitor long-term ecological  
 1860 changes, including water quality for total phosphorus, and  
 1861 ~~measure compliance with water quality standards for total~~  
 1862 ~~phosphorus, including any applicable total maximum daily load~~  
 1863 ~~for the Lake Okeechobee watershed as established pursuant to s.~~  
 1864 ~~403.067. Every 3 years, the district shall reevaluate water~~  
 1865 ~~quality and quantity data to ensure that the appropriate~~  
 1866 ~~projects are being designated and implemented to meet the water~~  
 1867 ~~quality and storage goals of the plan. The district shall also~~  
 1868 ~~implement a total phosphorus monitoring program at appropriate~~  
 1869 ~~structures owned or operated by the South Florida Water~~  
 1870 ~~Management District and within the Lake Okeechobee watershed.~~

1871 2. Develop a Lake Okeechobee water quality model that  
 1872 reasonably represents phosphorus dynamics of the lake and  
 1873 incorporates an uncertainty analysis associated with model  
 1874 predictions.

1875 3. Determine the relative contribution of phosphorus from  
 1876 all identifiable sources and all primary and secondary land  
 1877 uses.

1878 4. Conduct an assessment of the sources of phosphorus from  
 1879 the Upper Kissimmee Chain of Lakes and Lake Istokpoga, and their  
 1880 relative contribution to the water quality of Lake Okeechobee.  
 1881 The results of this assessment shall be used by the coordinating  
 1882 agencies to develop interim measures, best management practices,  
 1883 or regulation, as applicable.

1884 5. Assess current water management practices within the  
 1885 Lake Okeechobee watershed and develop recommendations for

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1886 structural and operational improvements. Such recommendations  
 1887 shall balance water supply, flood control, estuarine salinity,  
 1888 maintenance of a healthy lake littoral zone, and water quality  
 1889 considerations.

1890 ~~6. Evaluate the feasibility of alternative nutrient~~  
 1891 ~~reduction technologies, including sediment traps, canal and~~  
 1892 ~~ditch maintenance, fish production or other aquaculture,~~  
 1893 ~~bioenergy conversion processes, and algal or other biological~~  
 1894 ~~treatment technologies.~~

1895 7. Conduct an assessment of the water volumes and timing  
 1896 from the Lake Okeechobee watershed and their relative  
 1897 contribution to the water level changes in Lake Okeechobee and  
 1898 to the timing and volume of water delivered to the estuaries.

1899 (c)(e) Lake Okeechobee Exotic Species Control Program.—The  
 1900 coordinating agencies shall identify the exotic species that  
 1901 threaten the native flora and fauna within the Lake Okeechobee  
 1902 watershed and develop and implement measures to protect the  
 1903 native flora and fauna.

1904 (d)(f) Lake Okeechobee Internal Phosphorus Management  
 1905 Program.—The district, in cooperation with the other  
 1906 coordinating agencies and interested parties, shall evaluate the  
 1907 feasibility of complete a Lake Okeechobee internal phosphorus  
 1908 load removal projects feasibility study. The evaluation  
 1909 feasibility study shall be based on technical feasibility, as  
 1910 well as economic considerations, and shall consider address all  
 1911 reasonable methods of phosphorus removal. If projects methods  
 1912 are found to be feasible, the district shall immediately pursue  
 1913 the design, funding, and permitting for implementing such  
 1914 projects methods.

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1915 ~~(e)(g)~~ Lake Okeechobee Watershed Protection Program Plan  
 1916 implementation.—The coordinating agencies shall be jointly  
 1917 responsible for implementing the Lake Okeechobee Watershed  
 1918 Protection Program Plan, consistent with the statutory authority  
 1919 and responsibility of each agency. Annual funding priorities  
 1920 shall be jointly established, and the highest priority shall be  
 1921 assigned to programs and projects that address sources that have  
 1922 the highest relative contribution to loading and the greatest  
 1923 potential for reductions needed to meet the total maximum daily  
 1924 loads. In determining funding priorities, the coordinating  
 1925 agencies shall also consider the need for regulatory compliance,  
 1926 the extent to which the program or project is ready to proceed,  
 1927 and the availability of federal matching funds or other nonstate  
 1928 funding, including public-private partnerships. Federal and  
 1929 other nonstate funding shall be maximized to the greatest extent  
 1930 practicable.

1931 ~~(f)(h)~~ Priorities and implementation schedules.—The  
 1932 coordinating agencies are authorized and directed to establish  
 1933 priorities and implementation schedules for the achievement of  
 1934 total maximum daily loads, compliance with the requirements of  
 1935 s. 403.067, and compliance with applicable water quality  
 1936 standards within the waters and watersheds subject to this  
 1937 section.

1938 ~~(i) Legislative ratification.~~ The coordinating agencies  
 1939 shall submit the Phase II technical plan developed pursuant to  
 1940 paragraph (b) to the President of the Senate and the Speaker of  
 1941 the House of Representatives prior to the 2008 legislative  
 1942 session for review. If the Legislature takes no action on the  
 1943 plan during the 2008 legislative session, the plan is deemed

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1944 ~~approved and may be implemented.~~

1945 (4) CALOOSAHATCHEE RIVER WATERSHED PROTECTION PROGRAM AND  
 1946 ST. LUCIE RIVER WATERSHED PROTECTION PROGRAM.—A protection  
 1947 program shall be developed and implemented as specified in this  
 1948 subsection. In order to protect and restore surface water  
 1949 resources, the program shall address the reduction of pollutant  
 1950 loadings, restoration of natural hydrology, and compliance with  
 1951 applicable state water quality standards. The program shall be  
 1952 achieved through a phased program of implementation. In  
 1953 addition, pollutant load reductions based upon adopted total  
 1954 maximum daily loads established in accordance with s. 403.067  
 1955 shall serve as a program objective. In the development and  
 1956 administration of the program, the coordinating agencies shall  
 1957 maximize opportunities provided by federal and local government  
 1958 cost-sharing programs and opportunities for partnerships with  
 1959 the private sector and local government. The program plan shall  
 1960 include a goal for salinity envelopes and freshwater inflow  
 1961 targets for the estuaries based upon existing research and  
 1962 documentation. The goal may be revised as new information is  
 1963 available. This goal shall seek to reduce the frequency and  
 1964 duration of undesirable salinity ranges while meeting the other  
 1965 water-related needs of the region, including water supply and  
 1966 flood protection, while recognizing the extent to which water  
 1967 inflows are within the control and jurisdiction of the district.

1968 (a) Caloosahatchee River Watershed Protection Plan. ~~No~~  
 1969 ~~later than January 1, 2009,~~ The district, in cooperation with  
 1970 the other coordinating agencies, Lee County, and affected  
 1971 counties and municipalities, shall complete a River Watershed  
 1972 Protection Plan in accordance with this subsection. The

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1973 Caloosahatchee River Watershed Protection Plan shall identify  
 1974 the geographic extent of the watershed, be coordinated as needed  
 1975 with the plans developed pursuant to paragraph (3) (a) and  
 1976 paragraph (c) ~~(b)~~ of this subsection, and ~~contain an~~  
 1977 ~~implementation schedule for pollutant load reductions consistent~~  
 1978 ~~with any adopted total maximum daily loads and compliance with~~  
 1979 ~~applicable state water quality standards. The plan shall include~~  
 1980 the Caloosahatchee River Watershed Construction Project and the  
 1981 Caloosahatchee River Watershed Research and Water Quality  
 1982 Monitoring Program.+

1983 1. Caloosahatchee River Watershed Construction Project.—To  
 1984 improve the hydrology, water quality, and aquatic habitats  
 1985 within the watershed, the district shall, no later than January  
 1986 1, 2012, plan, design, and construct the initial phase of the  
 1987 Watershed Construction Project. In doing so, the district shall:

1988 a. Develop and designate the facilities to be constructed  
 1989 to achieve stated goals and objectives of the Caloosahatchee  
 1990 River Watershed Protection Plan.

1991 b. Conduct scientific studies that are necessary to support  
 1992 the design of the Caloosahatchee River Watershed Construction  
 1993 Project facilities.

1994 c. Identify the size and location of all such facilities.

1995 d. Provide a construction schedule for all such facilities,  
 1996 including the sequencing and specific timeframe for construction  
 1997 of each facility.

1998 e. Provide a schedule for the acquisition of lands or  
 1999 sufficient interests necessary to achieve the construction  
 2000 schedule.

2001 f. Provide a schedule of costs and benefits associated with

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2002 each construction project and identify funding sources.

2003 g. To ensure timely implementation, coordinate the design,  
 2004 scheduling, and sequencing of project facilities with the  
 2005 coordinating agencies, Lee County, other affected counties and  
 2006 municipalities, and other affected parties.

2007 2. Caloosahatchee River Watershed Research and Water  
 2008 Quality Monitoring Program.—The district, in cooperation with  
 2009 the other coordinating agencies and local governments, shall  
 2010 implement a Caloosahatchee River Watershed Research and Water  
 2011 Quality Monitoring Program that builds upon the district's  
 2012 existing research program and that is sufficient to carry out,  
 2013 comply with, or assess the plans, programs, and other  
 2014 responsibilities created by this subsection. The program shall  
 2015 also conduct an assessment of the water volumes and timing from  
 2016 Lake Okeechobee and the Caloosahatchee River watershed and their  
 2017 relative contributions to the timing and volume of water  
 2018 delivered to the estuary.

2019 (b)2- Caloosahatchee River Watershed Basin Management  
 2020 Action Plans Pollutant Control Program.—The basin management  
 2021 action plans adopted pursuant to s. 403.067 for the  
 2022 Caloosahatchee River watershed shall be the Caloosahatchee River  
 2023 Watershed Pollutant Control Program. The plans shall be ~~is~~  
 2024 designed to be a multifaceted approach to reducing pollutant  
 2025 loads by improving the management of pollutant sources within  
 2026 the Caloosahatchee River watershed through implementation of  
 2027 regulations and best management practices, development and  
 2028 implementation of improved best management practices,  
 2029 improvement and restoration of the hydrologic function of  
 2030 natural and managed systems, and utilization of alternative

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2031 technologies for pollutant reduction, such as cost-effective  
 2032 biologically based, hybrid wetland/chemical and other innovative  
 2033 nutrient control technologies. The plans shall contain an  
 2034 implementation schedule for pollutant load reductions consistent  
 2035 with the adopted total maximum daily load. The coordinating  
 2036 agencies shall facilitate the ~~use~~ ~~utilization~~ of federal  
 2037 programs that offer opportunities for water quality treatment,  
 2038 including preservation, restoration, or creation of wetlands on  
 2039 agricultural lands.

2040 ~~1.a.~~ Nonpoint source best management practices consistent  
 2041 with ~~s. 403.067 paragraph (3)(c)~~, designed to achieve the  
 2042 objectives of the Caloosahatchee River Watershed Protection  
 2043 Program, shall be implemented on an expedited basis. The  
 2044 coordinating agencies may develop an intergovernmental agreement  
 2045 with local governments to implement the nonagricultural,  
 2046 nonpoint-source best management practices within their  
 2047 respective geographic boundaries.

2048 ~~2.b.~~ This subsection does not preclude the department or  
 2049 the district from requiring compliance with water quality  
 2050 standards, adopted total maximum daily loads, or current best  
 2051 management practices requirements set forth in any applicable  
 2052 regulatory program authorized by law for the purpose of  
 2053 protecting water quality. This subsection applies only to the  
 2054 extent that it does not conflict with any rules adopted by the  
 2055 department or district which are necessary to maintain a  
 2056 federally delegated or approved program.

2057 ~~3.e.~~ Projects that make use of private lands, or lands held  
 2058 in trust for Indian tribes, to reduce pollutant loadings or  
 2059 concentrations within a basin, or that reduce the volume of

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2060 harmful discharges by one or more of the following methods:  
 2061 restoring the natural hydrology of the basin, restoring wildlife  
 2062 habitat or impacted wetlands, reducing peak flows after storm  
 2063 events, or increasing aquifer recharge, are eligible for grants  
 2064 available under this section from the coordinating agencies.

2065 ~~4.d.~~ The Caloosahatchee River Watershed Basin Management  
 2066 Action Plans ~~Pollutant Control Program~~ shall require assessment  
 2067 of current water management practices within the watershed and  
 2068 shall require development of recommendations for structural,  
 2069 nonstructural, and operational improvements. Such  
 2070 recommendations shall consider and balance water supply, flood  
 2071 control, estuarine salinity, aquatic habitat, and water quality  
 2072 considerations.

2073 ~~5.e.~~ ~~After December 31, 2007,~~ The department may not  
 2074 authorize the disposal of domestic wastewater biosolids  
 2075 ~~residuals~~ within the Caloosahatchee River watershed unless the  
 2076 applicant can affirmatively demonstrate that the nutrients in  
 2077 the biosolids ~~residuals~~ will not add to nutrient loadings in the  
 2078 watershed. This demonstration shall be based on achieving a net  
 2079 balance between nutrient imports relative to exports on the  
 2080 permitted application site. Exports shall include only nutrients  
 2081 removed from the watershed through products generated on the  
 2082 permitted application site. This prohibition does not apply to  
 2083 Class AA biosolids ~~residuals~~ that are marketed and distributed  
 2084 as fertilizer products in accordance with department rule.

2085 ~~6.f.~~ The Department of Health shall require all entities  
 2086 disposing of septage within the Caloosahatchee River watershed  
 2087 to develop and submit to that agency an agricultural use plan  
 2088 that limits applications based upon nutrient loading consistent

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2089 with any basin management action plan adopted pursuant to s.  
2090 403.067. ~~By July 1, 2008, nutrient concentrations originating~~  
2091 ~~from these application sites may not exceed the limits~~  
2092 ~~established in the district's WOD program.~~

2093 ~~7.g.~~ The Department of Agriculture and Consumer Services  
2094 shall require ~~initiate rulemaking requiring~~ entities within the  
2095 Caloosahatchee River watershed which land-apply animal manure to  
2096 develop a resource management system level conservation plan,  
2097 according to United States Department of Agriculture criteria,  
2098 which limit such application. Such rules may include criteria  
2099 and thresholds for the requirement to develop a conservation or  
2100 recordkeeping requirements for the requirement to develop a conservation or  
2101 recordkeeping requirements.

2102 8. The district shall initiate rulemaking to provide for a  
2103 monitoring program for nonpoint source dischargers required to  
2104 monitor water quality pursuant to s. 403.067(7)(b)2.g. or s.  
2105 403.067(7)(c)3. The results of such monitoring must be reported  
2106 to the coordinating agencies.

2107 ~~3. Caloosahatchee River Watershed Research and Water~~  
2108 ~~Quality Monitoring Program. The district, in cooperation with~~  
2109 ~~the other coordinating agencies and local governments, shall~~  
2110 ~~establish a Caloosahatchee River Watershed Research and Water~~  
2111 ~~Quality Monitoring Program that builds upon the district's~~  
2112 ~~existing research program and that is sufficient to carry out,~~  
2113 ~~comply with, or assess the plans, programs, and other~~  
2114 ~~responsibilities created by this subsection. The program shall~~  
2115 ~~also conduct an assessment of the water volumes and timing from~~  
2116 ~~the Lake Okeechobee and Caloosahatchee River watersheds and~~  
2117 ~~their relative contributions to the timing and volume of water~~

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2118 ~~delivered to the estuary.~~

2119 ~~(c)(b) St. Lucie River Watershed Protection Plan. No later~~  
2120 ~~than January 1, 2009, The district, in cooperation with the~~  
2121 ~~other coordinating agencies, Martin County, and affected~~  
2122 ~~counties and municipalities shall complete a plan in accordance~~  
2123 ~~with this subsection. The St. Lucie River Watershed Protection~~  
2124 ~~Plan shall identify the geographic extent of the watershed, be~~  
2125 ~~coordinated as needed with the plans developed pursuant to~~  
2126 ~~paragraph (3)(a) and paragraph (a) of this subsection, and~~  
2127 ~~contain an implementation schedule for pollutant load reductions~~  
2128 ~~consistent with any adopted total maximum daily loads and~~  
2129 ~~compliance with applicable state water quality standards. The~~  
2130 ~~plan shall include the St. Lucie River Watershed Construction~~  
2131 ~~Project and St. Lucie River Watershed Research and Water Quality~~  
2132 ~~Monitoring Program.+~~

2133 1. St. Lucie River Watershed Construction Project.-To  
2134 improve the hydrology, water quality, and aquatic habitats  
2135 within the watershed, the district shall, no later than January  
2136 1, 2012, plan, design, and construct the initial phase of the  
2137 Watershed Construction Project. In doing so, the district shall:  
2138 a. Develop and designate the facilities to be constructed  
2139 to achieve stated goals and objectives of the St. Lucie River  
2140 Watershed Protection Plan.

2141 b. Identify the size and location of all such facilities.

2142 c. Provide a construction schedule for all such facilities,  
2143 including the sequencing and specific timeframe for construction  
2144 of each facility.

2145 d. Provide a schedule for the acquisition of lands or  
2146 sufficient interests necessary to achieve the construction

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2147

schedule.

2148

e. Provide a schedule of costs and benefits associated with each construction project and identify funding sources.

2150

f. To ensure timely implementation, coordinate the design, scheduling, and sequencing of project facilities with the coordinating agencies, Martin County, St. Lucie County, other interested parties, and other affected local governments.

2154

2. St. Lucie River Watershed Research and Water Quality Monitoring Program.—The district, in cooperation with the other coordinating agencies and local governments, shall establish a St. Lucie River Watershed Research and Water Quality Monitoring Program that builds upon the district's existing research program and that is sufficient to carry out, comply with, or assess the plans, programs, and other responsibilities created by this subsection. The program shall also conduct an assessment of the water volumes and timing from Lake Okeechobee and the St. Lucie River watershed and their relative contributions to the timing and volume of water delivered to the estuary.

2165

(d) ~~2~~ St. Lucie River Watershed Basin Management Action Plans Pollutant Control Program.—Basin management action plans for the St. Lucie River watershed adopted pursuant to s. 403.067 shall be the St. Lucie River Watershed Pollutant Control Program and shall be ~~is~~ designed to be a multifaceted approach to reducing pollutant loads by improving the management of pollutant sources within the St. Lucie River watershed through implementation of regulations and best management practices, development and implementation of improved best management practices, improvement and restoration of the hydrologic function of natural and managed systems, and use utilization of

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alternative technologies for pollutant reduction, such as cost-effective biologically based, hybrid wetland/chemical and other innovative nutrient control technologies. The plan shall contain an implementation schedule for pollutant load reductions consistent with the adopted total maximum daily load. The coordinating agencies shall facilitate the use utilization of federal programs that offer opportunities for water quality treatment, including preservation, restoration, or creation of wetlands on agricultural lands.

2185

1.a. Nonpoint source best management practices consistent with s. 403.067 paragraph (3)(c), designed to achieve the objectives of the St. Lucie River Watershed Protection Program, shall be implemented on an expedited basis. The coordinating agencies may develop an intergovernmental agreement with local governments to implement the nonagricultural nonpoint source best management practices within their respective geographic boundaries.

2193

2.b. This subsection does not preclude the department or the district from requiring compliance with water quality standards, adopted total maximum daily loads, or current best management practices requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. This subsection applies only to the extent that it does not conflict with any rules adopted by the department or district which are necessary to maintain a federally delegated or approved program.

2202

3.e. Projects that make use of private lands, or lands held in trust for Indian tribes, to reduce pollutant loadings or concentrations within a basin, or that reduce the volume of

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2205 harmful discharges by one or more of the following methods:  
 2206 restoring the natural hydrology of the basin, restoring wildlife  
 2207 habitat or impacted wetlands, reducing peak flows after storm  
 2208 events, or increasing aquifer recharge, are eligible for grants  
 2209 available under this section from the coordinating agencies.

2210 ~~4.d.~~ The St. Lucie River Watershed Basin Management Action  
 2211 Plans Pollutant Control Program shall require assessment of  
 2212 current water management practices within the watershed and  
 2213 shall require development of recommendations for structural,  
 2214 nonstructural, and operational improvements. Such  
 2215 recommendations shall consider and balance water supply, flood  
 2216 control, estuarine salinity, aquatic habitat, and water quality  
 2217 considerations.

2218 ~~5.e.~~ After December 31, 2007, The department may not  
 2219 authorize the disposal of domestic wastewater biosolids  
 2220 ~~residuals~~ within the St. Lucie River watershed unless the  
 2221 applicant can affirmatively demonstrate that the nutrients in  
 2222 the biosolids residuals will not add to nutrient loadings in the  
 2223 watershed. This demonstration shall be based on achieving a net  
 2224 balance between nutrient imports relative to exports on the  
 2225 permitted application site. Exports shall include only nutrients  
 2226 removed from the St. Lucie River watershed through products  
 2227 generated on the permitted application site. This prohibition  
 2228 does not apply to Class AA biosolids residuals that are marketed  
 2229 and distributed as fertilizer products in accordance with  
 2230 department rule.

2231 ~~6.f.~~ The Department of Health shall require all entities  
 2232 disposing of septage within the St. Lucie River watershed to  
 2233 develop and submit to that agency an agricultural use plan that

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2234 limits applications based upon nutrient loading consistent with  
 2235 any basin management action plan adopted pursuant to s. 403.067.  
 2236 ~~By July 1, 2008, nutrient concentrations originating from these~~  
 2237 ~~application sites may not exceed the limits established in the~~  
 2238 ~~district's WOD program.~~

2239 ~~7.g.~~ The Department of Agriculture and Consumer Services  
 2240 shall initiate rulemaking requiring entities within the St.  
 2241 Lucie River watershed which land-apply animal manure to develop  
 2242 a resource management system level conservation plan, according  
 2243 to United States Department of Agriculture criteria, which limit  
 2244 such application. Such rules may include criteria and thresholds  
 2245 for the requirement to develop a conservation or nutrient  
 2246 management plan, requirements for plan approval, and  
 2247 recordkeeping requirements.

2248 8. The district shall initiate rulemaking to provide for a  
 2249 monitoring program for nonpoint source dischargers required to  
 2250 monitor water quality pursuant to s. 403.067 (7) (b)2.g. or s.  
 2251 403.067 (7) (c)3. The results of such monitoring must be reported  
 2252 to the coordinating agencies.

2253 ~~3. St. Lucie River Watershed Research and Water Quality~~  
 2254 ~~Monitoring Program. The district, in cooperation with the other~~  
 2255 ~~coordinating agencies and local governments, shall establish a~~  
 2256 ~~St. Lucie River Watershed Research and Water Quality Monitoring~~  
 2257 ~~Program that builds upon the district's existing research~~  
 2258 ~~program and that is sufficient to carry out, comply with, or~~  
 2259 ~~assess the plans, programs, and other responsibilities created~~  
 2260 ~~by this subsection. The program shall also conduct an assessment~~  
 2261 ~~of the water volumes and timing from the Lake Okeechobee and St.~~  
 2262 ~~Lucie River watersheds and their relative contributions to the~~

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2263 ~~timing and volume of water delivered to the estuary.~~

2264 ~~(e)(e)~~ River Watershed Protection Plan implementation.—The  
 2265 coordinating agencies shall be jointly responsible for  
 2266 implementing the River Watershed Protection Plans, consistent  
 2267 with the statutory authority and responsibility of each agency.  
 2268 Annual funding priorities shall be jointly established, and the  
 2269 highest priority shall be assigned to programs and projects that  
 2270 have the greatest potential for achieving the goals and  
 2271 objectives of the plans. In determining funding priorities, the  
 2272 coordinating agencies shall also consider the need for  
 2273 regulatory compliance, the extent to which the program or  
 2274 project is ready to proceed, and the availability of federal or  
 2275 local government matching funds. Federal and other nonstate  
 2276 funding shall be maximized to the greatest extent practicable.

2277 ~~(f)(f)~~ Evaluation.—Beginning By March 1, 2020 2012, and  
 2278 every 5 ~~3~~ years thereafter concurrent with the updates of the  
 2279 basin management action plans adopted pursuant to s. 403.067,  
 2280 the district, in cooperation with the other coordinating  
 2281 agencies, shall conduct an evaluation of any pollutant load  
 2282 reduction goals, as well as any other specific objectives and  
 2283 goals, as stated in the River Watershed Protection Programs  
 2284 Plans. ~~Additionally,~~ The district shall identify modifications  
 2285 to facilities of the River Watershed Construction Projects, as  
 2286 appropriate, or any other elements of the River Watershed  
 2287 Protection Programs Plans. The evaluation shall be included in  
 2288 the annual progress report submitted pursuant to this section.

2289 ~~(g)(e)~~ Priorities and implementation schedules.—The  
 2290 coordinating agencies are authorized and directed to establish  
 2291 priorities and implementation schedules for the achievement of

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2292 total maximum daily loads, the requirements of s. 403.067, and  
 2293 compliance with applicable water quality standards within the  
 2294 waters and watersheds subject to this section.

2295 ~~(f) Legislative ratification.~~ ~~The coordinating agencies~~  
 2296 ~~shall submit the River Watershed Protection Plans developed~~  
 2297 ~~pursuant to paragraphs (a) and (b) to the President of the~~  
 2298 ~~Senate and the Speaker of the House of Representatives prior to~~  
 2299 ~~the 2009 legislative session for review. If the Legislature~~  
 2300 ~~takes no action on the plan during the 2009 legislative session,~~  
 2301 ~~the plan is deemed approved and may be implemented.~~

2302 (5) ADOPTION AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY  
 2303 LOADS AND DEVELOPMENT OF BASIN MANAGEMENT ACTION PLANS.—The  
 2304 department is directed to expedite development and adoption of  
 2305 total maximum daily loads for the Caloosahatchee River and  
 2306 estuary. The department is further directed to, ~~no later than~~  
 2307 ~~December 31, 2008,~~ propose for final agency action total maximum  
 2308 daily loads for nutrients in the tidal portions of the  
 2309 Caloosahatchee River and estuary. The department shall initiate  
 2310 development of basin management action plans for Lake  
 2311 Okeechobee, the Caloosahatchee River watershed and estuary, and  
 2312 the St. Lucie River watershed and estuary as provided in s.  
 2313 403.067 s. 403.067(7)(a) as follows:

2314 (a) Basin management action plans shall be developed as  
 2315 soon as practicable as determined necessary by the department to  
 2316 achieve the total maximum daily loads established for the Lake  
 2317 Okeechobee watershed and the estuaries.

2318 (b) The Phase II technical plan development pursuant to  
 2319 paragraph (3)(a) ~~(3)(b)~~, and the River Watershed Protection  
 2320 Plans developed pursuant to paragraphs (4)(a) and (c)(b), shall

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2321 provide the basis for basin management action plans developed by  
2322 the department.

2323 (c) As determined necessary by the department in order to  
2324 achieve the total maximum daily loads, additional or modified  
2325 projects or programs that complement those in the legislatively  
2326 ratified plans may be included during the development of the  
2327 basin management action plan.

2328 (d) As provided in s. 403.067, management strategies and  
2329 pollution reduction requirements set forth in a basin management  
2330 action plan subject to permitting by the department under  
2331 subsection (7) must be completed pursuant to the schedule set  
2332 forth in the basin management action plan, as amended. The  
2333 implementation schedule may extend beyond the 5-year permit  
2334 term.

2335 (e) As provided in s. 403.067, management strategies and  
2336 pollution reduction requirements set forth in a basin management  
2337 action plan for a specific pollutant of concern are not subject  
2338 to challenge under chapter 120 at the time they are  
2339 incorporated, in an identical form, into a department or  
2340 district issued permit or a permit modification issued in  
2341 accordance with subsection (7).

2342 ~~(d) Development of basin management action plans that~~  
2343 ~~implement the provisions of the legislatively ratified plans~~  
2344 ~~shall be initiated by the department no later than September 30~~  
2345 ~~of the year in which the applicable plan is ratified. Where a~~  
2346 ~~total maximum daily load has not been established at the time of~~  
2347 ~~plan ratification, development of basin management action plans~~  
2348 ~~shall be initiated no later than 90 days following adoption of~~  
2349 ~~the applicable total maximum daily load.~~

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2350 (6) ANNUAL PROGRESS REPORT.—Each March 1 the district, in  
2351 cooperation with the other coordinating agencies, shall report  
2352 on implementation of this section as part of the consolidated  
2353 annual report required in s. 373.036(7). The annual report shall  
2354 include a summary of the conditions of the hydrology, water  
2355 quality, and aquatic habitat in the northern Everglades based on  
2356 the results of the Research and Water Quality Monitoring  
2357 Programs, the status of the Lake Okeechobee Watershed  
2358 Construction Project, the status of the Caloosahatchee River  
2359 Watershed Construction Project, and the status of the St. Lucie  
2360 River Watershed Construction Project. In addition, the report  
2361 shall contain an annual accounting of the expenditure of funds  
2362 from the Save Our Everglades Trust Fund. At a minimum, the  
2363 annual report shall provide detail by program and plan,  
2364 including specific information concerning the amount and use of  
2365 funds from federal, state, or local government sources. In  
2366 detailing the use of these funds, the district shall indicate  
2367 those designated to meet requirements for matching funds. The  
2368 district shall prepare the report in cooperation with the other  
2369 coordinating agencies and affected local governments. The  
2370 department shall report on the status of the Lake Okeechobee  
2371 Basin Management Action Plan, the Caloosahatchee River Watershed  
2372 Basin Management Action Plan, and the St. Lucie River Watershed  
2373 Basin Management Action Plan. The Department of Agriculture and  
2374 Consumer Services shall report on the status of the  
2375 implementation of the agricultural nonpoint source best  
2376 management practices.

2377 (7) LAKE OKEECHOBEE PROTECTION PERMITS.—

2378 (a) The Legislature finds that the Lake Okeechobee

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2379 Watershed Protection Program will benefit Lake Okeechobee and  
 2380 downstream receiving waters and is in ~~consistent~~ with the public  
 2381 interest. The Lake Okeechobee Watershed Construction Project,  
 2382 and structures discharging into or from Lake Okeechobee shall be  
 2383 constructed, operated, and maintained in accordance with this  
 2384 section.

2385 (b) Permits obtained pursuant to this section are in lieu  
 2386 of all other permits under this chapter or chapter 403, except  
 2387 those issued under s. 403.0885, if applicable. ~~No~~ Additional  
 2388 permits are not required for the Lake Okeechobee Watershed  
 2389 Construction Project, or structures discharging into or from  
 2390 Lake Okeechobee, if such project or structures are permitted  
 2391 under this section. Construction activities related to  
 2392 implementation of the Lake Okeechobee Watershed Construction  
 2393 Project may be initiated before ~~prior to~~ final agency action, or  
 2394 notice of intended agency action, on any permit from the  
 2395 department under this section.

2396 (c) 1. ~~Within 90 days of completion of the diversion plans~~  
 2397 ~~set forth in Department Consent Orders 91-0694, 91-0707, 91-~~  
 2398 ~~0706, 91-0705, and RT50-205564,~~ Owners or operators of existing  
 2399 structures which discharge into or from Lake Okeechobee that  
 2400 were subject to Department Consent Orders 91-0694, 91-0705, 91-  
 2401 0706, 91-0707, and RT50-205564 and that are subject to ~~the~~  
 2402 ~~provisions of~~ s. 373.4592(4) (a) do not require a permit under  
 2403 this section and shall be governed by permits issued under ~~apply~~  
 2404 ~~for a permit from the department to operate and maintain such~~  
 2405 ~~structures. By September 1, 2000, owners or operators of all~~  
 2406 ~~other existing structures which discharge into or from Lake~~  
 2407 ~~Okeechobee shall apply for a permit from the department to~~

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2408 ~~operate and maintain such structures. The department shall issue~~  
 2409 ~~one or more such permits for a term of 5 years upon the~~  
 2410 ~~demonstration of reasonable assurance that schedules and~~  
 2411 ~~strategies to achieve and maintain compliance with water quality~~  
 2412 ~~standards have been provided for, to the maximum extent~~  
 2413 ~~practicable, and that operation of the structures otherwise~~  
 2414 ~~complies with provisions of~~ ss. 373.413 and 373.416 and the Lake  
 2415 Okeechobee Basin Management Action Plan adopted pursuant to s.  
 2416 403.067.

2417 ~~1. Permits issued under this paragraph shall also contain~~  
 2418 ~~reasonable conditions to ensure that discharges of waters~~  
 2419 ~~through structures:~~

2420 ~~a. Are adequately and accurately monitored;~~

2421 ~~b. Will not degrade existing Lake Okeechobee water quality~~  
 2422 ~~and will result in an overall reduction of phosphorus input into~~  
 2423 ~~Lake Okeechobee, as set forth in the district's Technical~~  
 2424 ~~Publication 81-2 and the total maximum daily load established in~~  
 2425 ~~accordance with s. 403.067, to the maximum extent practicable;~~  
 2426 ~~and~~

2427 ~~c. Do not pose a serious danger to public health, safety,~~  
 2428 ~~or welfare.~~

2429 2. For the purposes of this paragraph, owners and operators  
 2430 of existing structures which are subject to ~~the provisions of~~ s.  
 2431 373.4592(4) (a) and which discharge into or from Lake Okeechobee  
 2432 shall be deemed in compliance with this paragraph ~~the term~~  
 2433 ~~"maximum extent practicable"~~ if they are in full compliance with  
 2434 the conditions of permits under chapter ~~chapters~~ 40E-61 and 40E-  
 2435 63, Florida Administrative Code.

2436 3. By January 1, 2004, The district shall obtain from

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2437 ~~submit to the department a permit modification to the Lake~~  
 2438 ~~Okeechobee structure permits to incorporate proposed changes~~  
 2439 ~~necessary to ensure that discharges through the structures~~  
 2440 ~~covered by this permit are consistent with the basin management~~  
 2441 ~~action plan adopted pursuant to achieve state water quality~~  
 2442 ~~standards, including the total maximum daily load established in~~  
 2443 ~~accordance with s. 403.067. These changes shall be designed to~~  
 2444 ~~achieve such compliance with state water quality standards no~~  
 2445 ~~later than January 1, 2015.~~

2446 (d) The department shall require permits for district  
 2447 regional projects that are part of the Lake Okeechobee Watershed  
 2448 Construction Project facilities. However, projects ~~identified in~~  
 2449 ~~sub paragraph (3)(b)1.b.~~ that qualify as exempt pursuant to  
 2450 s. 373.406 do shall not require need permits under this section.  
 2451 Such permits shall be issued for a term of 5 years upon the  
 2452 demonstration of reasonable assurances that:

2453 1. District regional projects that are part of the Lake  
 2454 Okeechobee Watershed Construction Project shall facility, based  
 2455 ~~upon the conceptual design documents and any subsequent detailed~~  
 2456 ~~design documents developed by the district, will~~ achieve the  
 2457 design objectives for phosphorus required in subparagraph  
 2458 (3)(a)1. paragraph (3)(b);

2459 2. For water quality standards other than phosphorus, the  
 2460 quality of water discharged from the facility is of equal or  
 2461 better quality than the inflows;

2462 3. Discharges from the facility do not pose a serious  
 2463 danger to public health, safety, or welfare; and

2464 4. Any impacts on wetlands or state-listed species  
 2465 resulting from implementation of that facility of the Lake

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2466 Okeechobee Construction Project are minimized and mitigated, as  
 2467 appropriate.

2468 (e) At least 60 days ~~before prior to~~ the expiration of any  
 2469 permit issued under this section, the permittee may apply for a  
 2470 renewal thereof for a period of 5 years.

2471 (f) Permits issued under this section may include any  
 2472 standard conditions provided by department rule which are  
 2473 appropriate and consistent with this section.

2474 (g) Permits issued under pursuant to this section may be  
 2475 modified, as appropriate, upon review and approval by the  
 2476 department.

2477 (8) ENFORCEMENT OF BASIN MANAGEMENT ACTION PLANS.—The basin  
 2478 management action plans for Lake Okeechobee, the Caloosahatchee  
 2479 River watershed and estuary, and the St. Lucie River watershed  
 2480 and estuary are enforceable pursuant to ss. 403.067, 403.121,  
 2481 403.141, and 403.161.

2482 Section 19. Paragraphs (a) and (b) of subsection (6) of  
 2483 section 373.536, Florida Statutes, are amended to read:

2484 373.536 District budget and hearing thereon.—

2485 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;  
 2486 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

2487 (a) Each district must, by the date specified for each  
 2488 item, furnish copies of the following documents to the Governor,  
 2489 the President of the Senate, the Speaker of the House of  
 2490 Representatives, the chairs of all legislative committees and  
 2491 subcommittees having substantive or fiscal jurisdiction over the  
 2492 districts, as determined by the President of the Senate or the  
 2493 Speaker of the House of Representatives as applicable, the  
 2494 secretary of the department, and the governing board of each

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2495 county in which the district has jurisdiction or derives any  
2496 funds for the operations of the district:

2497 1. The adopted budget, to be furnished within 10 days after  
2498 its adoption.

2499 2. A financial audit of its accounts and records, to be  
2500 furnished within 10 days after its acceptance by the governing  
2501 board. The audit must be conducted in accordance with s. 11.45  
2502 and the rules adopted thereunder. In addition to the entities  
2503 named above, the district must provide a copy of the audit to  
2504 the Auditor General within 10 days after its acceptance by the  
2505 governing board.

2506 3. A 5-year capital improvements plan, to be included in  
2507 the consolidated annual report required by s. 373.036(7). The  
2508 plan must include expected sources of revenue for planned  
2509 improvements and must be prepared in a manner comparable to the  
2510 fixed capital outlay format set forth in s. 216.043.

2511 4. A 5-year water resource development work program to be  
2512 furnished within 30 days after the adoption of the final budget.  
2513 The program must describe the district's implementation strategy  
2514 and include an annual funding plan for each of the 5 years  
2515 included in the plan for the water resource ~~and~~ water supply,  
2516 development components, including ~~and~~ alternative water supply  
2517 development, ~~components~~ of each approved regional water supply  
2518 plan developed or revised under s. 373.709. The work program  
2519 must address all the elements of the water resource development  
2520 component in the district's approved regional water supply  
2521 plans, as well as the water supply projects proposed for  
2522 district funding and assistance. The annual funding plan shall  
2523 identify both anticipated available district funding and

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2524 additional funding needs for the second through fifth years of  
2525 the funding plan. Funding requests for projects submitted for  
2526 consideration for state funding pursuant to s. 403.0616 shall be  
2527 identified separately. The work program ~~and~~ must identify  
2528 projects in the work program which will provide water; explain  
2529 how each water resource, and water supply, ~~and alternative water~~  
2530 ~~supply development~~ project will produce additional water  
2531 available for consumptive uses; estimate the quantity of water  
2532 to be produced by each project; ~~and~~ provide an assessment of the  
2533 contribution of the district's regional water supply plans in  
2534 supporting the implementation of minimum flows and levels and  
2535 reservations; and ensure ~~providing~~ sufficient water is available  
2536 needed to timely meet the water supply needs of existing and  
2537 future reasonable-beneficial uses for a 1-in-10-year drought  
2538 event and to avoid the adverse effects of competition for water  
2539 supplies.

2540 (b) Within 30 days after its submittal, the department  
2541 shall review the proposed work program and submit its findings,  
2542 questions, and comments to the district. The review must include  
2543 a written evaluation of the program's consistency with the  
2544 furtherance of the district's approved regional water supply  
2545 plans, and the adequacy of proposed expenditures. As part of the  
2546 review, the department shall post the work program on its  
2547 website and give interested parties the opportunity to provide  
2548 written comments on each district's proposed work program.  
2549 Within 45 days after receipt of the department's evaluation, the  
2550 governing board shall state in writing to the department which  
2551 of the changes recommended in the evaluation it will incorporate  
2552 into its work program submitted as part of the March 1

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2553 consolidated annual report required by s. 373.036(7) or specify  
 2554 the reasons for not incorporating the changes. The department  
 2555 shall include the district's responses in a final evaluation  
 2556 report and shall submit a copy of the report to the Governor,  
 2557 the President of the Senate, and the Speaker of the House of  
 2558 Representatives.

2559 Section 20. Subsection (9) of section 373.703, Florida  
 2560 Statutes, is amended to read:

2561 373.703 Water production; general powers and duties.—In the  
 2562 performance of, and in conjunction with, its other powers and  
 2563 duties, the governing board of a water management district  
 2564 existing pursuant to this chapter:

2565 (9) May join with one or more other water management  
 2566 districts, counties, municipalities, special districts, publicly  
 2567 owned or privately owned water utilities, multijurisdictional  
 2568 water supply entities, regional water supply authorities,  
 2569 private landowners, or self-suppliers for the purpose of  
 2570 carrying out its powers, and may contract with such other  
 2571 entities to finance acquisitions, construction, operation, and  
 2572 maintenance, provided that such contracts are consistent with  
 2573 the public interest. The contract may provide for contributions  
 2574 to be made by each party to the contract for the division and  
 2575 apportionment of the expenses of acquisitions, construction,  
 2576 operation, and maintenance, and for the division and  
 2577 apportionment of resulting benefits, services, and products. The  
 2578 contracts may contain other covenants and agreements necessary  
 2579 and appropriate to accomplish their purposes.

2580 Section 21. Paragraph (b) of subsection (2), subsection  
 2581 (3), and paragraph (b) of subsection (4) of section 373.705,

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2582 Florida Statutes, are amended, and subsection (5) is added to  
 2583 that section, to read:

2584 373.705 Water resource development; water supply  
 2585 development.—

2586 (2) It is the intent of the Legislature that:

2587 (b) Water management districts take the lead in identifying  
 2588 and implementing water resource development projects, and be  
 2589 responsible for securing necessary funding for regionally  
 2590 significant water resource development projects, including  
 2591 regionally significant projects that prevent or limit adverse  
 2592 water resource impacts, avoid competition among water users, or  
 2593 support the provision of new water supplies in order to meet a  
 2594 minimum flow or minimum water level, implement a recovery or  
 2595 prevention strategy or water reservation.

2596 (3) (a) The water management districts shall fund and  
 2597 implement water resource development as defined in s. 373.019.  
 2598 The water management districts are encouraged to implement water  
 2599 resource development as expeditiously as possible in areas  
 2600 subject to regional water supply plans.

2601 (b) Each governing board shall include in its annual budget  
 2602 submittals required under this chapter:

2603 1. The amount of funds for each project in the annual  
 2604 funding plan developed pursuant to s. 373.536(6)(a)4.

2605 2. The total amount needed for the fiscal year to implement  
 2606 water resource development projects, as prioritized in its  
 2607 regional water supply plans.

2608 3. The amount of funds requested for each project submitted  
 2609 for consideration for state funding pursuant to s. 403.0616.

2610 (4)

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2611 (b) Water supply development projects that meet the  
2612 criteria in paragraph (a) and that meet one or more of the  
2613 following additional criteria shall be given first consideration  
2614 for state or water management district funding assistance:

2615 1. The project brings about replacement of existing sources  
2616 in order to help implement a minimum flow or level; ~~or~~

2617 2. The project implements reuse that assists in the  
2618 elimination of domestic wastewater ocean outfalls as provided in  
2619 s. 403.086(9); or

2620 3. The project reduces or eliminates the adverse effects of  
2621 competition between legal users and the natural system.

2622 (5) The water management districts shall promote expanded  
2623 cost-share criteria for additional conservation practices, such  
2624 as soil and moisture sensors and other irrigation improvements,  
2625 water-saving equipment, and water-saving household fixtures.

2626 Section 22. Paragraph (f) of subsection (3), paragraph (a)  
2627 of subsection (6), and paragraph (e) of subsection (8) of  
2628 section 373.707, Florida Statutes, are amended to read:

2629 373.707 Alternative water supply development.—

2630 (3) The primary roles of the water management districts in  
2631 water resource development as it relates to supporting  
2632 alternative water supply development are:

2633 (f) The provision of technical and financial assistance to  
2634 local governments and publicly owned and privately owned water  
2635 utilities for alternative water supply projects and for self-  
2636 suppliers for alternative water supply projects to the extent  
2637 assistance for self-suppliers promotes the policies in paragraph  
2638 (1) (f).

2639 (6) (a) Where state ~~The statewide funds~~ are provided through

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2640 specific appropriation for a priority project of the water  
2641 resources work program pursuant to s. 403.0616, or pursuant to  
2642 the Water Protection and Sustainability Program, such funds  
2643 serve to supplement existing water management district or basin  
2644 board funding for alternative water supply development  
2645 assistance and should not result in a reduction of such funding.  
2646 For each project identified in the plans prepared pursuant to s.  
2647 373.536(6) (a)4. ~~Therefore,~~ the water management districts shall  
2648 include in the annual tentative and adopted budget submittals  
2649 required under this chapter the amount of funds allocated for  
2650 water resource development that supports alternative water  
2651 supply development and the funds allocated for alternative water  
2652 supply projects ~~selected for inclusion in the Water Protection~~  
2653 and ~~Sustainability Program.~~ It shall be the goal of each water  
2654 management district and basin boards that the combined funds  
2655 allocated annually for these purposes be, at a minimum, the  
2656 equivalent of 100 percent of the state funding provided to the  
2657 water management district for alternative water supply  
2658 development. If this goal is not achieved, the water management  
2659 district shall provide in the budget submittal an explanation of  
2660 the reasons or constraints that prevent this goal from being  
2661 met, an explanation of how the goal will be met in future years,  
2662 and affirmation of match is required during the budget review  
2663 process as established under s. 373.536(5). The Suwannee River  
2664 Water Management District and the Northwest Florida Water  
2665 Management District shall not be required to meet the match  
2666 requirements of this paragraph; however, they shall try to  
2667 achieve the match requirement to the greatest extent  
2668 practicable.

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2669 (8)

2670 (e) Applicants for projects that may receive funding

2671 assistance pursuant to the Water Protection and Sustainability

2672 Program shall, at a minimum, be required to pay 60 percent of

2673 the project's construction costs. The water management districts

2674 may, at their discretion, totally or partially waive this

2675 requirement for projects sponsored by:

2676 1. Financially disadvantaged small local governments as

2677 defined in former s. 403.885(5); or

2678 2. Water users for projects determined by a water

2679 management district governing board to be in the public interest

2680 pursuant to paragraph (1)(f), if the projects are not otherwise

2681 financially feasible.

2682

2683 The water management districts or basin boards may, at their

2684 discretion, use ad valorem or federal revenues to assist a

2685 project applicant in meeting the requirements of this paragraph.

2686 Section 23. Paragraph (a) of subsection (2) and paragraphs

2687 (a) and (e) of subsection (6) of section 373.709, Florida

2688 Statutes, are amended to read:

2689 373.709 Regional water supply planning.-

2690 (2) Each regional water supply plan must be based on at

2691 least a 20-year planning period and must include, but need not

2692 be limited to:

2693 (a) A water supply development component for each water

2694 supply planning region identified by the district which

2695 includes:

2696 1. A quantification of the water supply needs for all

2697 existing and future reasonable-beneficial uses within the

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2698 planning horizon. The level-of-certainty planning goal

2699 associated with identifying the water supply needs of existing

2700 and future reasonable-beneficial uses must be based upon meeting

2701 those needs for a 1-in-10-year drought event.

2702 a. Population projections used for determining public water

2703 supply needs must be based upon the best available data. In

2704 determining the best available data, the district shall consider

2705 the University of ~~Florida~~ Florida's Bureau of Economic and

2706 Business Research (BEBR) medium population projections and

2707 population projection data and analysis submitted by a local

2708 government pursuant to the public workshop described in

2709 subsection (1) if the data and analysis support the local

2710 government's comprehensive plan. Any adjustment of or deviation

2711 from the BEBR projections must be fully described, and the

2712 original BEBR data must be presented along with the adjusted

2713 data.

2714 b. Agricultural demand projections used for determining the

2715 needs of agricultural self-suppliers must be based upon the best

2716 available data. In determining the best available data for

2717 agricultural self-supplied water needs, the district shall

2718 consider the data indicative of future water supply demands

2719 provided by the Department of Agriculture and Consumer Services

2720 pursuant to s. 570.93 and agricultural demand projection data

2721 and analysis submitted by a local government pursuant to the

2722 public workshop described in subsection (1), if the data and

2723 analysis support the local government's comprehensive plan. Any

2724 adjustment of or deviation from the data provided by the

2725 Department of Agriculture and Consumer Services must be fully

2726 described, and the original data must be presented along with

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2727 the adjusted data.

2728 2. A list of water supply development project options,  
 2729 including traditional and alternative water supply project  
 2730 options that are technically and financially feasible, from  
 2731 which local government, government-owned and privately owned  
 2732 utilities, regional water supply authorities,  
 2733 multijurisdictional water supply entities, self-suppliers, and  
 2734 others may choose for water supply development. In addition to  
 2735 projects listed by the district, such users may propose specific  
 2736 projects for inclusion in the list of alternative water supply  
 2737 projects. If such users propose a project to be listed as an  
 2738 alternative water supply project, the district shall determine  
 2739 whether it meets the goals of the plan, and, if so, it shall be  
 2740 included in the list. The total capacity of the projects  
 2741 included in the plan must exceed the needs identified in  
 2742 subparagraph 1. and take into account water conservation and  
 2743 other demand management measures, as well as water resources  
 2744 constraints, including adopted minimum flows and levels and  
 2745 water reservations. Where the district determines it is  
 2746 appropriate, the plan should specifically identify the need for  
 2747 multijurisdictional approaches to project options that, based on  
 2748 planning level analysis, are appropriate to supply the intended  
 2749 uses and that, based on such analysis, appear to be permissible  
 2750 and financially and technically feasible. The list of water  
 2751 supply development options must contain provisions that  
 2752 recognize that alternative water supply options for agricultural  
 2753 self-suppliers are limited.

2754 3. For each project option identified in subparagraph 2.,  
 2755 the following must be provided:

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2756 a. An estimate of the amount of water to become available  
 2757 through the project.

2758 b. The timeframe in which the project option should be  
 2759 implemented and the estimated planning-level costs for capital  
 2760 investment and operating and maintaining the project.

2761 c. An analysis of funding needs and sources of possible  
 2762 funding options. For alternative water supply projects, the  
 2763 water management districts shall provide funding assistance  
 2764 pursuant to s. 373.707(8).

2765 d. Identification of the entity that should implement each  
 2766 project option and the current status of project implementation.

2767 (6) Annually and in conjunction with the reporting  
 2768 requirements of s. 373.536(6)(a)4., the department shall submit  
 2769 to the Governor and the Legislature a report on the status of  
 2770 regional water supply planning in each district. The report  
 2771 shall include:

2772 (a) A compilation of the estimated costs ~~of~~ and an analysis  
 2773 of the sufficiency of potential sources of funding from all  
 2774 sources for water resource development and water supply  
 2775 development projects as identified in the water management  
 2776 district regional water supply plans.

2777 (e) An overall assessment of the progress being made to  
 2778 develop water supply in each district, including, but not  
 2779 limited to, an explanation of how each project in the 5-year  
 2780 water resource development work program in s. 373.536(6)(a)4.,  
 2781 either alternative or traditional, will produce, contribute to,  
 2782 or account for additional water being made available for  
 2783 consumptive uses, minimum flows and levels, or water  
 2784 reservations; an estimate of the quantity of water to be

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2785 produced by each project,<sup>7</sup> and an assessment of the contribution  
 2786 of the district's regional water supply plan in providing  
 2787 sufficient water to meet the needs of existing and future  
 2788 reasonable-beneficial uses for a 1-in-10-year drought event, as  
 2789 well as the needs of the natural systems.

2790 Section 24. Part VIII of chapter 373, Florida Statutes,  
 2791 consisting of sections 373.801, 373.802, 373.803, 373.805,  
 2792 373.807, 373.811, 373.813, and 373.815, Florida Statutes, is  
 2793 created and entitled the "Florida Springs and Aquifer Protection  
 2794 Act."

2795 Section 25. Section 373.801, Florida Statutes, is created  
 2796 to read:

2797 373.801 Legislative findings and intent.—

2798 (1) The Legislature finds that springs are a unique part of  
 2799 this state's scenic beauty. Springs provide critical habitat for  
 2800 plants and animals, including many endangered or threatened  
 2801 species. Springs also provide immeasurable natural,  
 2802 recreational, economic, and inherent value. Springs are of great  
 2803 scientific importance in understanding the diverse functions of  
 2804 aquatic ecosystems. Water quality of springs is an indicator of  
 2805 local conditions of the Floridan Aquifer, which is a source of  
 2806 drinking water for many residents of this state. Water flows in  
 2807 springs reflect regional aquifer conditions. In addition,  
 2808 springs provide recreational opportunities for swimming,  
 2809 canoeing, wildlife watching, fishing, cave diving, and many  
 2810 other activities in this state. These recreational opportunities  
 2811 and the accompanying tourism they provide are a benefit to local  
 2812 economies and the economy of the state as a whole.

2813 (2) Water quantity and water quality in springs may be

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2814 related. For regulatory purposes, the department has primary  
 2815 responsibility for water quality; the water management districts  
 2816 have primary responsibility for water quantity; the Department  
 2817 of Agriculture and Consumer Services has primary responsibility  
 2818 for the development and implementation of agricultural best  
 2819 management practices; and the local governments have primary  
 2820 responsibility for providing wastewater and stormwater  
 2821 management. The foregoing responsible entities must coordinate  
 2822 to restore and maintain the water quantity and water quality of  
 2823 the Outstanding Florida Springs.

2824 (3) The Legislature recognizes that:

2825 (a) Springs are only as healthy as their springheds. The  
 2826 groundwater that supplies springs is derived from water that  
 2827 recharges the aquifer system in the form of seepage from the  
 2828 land surface and through direct conduits, such as sinkholes.  
 2829 Springs may be adversely affected by polluted runoff from urban  
 2830 and agricultural lands; discharge resulting from inadequate  
 2831 wastewater and stormwater management practices; stormwater  
 2832 runoff; and reduced water levels of the Floridan Aquifer. As a  
 2833 result, the hydrologic and environmental conditions of a spring  
 2834 or spring run are directly influenced by activities and land  
 2835 uses within a springshed and by water withdrawals from the  
 2836 Floridan Aquifer.

2837 (b) Springs, whether found in urban or rural settings, or  
 2838 on public or private lands, may be threatened by actual or  
 2839 potential flow reductions and declining water quality. Many of  
 2840 this state's springs are demonstrating signs of significant  
 2841 ecological imbalance, increased nutrient loading, and declining  
 2842 water flow. Without effective remedial action, further declines

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2843 in water quality and water quantity may occur.

2844 (c) Springshed boundaries and areas of high vulnerability  
2845 within a springshed need to be identified and delineated using  
2846 the best available data.

2847 (d) Springsheds typically cross water management district  
2848 boundaries and local government jurisdictional boundaries, so a  
2849 coordinated statewide springs protection plan is needed.

2850 (e) The aquifers and springs of this state are complex  
2851 systems affected by many variables and influences.

2852 (4) The Legislature recognizes that action is urgently  
2853 needed and, as additional data is acquired, action must be  
2854 continually modified.

2855 Section 26. Section 373.802, Florida Statutes, is created  
2856 to read:

2857 373.802 Definitions.—As used in this part, the term:

2858 (1) "Department" means the Department of Environmental  
2859 Protection, which includes the Florida Geological Survey or its  
2860 successor agencies.

2861 (2) "Local government" means a county or municipal  
2862 government the jurisdictional boundaries of which include an  
2863 Outstanding Florida Spring or any part of a springshed or  
2864 delineated priority focus area of an Outstanding Florida Spring.

2865 (3) "Onsite sewage treatment and disposal system" means a  
2866 system that contains a standard subsurface, filled, or mound  
2867 drainfield system; an aerobic treatment unit; a graywater system  
2868 tank; a laundry wastewater system tank; a septic tank; a grease  
2869 interceptor; a pump tank; a solids or effluent pump; a  
2870 waterless, incinerating, or organic waste-composting toilet; or  
2871 a sanitary pit privy that is installed or proposed to be

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2872 installed beyond the building sewer on land of the owner or on  
2873 other land on which the owner has the legal right to install  
2874 such system. The term includes any item placed within, or  
2875 intended to be used as a part of or in conjunction with, the  
2876 system. The term does not include package sewage treatment  
2877 facilities and other treatment works regulated under chapter  
2878 403.

2879 (4) "Outstanding Florida Spring" includes all historic  
2880 first magnitude springs, as determined by the department using  
2881 the most recent Florida Geological Survey springs bulletin,  
2882 excluding submarine springs, and the following springs, and  
2883 their associated spring runs:

2884 (a) De Leon Springs;

2885 (b) Peacock Springs;

2886 (c) Poe Springs;

2887 (d) Rock Springs;

2888 (e) Wekiwa Springs; and

2889 (f) Gemini Springs.

2890 (5) "Priority focus area" means the area or areas of a  
2891 basin where the Floridan Aquifer is most vulnerable to  
2892 groundwater withdrawals or pollutant inputs, where the  
2893 groundwater travel times are the fastest, and where there is a  
2894 known connectivity between groundwater pathways and an  
2895 Outstanding Florida Spring, as determined by the department in  
2896 consultation with the appropriate water management districts.

2897 (6) "Springshed" means the areas within the groundwater and  
2898 surface water basins which contribute, based upon all relevant  
2899 facts, circumstances, and data, to the discharge of a spring as  
2900 defined by potentiometric surface maps and surface watershed

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2901 boundaries.

2902 (7) "Spring run" means a body of flowing water that  
 2903 originates from a spring or whose primary source of water is a  
 2904 spring or springs under average rainfall conditions.

2905 (8) "Spring vent" means a location where groundwater flows  
 2906 out of a natural, discernable opening in the ground onto the  
 2907 land surface or into a predominantly fresh surface water body.

2908 Section 27. Section 373.803, Florida Statutes, is created  
 2909 to read:

2910 373.803 Delineation of priority focus areas for Outstanding  
 2911 Florida Springs.—Using the best data available from the water  
 2912 management districts and other credible sources, the department,  
 2913 in coordination with the water management districts, shall  
 2914 delineate priority focus areas for each Outstanding Florida  
 2915 Spring or group of springs that contains one or more Outstanding  
 2916 Florida Springs. In delineating priority focus areas, the  
 2917 department shall consider groundwater travel time to the spring,  
 2918 hydrogeology, nutrient load, and any other factors that may lead  
 2919 to degradation of an Outstanding Florida Spring. The delineation  
 2920 of priority focus areas must be completed by July 1, 2018.

2921 Section 28. Section 373.805, Florida Statutes, is created  
 2922 to read:

2923 373.805 Minimum flows and minimum water levels for  
 2924 Outstanding Florida Springs.—

2925 (1)(a) At the time a minimum flow or minimum water level is  
 2926 adopted for an Outstanding Florida Spring, if the spring is  
 2927 below or is projected within 20 years to fall below the minimum  
 2928 flow or minimum water level, a water management district or the  
 2929 department shall simultaneously adopt a recovery or prevention

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2930 strategy.

2931 (b) When an interim minimum flow or minimum water level is  
 2932 established pursuant to s. 373.042(2) for an Outstanding Florida  
 2933 Spring, the water management district or the department shall  
 2934 also adopt a recovery or prevention strategy by July 1, 2016, if  
 2935 the spring is below or is projected within 20 years to fall  
 2936 below the interim minimum flow or minimum water level.

2937 (2) For an Outstanding Florida Spring, a minimum flow or  
 2938 minimum water level adopted before July 1, 2015, must be revised  
 2939 by July 1, 2018. When a minimum flow or minimum water level is  
 2940 revised, if the spring is below or is projected within 20 years  
 2941 to fall below the revised minimum flow or minimum water level, a  
 2942 water management district or the department shall simultaneously  
 2943 adopt a recovery or prevention strategy or modify an existing  
 2944 recovery or prevention strategy. A district or the department  
 2945 may adopt the revised minimum flow or minimum water level before  
 2946 the adoption of a recovery or prevention strategy if the revised  
 2947 minimum flow or minimum water level is less constraining on  
 2948 existing or projected future consumptive uses.

2949 (3) For an Outstanding Florida Spring without an adopted  
 2950 recovery or prevention strategy, if a district or the department  
 2951 determines the spring has fallen below, or is projected within  
 2952 20 years to fall below the adopted or interim minimum flow or  
 2953 minimum water level, a water management district or the  
 2954 department shall expeditiously adopt a recovery or prevention  
 2955 strategy.

2956 (4) The recovery or prevention strategy for each  
 2957 Outstanding Florida Spring must, at a minimum, include:

2958 (a) A listing of all specific projects identified for

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2959 implementation of the plan;

2960 (b) A priority listing of each project;

2961 (c) For each listed project, the estimated cost of and the  
 2962 estimated date of completion;

2963 (d) The source and amount of financial assistance to be  
 2964 made available by the water management district for each listed  
 2965 project, which may not be less than 25 percent of the total  
 2966 project cost unless a specific funding source or sources are  
 2967 identified which will provide more than 75 percent of the total  
 2968 project cost. The Northwest Florida Water Management District  
 2969 and the Suwannee River Water Management District are not  
 2970 required to provide matching funds pursuant to this paragraph;

2971 (e) An estimate of each listed project's benefit to an  
 2972 Outstanding Florida Spring; and

2973 (f) An implementation plan with a goal to achieve the  
 2974 adopted or interim minimum flow or minimum water level no more  
 2975 than 20 years after the adoption of a recovery or prevention  
 2976 strategy. The implementation plan must include measureable  
 2977 interim milestones to be achieved within 5, 10, and 15 years,  
 2978 respectively, intended to achieve the adopted or interim minimum  
 2979 flow or minimum water level.

2980 (5) A local government may apply to the department for an  
 2981 extension of up to 5 years for any project in an adopted  
 2982 recovery or prevention strategy. The department may grant the  
 2983 extension if the local government provides to the department  
 2984 sufficient evidence that an extension is in the best interest of  
 2985 the public. For a local government in a rural area of  
 2986 opportunity, as defined in s. 288.0656, the department may grant  
 2987 an extension of up to 10 years.

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2988 Section 29. Section 373.807, Florida Statutes, is created  
 2989 to read:

2990 373.807 Protection of water quality in Outstanding Florida  
 2991 Springs.—By July 1, 2015, the department shall initiate  
 2992 assessment, pursuant to s. 403.067(3), of each Outstanding  
 2993 Florida Spring for which an impairment determination has not  
 2994 been made under the numeric nutrient standards in effect for  
 2995 spring vents. Assessments must be completed by July 1, 2018.

2996 (1) (a) Simultaneously with the adoption of a nutrient total  
 2997 maximum daily load for an Outstanding Florida Spring, the  
 2998 department, or the department in conjunction with a water  
 2999 management district, shall initiate development of a basin  
 3000 management action plan, as specified in s. 403.067. For an  
 3001 Outstanding Florida Spring with a nutrient total maximum daily  
 3002 load adopted before July 1, 2015, the department, or the  
 3003 department in conjunction with a water management district,  
 3004 shall initiate development of a basin management action plan by  
 3005 July 1, 2015. During the development of a basin management  
 3006 action plan, if the department identifies onsite sewage  
 3007 treatment and disposal systems as significant nonpoint sources  
 3008 of nutrient pollution which need to be addressed within a local  
 3009 government jurisdiction, the department shall notify the local  
 3010 government within 30 days. The local government shall develop an  
 3011 onsite sewage treatment and disposal system remediation plan  
 3012 pursuant to subsection (3) for those systems identified as  
 3013 significant nonpoint sources of nutrient pollution for inclusion  
 3014 in the basin management action plan.

3015 (b) A basin management action plan for an Outstanding  
 3016 Florida Spring shall be adopted within 3 years after its

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3017 initiation and must include, at a minimum:

3018 1. A list of all specific projects identified to implement  
 3019 a nutrient total maximum daily load;

3020 2. A list of all specific projects identified in an onsite  
 3021 sewage treatment and disposal system remediation plan, if  
 3022 applicable;

3023 3. A priority rank for each listed project;

3024 4. For each listed project, the estimated cost of and the  
 3025 estimated date of completion;

3026 5. The source and amount of financial assistance to be made  
 3027 available by the department, a water management district, or  
 3028 other entity for each listed project;

3029 6. An estimate of each listed project's nutrient load  
 3030 reduction;

3031 7. Identification of each point source or category of  
 3032 nonpoint sources, including, but not limited to, urban turf  
 3033 fertilizer, sports turf fertilizer, agricultural fertilizer,  
 3034 onsite sewage treatment and disposal systems, wastewater  
 3035 treatment facilities, animal wastes, and stormwater facilities.

3036 An estimated allocation of the pollutant load must be provided  
 3037 for each point source or category of nonpoint sources; and

3038 8. An implementation plan intended to achieve the adopted  
 3039 nutrient total maximum daily load no more than 20 years after  
 3040 the adoption of a basin management action plan. The plan must  
 3041 include measureable interim milestones to be achieved within 5,  
 3042 10, and 15 years, respectively, intended to achieve the adopted  
 3043 nutrient total maximum daily load.

3044 (c) For a basin management action plan adopted before July  
 3045 1, 2015, which addresses an Outstanding Florida Spring, the

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3046 department or the department in conjunction with a water  
 3047 management district must revise the plan pursuant to this  
 3048 section by July 1, 2018.

3049 (d) Upon approval of an onsite sewage treatment and  
 3050 disposal system remediation plan by the department, the plan  
 3051 shall be deemed incorporated as part of the appropriate basin  
 3052 management action plan pursuant to s. 403.067(7) until such time  
 3053 as the basin management action plan is revised.

3054 (e) A local government may apply to the department for an  
 3055 extension of up to 5 years for any project in an adopted basin  
 3056 management action plan. A local government in a rural area of  
 3057 opportunity, as defined in s. 288.0656, may apply for an  
 3058 extension of up to 10 years for such a project. The department  
 3059 may grant the extension if the local government provides to the  
 3060 department sufficient evidence that an extension is in the best  
 3061 interest of the public.

3062 (2) Within 6 months after the delineation of priority focus  
 3063 areas of an Outstanding Florida Spring that is fully or  
 3064 partially within the jurisdiction of a local government, a local  
 3065 government must develop, enact, and implement an ordinance that  
 3066 meets or exceeds the requirements of the department's Model  
 3067 Ordinance for Florida-Friendly Fertilizer Use on Urban  
 3068 Landscapes. Such ordinance must require that, within a priority  
 3069 focus area of an Outstanding Florida Spring with an adopted  
 3070 nutrient total maximum daily load, the nitrogen application rate  
 3071 of any fertilizer applied to turf or landscape plants may not  
 3072 exceed the lowest basic maintenance rate of the most recent  
 3073 recommendations by the Institute of Food and Agricultural  
 3074 Sciences. The department shall adopt rules to implement this

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3075 subsection which establish reasonable minimum standards and  
 3076 reflect advancements or improvements regarding nutrient load  
 3077 reductions.

3078 (3) Notwithstanding ss. 381.0064, 381.0065, 381.00651,  
 3079 381.00655, 381.0066, 381.0067 and 381.0068, by July 1, 2017, the  
 3080 department, in conjunction with the Department of Health and  
 3081 local governments, must identify onsite sewage treatment and  
 3082 disposal systems within each priority focus area. Within 60 days  
 3083 after the department's completion of the identification of these  
 3084 systems, the department shall provide the location of the  
 3085 systems to the local governments in which they are located. If  
 3086 notified by the department pursuant to subsection (1), the local  
 3087 government, in consultation with the department, shall develop  
 3088 an onsite sewage treatment and disposal system remediation plan  
 3089 within 12 months after notification by the department. If the  
 3090 department determines onsite sewage treatment and disposal  
 3091 systems within a priority focus area contribute at least 20  
 3092 percent of nonpoint source nutrient pollution, the plan must  
 3093 identify which systems require repair, upgrade, replacement,  
 3094 drainfield modification, connection to a central sewerage  
 3095 system, or no action. The plan must include a priority ranking  
 3096 for each system or group of systems that require remediation.  
 3097 Each remediation plan must be submitted to the department for  
 3098 approval.

3099 (a) In reviewing and approving the remediation plans, the  
 3100 department shall consider, at a minimum:

3101 1. The density of onsite sewage treatment and disposal  
 3102 systems;

3103 2. The number of onsite sewage treatment and disposal

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3104 systems;

3105 3. The proximity of the onsite sewage treatment and  
 3106 disposal system or systems to an Outstanding Florida Spring;

3107 4. The estimated nutrient loading of the onsite sewage  
 3108 treatment and disposal system or systems; and

3109 5. The cost of the proposed remedial action.

3110 (b) Before submitting an onsite sewage treatment and  
 3111 disposal system remediation plan to the department, the local  
 3112 government shall hold at least one public meeting to provide the  
 3113 public an opportunity to comment on the plan. The approval of an  
 3114 onsite sewage treatment and disposal system remediation plan by  
 3115 the department constitutes a final agency action.

3116 (c) If a local government does not substantially comply  
 3117 with this subsection, it may be ineligible for funding pursuant  
 3118 to s. 403.0617.

3119 (d) With respect to implementation of an onsite sewage  
 3120 treatment and disposal system remediation plan, a property owner  
 3121 with an onsite sewage treatment and disposal system identified  
 3122 as requiring remediation by the plan may not be required to pay  
 3123 the cost of a system inspection, a system upgrade, a system  
 3124 replacement, a drainfield modification, or any initial  
 3125 connection fee for connecting to a sanitary sewer system. This  
 3126 paragraph does not apply to local government programs in  
 3127 existence before July 1, 2015, which are inconsistent with this  
 3128 paragraph.

3129 (4) The department shall provide notice to a local  
 3130 government of all permit applicants under s. 403.814(12) in a  
 3131 priority focus area of an Outstanding Florida Spring over which  
 3132 the local government has full or partial jurisdiction.

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3133 Section 30. Section 373.811, Florida Statutes, is created  
3134 to read:

3135 373.811 Prohibited activities within a priority focus  
3136 area.—The following activities are prohibited within a priority  
3137 focus area of an Outstanding Florida Spring:

3138 (1) New municipal or industrial wastewater disposal  
3139 facilities, including rapid infiltration basins, with permitted  
3140 capacities of 100,000 gallons per day or more, except for those  
3141 facilities that meet an advanced wastewater treatment standard  
3142 of no more than 3 mg/l total nitrogen, expressed as N, on an  
3143 annual permitted basis, or a more stringent treatment standard  
3144 if the department determines the more stringent standard is  
3145 necessary to prevent impairment or aid in the recovery of an  
3146 Outstanding Florida Spring.

3147 (2) Beginning 6 months after the Department of Health  
3148 approves passive nitrogen removing onsite sewage treatment and  
3149 disposal systems, new onsite sewage treatment and disposal  
3150 systems on lots of less than 1 acre, except for passive nitrogen  
3151 removing onsite sewage treatment and disposal systems.

3152 (3) New facilities for the disposal of hazardous waste.

3153 (4) The land application of Class A or Class B domestic  
3154 wastewater biosolids.

3155 (5) New agriculture operations that do not implement best  
3156 management practices, measures necessary to achieve pollution  
3157 reduction levels established by the department, or groundwater  
3158 monitoring plans approved by a water management district or the  
3159 department.

3160 Section 31. Section 373.813, Florida Statutes, is created  
3161 to read:

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3162 373.813 Rules.—

3163 (1) The department shall adopt rules to create a program to  
3164 improve water quantity and water quality to administer this  
3165 part, as applicable.

3166 (2) The Department of Health, the Department of Agriculture  
3167 and Consumer Services, and the water management districts, as  
3168 appropriate, may adopt rules to administer this part, as  
3169 applicable.

3170 (3) (a) The Department of Agriculture and Consumer Services  
3171 is the lead agency coordinating the reduction of agricultural  
3172 nonpoint sources of pollution for the protection of Outstanding  
3173 Florida Springs. The Department of Agriculture and Consumer  
3174 Services and the department, pursuant to s. 403.067(7)(c)4.,  
3175 shall study new or revised agricultural best management  
3176 practices for improving and protecting Outstanding Florida  
3177 Springs and, if necessary, in cooperation with applicable local  
3178 governments and stakeholders, initiate rulemaking to require the  
3179 implementation of such practices within a reasonable period.

3180 (b) The department, the Department of Agriculture and  
3181 Consumer Services, and the University of Florida Institute of  
3182 Food and Agricultural Sciences shall cooperate in conducting the  
3183 necessary research and demonstration projects to develop  
3184 improved or additional nutrient management tools, including the  
3185 use of controlled release fertilizer that can be used by  
3186 agricultural producers as part of an agricultural best  
3187 management practices program. The development of such tools must  
3188 reflect a balance between water quality improvement and  
3189 agricultural productivity and, if applicable, must be  
3190 incorporated into the revised agricultural best management

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3191 practices adopted by rule by the Department of Agriculture and  
 3192 Consumer Services.

3193 Section 32. Section 373.815, Florida Statutes, is created  
 3194 to read:

3195 373.815 Reports.—Each July 1, beginning July 1, 2016, the  
 3196 department, in conjunction with the water management districts,  
 3197 shall submit progress reports to the Governor, the President of  
 3198 the Senate, and the Speaker of the House of Representatives on  
 3199 the status of each total maximum daily load, basin management  
 3200 action plan, minimum flow or minimum water level, and recovery  
 3201 or prevention strategy adopted pursuant to this part. The report  
 3202 must include the status of each project identified to achieve an  
 3203 adopted total maximum daily load or an adopted or interim  
 3204 minimum flow or minimum water level, as applicable. If a report  
 3205 indicates that any of the interim 5-, 10-, or 15-year  
 3206 milestones, or the 20-year goal will not be met, the report must  
 3207 include specific corrective actions that will be taken to  
 3208 achieve these milestones and goals, and, if necessary, executive  
 3209 and legislative recommendations to that end.

3210 Section 33. Subsections (25) and (29) of section 403.061,  
 3211 Florida Statutes, are amended, and subsection (45) is added to  
 3212 that section, to read:

3213 403.061 Department; powers and duties.—The department shall  
 3214 have the power and the duty to control and prohibit pollution of  
 3215 air and water in accordance with the law and rules adopted and  
 3216 promulgated by it and, for this purpose, to:

3217 (25) (a) Establish and administer a program for the  
 3218 restoration and preservation of bodies of water within the  
 3219 state. The department shall have the power to acquire lands, to

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3220 cooperate with other applicable state or local agencies to  
 3221 enhance existing public access to such bodies of water, and to  
 3222 adopt all rules necessary to accomplish this purpose.

3223 (b) Create a consolidated water resources work plan, in  
 3224 consultation with state agencies, water management districts,  
 3225 and local governments, which provides a geographic depiction of  
 3226 the total inventory of water resources projects currently under  
 3227 construction, completed in the previous 5 years, or planned to  
 3228 begin construction in the next 5 years. The consolidated work  
 3229 plan must include for each project a description of the project,  
 3230 the total cost of the project, and identification of the  
 3231 governmental entity financing the project. This information  
 3232 together with the information provided pursuant to paragraph  
 3233 (45) (a) is intended to facilitate the ability of the Florida  
 3234 Water Resources Advisory Council, the Legislature, and the  
 3235 public to consider the projects contained in the tentative water  
 3236 resources work program developed pursuant to s. 403.0616 in  
 3237 relation to all projects undertaken within a 10-year period and  
 3238 the existing condition of water resources in the project area  
 3239 and in the state as a whole. The department may adopt all rules  
 3240 necessary to accomplish this purpose.

3241 (29) (a) Adopt by rule special criteria to protect Class II  
 3242 and Class III shellfish harvesting waters. Such rules may  
 3243 include special criteria for approving docking facilities that  
 3244 have 10 or fewer slips if the construction and operation of such  
 3245 facilities will not result in the closure of shellfish waters.

3246 (b) Adopt by rule a specific surface water classification  
 3247 to protect surface waters used for treated potable water supply.  
 3248 These designated surface waters shall have the same water

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3249 quality criteria protections as waters designated for fish  
 3250 consumption, recreation, and the propagation and maintenance of  
 3251 a healthy, well-balanced population of fish and wildlife, and  
 3252 shall be free from discharged substances at a concentration  
 3253 that, alone or in combination with other discharged substances,  
 3254 would require significant alteration of permitted treatment  
 3255 processes at the permitted treatment facility or that would  
 3256 otherwise prevent compliance with applicable state drinking  
 3257 water standards in the treated water. Notwithstanding this  
 3258 classification or the inclusion of treated water supply as a  
 3259 designated use of a surface water, a surface water used for  
 3260 treated potable water supply may be reclassified to the potable  
 3261 water supply classification.

3262 (45) (a) Create and maintain a web-based, interactive map  
 3263 that includes, at a minimum:

3264 1. All watersheds and each water body within those  
 3265 watersheds;

3266 2. The county or counties in which the watershed or water  
 3267 body is located;

3268 3. The water management district or districts in which the  
 3269 watershed or water body is located;

3270 4. Whether a minimum flow or minimum water level has been  
 3271 adopted for the water body, and if such minimum flow or minimum  
 3272 water level has not been adopted, the anticipated adoption date;

3273 5. Whether a recovery or prevention strategy has been  
 3274 adopted for the watershed or water body and, if such a plan has  
 3275 not been adopted, the anticipated adoption date;

3276 6. The impairment status of each watershed or water body;

3277 7. Whether a total maximum daily load has been adopted if

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3278 the watershed or water body is listed as impaired and, if such  
 3279 total maximum daily load has not been adopted, the anticipated  
 3280 adoption date;

3281 8. Whether a basin management action plan has been adopted  
 3282 for the watershed and, if such a plan has not been adopted, the  
 3283 anticipated adoption date;

3284 9. Each project listed on the 5-year water resources work  
 3285 program developed pursuant to s. 373.036(7);

3286 10. The agency or agencies and local sponsor, if any,  
 3287 responsible for overseeing the project;

3288 11. The estimated cost and completion date of each project  
 3289 and the financial contribution of each entity;

3290 12. The quantitative estimated benefit to the watershed or  
 3291 water body; and

3292 13. The water projects completed within the last 5 years  
 3293 within the watershed or water body.

3294 (b) The department and each water management district shall  
 3295 prominently display on their respective websites a hyperlink to  
 3296 the interactive map required by this subsection.

3297  
 3298 The department shall implement such programs in conjunction with  
 3299 its other powers and duties and shall place special emphasis on  
 3300 reducing and eliminating contamination that presents a threat to  
 3301 humans, animals or plants, or to the environment.

3302 Section 34. Section 403.0616, Florida Statutes, is created  
 3303 to read:

3304 403.0616 Florida Water Resources Advisory Council.—

3305 (1) The Florida Water Resources Advisory Council is hereby  
 3306 created within the department for the purpose of evaluating



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3307 water resource projects prioritized and submitted by state  
 3308 agencies, water management districts, or local governments. The  
 3309 council shall evaluate and recommend projects that are eligible  
 3310 for state funding as priority projects of statewide, regional,  
 3311 or critical local importance under this chapter or chapter 373.  
 3312 The council must review and evaluate all water resource projects  
 3313 that are prioritized and reported by state agencies or water  
 3314 management districts pursuant to s. 373.036(7)(d)3., or by local  
 3315 governments, if applicable, in order to provide the Legislature  
 3316 with recommendations for projects that improve or restore the  
 3317 water resources of this state. The council is also responsible  
 3318 for submitting a prioritization of pilot projects that test the  
 3319 effectiveness of innovative or existing nutrient reduction or  
 3320 water conservation technologies or practices designed to  
 3321 minimize nutrient pollution or restore flows in the water bodies  
 3322 of the state as provided in s. 403.0617.

3323 (2) The Florida Water Resources Advisory Council consists  
 3324 of five voting members and five ex officio, nonvoting members as  
 3325 follows:

3326 (a) The Secretary of Environmental Protection, who shall  
 3327 serve as chair of the council; the Commissioner of Agriculture;  
 3328 the executive director of the Fish and Wildlife Conservation  
 3329 Commission; one member with expertise in a scientific discipline  
 3330 related to water resources, appointed by the President of the  
 3331 Senate; and one member with expertise in a scientific discipline  
 3332 related to water resources, appointed by the Speaker of the  
 3333 House of Representatives, all of whom shall be voting members.

3334 (b) The executive directors of each of the five water  
 3335 management districts, all of whom shall be nonvoting members.

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3336 (3) Members appointed by the President of the Senate and  
 3337 Speaker of the House of Representatives shall serve 2-year terms  
 3338 but may not serve more than a total of 6 years. The President of  
 3339 the Senate and Speaker of the House of Representatives may fill  
 3340 a vacancy at any time for an unexpired term of an appointed  
 3341 member.

3342 (4) If a member of the council is disqualified from serving  
 3343 because he or she no longer holds the position required to serve  
 3344 under this section, the interim head of the agency shall serve  
 3345 as the agency representative.

3346 (5) The two appointed council members shall receive  
 3347 reimbursement for expenses and per diem for travel to attend  
 3348 council meetings authorized pursuant to s. 112.061 while in the  
 3349 performance of their duties.

3350 (6) The council shall hold periodic meetings at the request  
 3351 of the chair but must hold at least two public meetings,  
 3352 separately noticed, each year in which the public has the  
 3353 opportunity to participate and comment. Unless otherwise  
 3354 provided by law, notice for each meeting must be published in a  
 3355 newspaper of general circulation in the area where the meeting  
 3356 is to be held at least 5 days but no more than 15 days before  
 3357 the meeting date.

3358 (a) By July 15 of each year, the council shall release a  
 3359 tentative water resources work program containing legislative  
 3360 recommendations for water resource projects. The public has 30  
 3361 days to submit comments regarding the tentative program.

3362 (b) The council shall adopt the tentative work program  
 3363 containing its legislative recommendations and submit it to the  
 3364 Governor, the President of the Senate, and the Speaker of the

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3365 House of Representatives by August 31 of each year. An  
 3366 affirmative vote of three members of the council is required to  
 3367 adopt the tentative work program.

3368 (7) The department shall provide primary staff support to  
 3369 the council and shall ensure that council meetings are  
 3370 electronically recorded. Such recordings must be preserved  
 3371 pursuant to chapters 119 and 257.

3372 (8) The council shall recommend rules for adoption by the  
 3373 department to competitively evaluate, select, and rank projects  
 3374 for the tentative water resources work program. The council  
 3375 shall develop specific criteria for the evaluation, selection,  
 3376 and ranking of projects, including a preference for projects  
 3377 that will have a significant, measurable impact on improving  
 3378 water quantity or water quality; projects in areas of greatest  
 3379 impairment; projects of state or regional significance; projects  
 3380 recommended by multiple districts or multiple local governments  
 3381 cooperatively; projects with a significant monetary commitment  
 3382 by the local project sponsor or sponsors; projects in rural  
 3383 areas of opportunity as defined in s. 288.0656; projects that  
 3384 may be funded through appropriate loan programs; and projects  
 3385 that have significant private contributions of time or money.

3386 (9) The department, in consultation with the Department of  
 3387 Agriculture and Consumer Services, the Fish and Wildlife  
 3388 Conservation Commission, and the water management districts,  
 3389 shall adopt rules to implement this section.

3390 Section 35. Section 403.0617, Florida Statutes, is created  
 3391 to read:

3392 403.0617 Innovative nutrient and sediment reduction and  
 3393 conservation pilot project program.-

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3394 (1) By December 31, 2015, the department shall adopt rules  
 3395 to competitively evaluate and rank projects for selection and  
 3396 prioritization by the Water Resources Advisory Council, pursuant  
 3397 to s. 403.0616, for submission to the Legislature for funding.  
 3398 These pilot projects are intended to test the effectiveness of  
 3399 innovative or existing nutrient reduction or water conservation  
 3400 technologies or practices designed to minimize nutrient  
 3401 pollution or restore flows in the water bodies of the state. The  
 3402 department must include in the evaluation criteria a  
 3403 determination by the department that the pilot project will not  
 3404 be harmful to the ecological resources in the study area.

3405 (2) In developing these rules, the council shall give  
 3406 preference to the projects that will result in the greatest  
 3407 improvement to water quality and water quantity for the dollars  
 3408 to be expended for the project. At a minimum, the department  
 3409 shall consider all of the following:

3410 (a) The level of nutrient impairment of the waterbody,  
 3411 watershed, or water segment in which the project is located.

3412 (b) The quantity of pollutants, particularly total  
 3413 nitrogen, which the project is estimated to remove from a water  
 3414 body, watershed, or water segment with an adopted nutrient total  
 3415 maximum daily load.

3416 (c) The potential for the project to provide a cost  
 3417 effective solution to pollution caused by onsite sewage  
 3418 treatment and disposal systems.

3419 (d) The flow necessary to restore a water resource to its  
 3420 adopted or interim minimum flow or minimum water level.

3421 (e) The anticipated impact the project will have on  
 3422 restoring or increasing water flow or water level.

Page 118 of 121

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

592-02829B-15

2015918c1

3423 (f) The amount of matching funds for the project which will  
 3424 be provided by the entities responsible for implementing the  
 3425 project.

3426 (g) Whether the project is located in a rural area of  
 3427 opportunity, as defined in s. 288.0656, with preference given to  
 3428 the local government responsible for implementing the project.

3429 (h) For multiple-year projects, whether the project has  
 3430 funding sources that are identified and assured through the  
 3431 expected completion date of the project.

3432 (i) The cost of the project and the length of time it will  
 3433 take to complete relative to its expected benefits.

3434 (j) Whether the entities responsible for implementing the  
 3435 project have used their own funds for projects to improve water  
 3436 quality or conserve water use with preference given to those  
 3437 entities that have expended such funds.

3438 Section 36. Section 403.0623, Florida Statutes, is amended  
 3439 to read:

3440 403.0623 Environmental data; quality assurance.—

3441 (1) The department must establish, by rule, appropriate  
 3442 quality assurance requirements for environmental data submitted  
 3443 to the department and the criteria by which environmental data  
 3444 may be rejected by the department. The department may adopt and  
 3445 enforce rules to establish data quality objectives and specify  
 3446 requirements for training of laboratory and field staff, sample  
 3447 collection methodology, proficiency testing, and audits of  
 3448 laboratory and field sampling activities. Such rules may be in  
 3449 addition to any laboratory certification provisions under ss.  
 3450 403.0625 and 403.863.

3451 (2) (a) The department, in coordination with the water

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3452 management districts, shall establish standards for the  
 3453 collection of water quantity, water quality, and related data to  
 3454 ensure quality, reliability, and validity of the data and  
 3455 testing results. The water management districts shall submit  
 3456 such data collected after June 30, 2015, to the department for  
 3457 analysis. The department shall analyze the data to ensure  
 3458 statewide consistency. The department shall maintain a  
 3459 centralized database for all testing results and analyses, which  
 3460 must be accessible by the water management districts.

3461 (b) To the extent practicable, the department shall  
 3462 coordinate with federal agencies to ensure that its collection  
 3463 and analysis of water quality, water quantity, and related data,  
 3464 which may be used by any state agency, water management  
 3465 district, or local government, is consistent with this  
 3466 subsection.

3467 (c) In order to receive state funds for the acquisition of  
 3468 lands or the financing of a water resource project, state  
 3469 agencies and water management districts must use the  
 3470 department's testing results and analysis, if available, as a  
 3471 prerequisite for any such request for funding.

3472 (d) The department and the water management districts may  
 3473 adopt rules to implement this subsection.

3474 Section 37. Subsection (21) is added to section 403.861,  
 3475 Florida Statutes, to read:

3476 403.861 Department; powers and duties.—The department shall  
 3477 have the power and the duty to carry out the provisions and  
 3478 purposes of this act and, for this purpose, to:

3479 (21) (a) Upon issuance of a construction permit to construct  
 3480 a new public water system drinking water treatment facility to

Page 120 of 121

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3481 provide potable water supply using a surface water of the state  
3482 that, at the time of the permit application, is not being used  
3483 as a potable water supply, and the classification of which does  
3484 not include potable water supply as a designated use, the  
3485 department shall add treated potable water supply as a  
3486 designated use of the surface water segment in accordance with  
3487 s. 403.061(29) (b).

3488 (b) For existing public water system drinking water  
3489 treatment facilities that use a surface water of the state as a  
3490 treated potable water supply, which surface water classification  
3491 does not include potable water as a designated use, the  
3492 department shall add treated potable water supply as a  
3493 designated use of the surface water segment in accordance with  
3494 403.061(29) (b).

3495 Section 38. This act shall take effect July 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8

Meeting Date

Bill Number (if applicable)

Topic SB 918 Strike All Amendment

Amendment Barcode (if applicable)

Name Greg Munson

Job Title \_\_\_\_\_

Address 205 S. Monroe Ste 601  
Street

Phone 850-521-1980

Tallahassee FL 32308  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing AFF H2O Coalition

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/8/2015

Meeting Date

SB 918

Bill Number (if applicable)

901608

Amendment Barcode (if applicable)

Topic Environmental Resources

Name Nick Mathews

Job Title

Address 115 S Andrews Ave

Street

Ft. Lauderdale FL 33301

City

State

Zip

Phone (954) 357-7135

Email nmathews@broward.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Broward County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/8/2015

Meeting Date

SB 918

Bill Number (if applicable)

901608

Amendment Barcode (if applicable)

Topic Environmental Resources

Name Todd J. Bonlarro

Job Title \_\_\_\_\_

Address 301 N. Olive Ave

Street

West Palm Beach

City

FL

State

33401

Zip

Phone (561) 355-3451

Email tbonlarro@pbcgov.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Palm Beach County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/8/2015  
Meeting Date

SB 918  
Bill Number (if applicable)  
129140  
Amendment Barcode (if applicable)

Topic Environmental Resources

Name Nick Matthews

Job Title \_\_\_\_\_

Address 115 S. Andrews Ave

Phone (954)357-7135

Street

Ft. Lauderdale FL 33301

Email nmatthews@broward.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Broward County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/8/2015

Meeting Date

SB 918

Bill Number (if applicable)

129140

Amendment Barcode (if applicable)

Topic Environmental Resources

Name Todd J. Bontarron

Job Title

Address 301 N. Olive Ave

Street

West Palm Beach FL 33401

City

State

Zip

Phone (561) 355-3451

Email tbontarr@pbc.gov.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Palm Beach County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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8 April 2015  
Meeting Date

SB918  
Bill Number (if applicable)

Topic Environmental Resources

AA 229130  
Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title Consultant

Address 201 W Park Avenue

Phone 786 255 5755

Kellahussee FL 32301  
City State Zip

Email Edgar@AnfieldLandscape.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Water Smart

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE

APPEARANCE RECORD

4/8/15  
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

918  
Bill Number (if applicable)

Topic WATER CONSERVATION

ALTMAN AMEND  
Amendment Barcode (if applicable)

Name FRANK MATTHEWS

TO AMEND  
322890

Job Title ATTY

Address PO BOX 6526  
Street

Phone 850 2227500

City TLH State FLA Zip 32301

Email frankm@hgslew.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLA, FARM BUREAU

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

918

Meeting Date

Bill Number (if applicable)

Topic Onsite WASTEWATER

Amendment Barcode (if applicable)

Name ROXANNE L. GROOVER

Job Title EXECUTIVE DIRECTOR

Address 5115 STATE ROAD 557

Phone 813 504 8340

Street

LAKE ALFRED FL 33850

Email rgroover@fowa

City

State

Zip

onsite.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA ONSITE WASTEWATER ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

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4-9-15

Meeting Date

CS/SB 918

Bill Number (if applicable)

Topic Lake Okechobee

Amendment Barcode (if applicable)

Name Eric Draper

Job Title \_\_\_\_\_

Address 308 N Monroe  
Street

Phone 850 222 2477

Tallahassee FL 323  
City State Zip

Email edraper@audubon.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Audubon

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/8/15  
Meeting Date

918  
Bill Number (if applicable)

Topic Environmental Resources

Amendment Barcode (if applicable)

Name Chris Scoonover

Job Title

Address 101 E. College Ave Ste 502

Phone 222-9075

Street

Tallahassee FL 32301

City

State

Zip

Email cscoonover@capacity  
consult.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Everglades Foundation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/8/15  
Meeting Date

918  
Bill Number (if applicable)

Topic ENV RESOURCES

Amendment Barcode (if applicable)

Name DAVID CURRIE

Job Title

Address 1674 UNIVERSITY PARKWAY  
Street

Phone 941-323-2404

SARASOTA FL 34243  
City State Zip

Email currie@doc.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SICRA CUPA FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4-8-15

Meeting Date

SB 918

Bill Number (if applicable)

Topic Water Policy

Amendment Barcode (if applicable)

Name Stephanie Kunkel

Job Title \_\_\_\_\_

Address 1143 Albritton Dr

Phone 850-320-4208

Street

Tallahassee

FL

32301

Email Stef.Kunkel

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Conservancy of Southwest Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/8/15  
Meeting Date

918  
Bill Number (if applicable)

Topic Environ Resources

Amendment Barcode (if applicable)

Name Katle Kelley

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fla Chamber

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

918

Meeting Date

Bill Number (if applicable)

Topic Onsite WASTE WATER

Amendment Barcode (if applicable)

Name ROXANNE GROOVER

Job Title EXEC. DIRECTOR

Address 5115 SR 557

Phone 8135048340

Street

LA

Email rgroover@fouronsite.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA Onsite WASTEWATER ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General Government  
Children, Families, and Elder Affairs  
Community Affairs  
Ethics and Elections

**SENATOR CHARLES S. DEAN, SR.**  
5th District

April 1, 2015

The Honorable Alan Hays  
320 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hays,

I respectfully request you place Senate Bill 918, relating to Environmental Resources, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean  
State Senator District 5

cc: Jamie DeLoach, Staff Director

SENATE APPROPRIATIONS  
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STAFF TO: CHAIRMAN  
STAFF DIR. STAFF

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- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: PCS/CS/SB 314 (510704)

INTRODUCER: Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee; and Senator Simpson

SUBJECT: Petroleum Restoration Program

DATE: April 10, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 314 revises certain provisions of the Petroleum Restoration Program. Specifically, the bill:

- Expands the eligibility requirements of the Abandoned Tanks Restoration Program (ATRP);
- Removes the provision that a property owner must provide evidence that he or she had a complete understanding of the previous ownership and use of the property prior to acquiring the property;
- Removes the exclusion eligibility for sites which are owned by a person who had knowledge of the polluting condition when title was acquired;
- Changes the name of the low scored site initiative to the Low-Risk Site Initiative (LRSI) and revises the criteria that must be met to participate in the LRSI;
- Increases the amount of money that may be encumbered from the Inland Protection Trust Fund each year to fund the LRSI from \$10 million to \$15 million, and increases the funding limit per site from \$30,000 to \$35,000;
- Decreases the number of sites that may be bundled and eligible to compete for performance based contracts under the Advanced Cleanup Program (ACP) from 20 to 10;
- Increases the annual funding cap from \$15 million to \$25 million for the Advanced Cleanup Program (ACP); and
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and specifies the sites are not subject to the agency term contractor assignment pursuant to rule.

The amended eligibility requirements for the Abandoned Tank Restoration Program (ATRP) and the Petroleum Cleanup Participation Program (PCPP) is projected to have an increased recurring cost of \$6 million to the Inland Protection Trust Fund within the Department of Environmental Protection (DEP). In addition, the DEP estimates an additional cost of \$14 million to cover the potential backlog in the PCPP program. Senate Bill 2500, the Senate's Fiscal Year 2015-2016 General Appropriations Bill, provides \$110 million from the Inland Protection Trust Fund within the DEP for the Petroleum Tanks Cleanup program, in addition to base operational funding. The bill would increase program costs.

This bill is effective July 1, 2015.

## II. Present Situation:

### Restoration of Petroleum Contaminated Sites

The Division of Waste Management within the Department of Environmental Protection (DEP) regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.<sup>1</sup> Leaking storage tanks pose a significant threat to groundwater quality, and Florida relies on groundwater for about 92 percent of its drinking water needs.<sup>2</sup>

As of February 25, 2015, 8,378 discharges have been closed since the program began in 1986. There are approximately 5,011 discharges undergoing some phase of remediation and 5,074 discharges that are waiting for remediation. Site rehabilitation funding is based on the available budget and the priority score. The score for each site ranges from five to 115, with five representing a very low potential threat to human health and the environment and 115 representing a substantial potential threat. The DEP is currently funding the remediation of discharges that score 30 or above. The total number of sites that are currently eligible for state funding varies as sites are closed out and new sites are added to the program.<sup>3</sup>

### *State Underground Petroleum Environmental Response Act*

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for cleanup of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund, which is funded by a tax on petroleum products imported or produced in Florida, and serves as a repository for the various petroleum contamination cleanup programs. The SUPER Act established the Early Detection Incentive Program (EDI), which provided site owners with the option of conducting the cleanup themselves and then receiving reimbursement from the Inland Protection Trust Fund, or having the state conduct the cleanup in priority order.<sup>4</sup>

---

<sup>1</sup> See ch. 83-310, Laws of Fla.

<sup>2</sup> DEP, *Storage Tank Compliance*, <http://www.dep.state.fl.us/waste/categories/tanks/> (last visited Mar. 9, 2015).

<sup>3</sup> DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>4</sup> Section 376.3071, F.S.

### ***Petroleum Liability Insurance Program***

In 1988, the Legislature created the Petroleum Liability Insurance Program (PLIP) to provide third-party liability insurance to qualified program participants. The PLIP provided up to \$1 million of liability insurance for each incident of petroleum contamination.<sup>5</sup> The program was revised in 1989 and renamed to the Petroleum Liability Insurance and Restoration Program (PLIRP). The PLIRP allowed eligible petroleum facilities to purchase \$1 million in pollution liability protection from a state contracted insurer and provided \$1 million worth of site restoration coverage through reimbursement or state-funded cleanup.<sup>6</sup>

### ***Abandoned Tank Restoration Program***

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline was subsequently extended to 1992, then 1994. In 1996, the Legislature waived the deadline indefinitely for owners who are unable to pay for the closure of abandoned tanks. To be eligible for the ATRP, applicants must certify that the petroleum system has not stored petroleum products for consumption, use, or sale since March 1, 1990.<sup>7</sup> There are currently 4,084 eligible ATRP discharges and 2,078 discharges have been remediated.<sup>8</sup>

### ***The Reimbursement Program***

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup of sites to the reimbursement program,<sup>9</sup> which was funded by increasing the excise tax on petroleum and petroleum products.<sup>10</sup> The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the Inland Protection Trust Fund. By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated \$551.5 million in outstanding reimbursement claims.<sup>11</sup>

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.<sup>12</sup>

---

<sup>5</sup> Section 376.3072, F.S.

<sup>6</sup> Chapter 89-188, Laws of Fla.

<sup>7</sup> Section 376.305, F.S.

<sup>8</sup> DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>9</sup> The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.

<sup>10</sup> Chapter 92-30, Laws of Fla.

<sup>11</sup> Comm. on Environmental Preservation and Conservation, the Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

<sup>12</sup> Chapter 95-2, Laws of Fla.

### ***Petroleum Preapproval Program***

The Petroleum Preapproval Program was implemented by the Legislature in 1996 in order to address the backlog of reimbursement applications and excessive costs to the Inland Protection Trust Fund (IPTF).<sup>13</sup> The program required state-funded cleanup of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based correction action (RBCA) principles in the cleanup criteria rule. The DEP preapproved all cleanup costs for performance based contracts using competitive bid procedures or negotiated contracts.

### ***Advanced Cleanup Program***

The Advanced Cleanup Program (ACP) was also created in 1996 to allow property owners or responsible parties the opportunity to pay a portion of the cleanup costs in order to bypass the priority ranking list. The ACP requires applicants to provide at least 25 percent of the total cleanup costs and requires the property owner to prepare limited scope assessments at their expense.<sup>14</sup>

Section 376.30713(4), F.S., authorizes the DEP to enter into advanced cleanup contracts for up to \$15 million each fiscal year and limits the amount a facility may receive to \$5 million per year. A facility includes multiple site facilities such as airports, ports, or terminal facilities.<sup>15</sup> Applications are submitted to the DEP twice a year (between May 1 and June 30 and between November 1 and December 31). The applications are ranked based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant that proposes the highest percentage of its share of costs.<sup>16</sup>

### ***Petroleum Cleanup Participation Program***

The Petroleum Cleanup Participation Program (PCPP) was also created in 1996 for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties in the PCPP cost share in the cleanup and prepare a limited scope assessment at their expense. Sites that qualify for this program are eligible for \$400,000 in rehabilitation funding and the owner, operator, or responsible party is required to pay 25 percent of the costs. The copayment amount may be reduced depending on the financial ability of the owner, operator, or responsible party.<sup>17</sup> There are currently 1,727 PCPP eligible discharges.<sup>18</sup>

### ***Revisions to the Petroleum Restoration Program***

The Petroleum Restoration Program was amended in 1999 by HB 2151 to provide up to \$5 million in funding for certain source removal activities in advance of the priority ranking. The

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<sup>13</sup> Chapter 96-277, s. 6, Laws of Fla.

<sup>14</sup> Section 376.30713, F.S.

<sup>15</sup> Section 376.30713(4), F.S.

<sup>16</sup> Section 376.30713(2), F.S.

<sup>17</sup> Section 376.3071(13), F.S.

<sup>18</sup> DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

DEP was directed to select five low-scoring sites in the petroleum preapproval program for an innovative pilot program. The measure also extended the ACP beyond October 1, 1999.

Section 376.30714, F.S., was created in HB 2151 to address contamination on a site with eligible discharges (reported by December 31, 1998) and ineligible discharges (reported on or after January 1, 1999). Discharges that are reported on or after January 1, 1998, are not only ineligible for state funding, but are also not eligible for the PLIRP. The inability to scientifically distinguish old discharges from new discharges results in eligible and ineligible discharges at a single location. The measure authorizes the DEP to address such instances through negotiated site rehabilitation agreements. The site rehabilitation agreements include a Limited Contamination Assessment Report; the allocation of funding between the state and the responsible party, owner, or operator; the proof of financial responsibility of the owner, operator, or responsible party; and the establishment of the cleanup priority of the site. Any discharges reported by December 31, 1998, remain subject to the program requirements for which it is eligible.

The Legislature substantially amended the Petroleum Restoration Program in 2005 to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- The DEP to establish a process to uniformly encumber funds appropriated for the petroleum preapproval program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited, interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Department of Transportation (DOT) projects;
- Funding for limited, interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to ten sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding for interim source removal activities at the DOT projects to up to ten percent of the total source removal costs and funds may only be used for soil assessment, soil screening, soil removal, backfill material, treatment or disposal of contaminated soil, and dewatering;
- Limited funding of \$1 million per fiscal year for the DOT projects, and \$10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions by June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges that are eligible for restoration funding under the PCPP provided the applicants includes a cost-sharing commitment in addition to the 25 percent copayment requirement for the PCPP; and
- An extension of the life of the Inland Protection Financing Corporation from 2011 to 2025, and that the corporation issue notes and bonds, and pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.<sup>19</sup>

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<sup>19</sup> Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.



### *Low-Scored Site Initiative*

The Low-Scored Site Initiative (LSSI) was created in 2010 to allow property owners with low scoring sites to voluntarily participate the Petroleum Restoration program. To qualify for the LSSI, the following site conditions are required:

- A priority score of 29 or less;
- Excessively contaminated soil from petroleum products is not present;
- Six months of groundwater monitoring that demonstrate the plume is shrinking or stable;
- Adjacent surface water, including its effects on human health and the environment, is not affected;
- The area containing the contamination must be less than one-quarter acre and confined to the source property boundaries; and
- Soil contamination subject to human exposure at the surface and two feet below the land surface meets the appropriate cleanup target levels.

A property that qualifies for state funding may receive up to \$30,000 to conduct a site assessment and six months of groundwater monitoring. Funding for the LSSI is limited to \$10 million for a fiscal year and is made available on a first come, first served basis. A property owner that chooses to participate in the LSSI is limited to ten sites per fiscal year.

Once the LSSI criteria in s. 376.3071(12)(b)1., F.S., is confirmed for a site, the DEP must issue either a No Further Action, indicating the contamination is minimal and of no risk, or a site rehabilitation completion order, indicating there is no contamination remaining.

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S., after June 30, 2014.<sup>20</sup>

The Fiscal Year 2013-2014 General Appropriations Act (GAA) appropriated \$125 million to the DEP for the rehabilitation of eligible petroleum contaminated sites. The GAA directed that up to \$50 million be appropriated to fund petroleum rehabilitation task assignments, work orders, and contracts entered into prior to June 30, 2013. The remaining \$75 million was placed in reserve and was contingent upon submission of a plan for consideration by the Legislative Budget Commission (LBC) detailing how the DEP would improve the effectiveness and efficiency of the Petroleum Restoration program. In addition, no funds could be released after January 1, 2014, unless the DEP adopted rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S. The DEP's plan was approved by the LBC on September 12, 2013, and rules were adopted on December 27, 2013.<sup>21</sup> The remaining \$75 million in appropriation was released in March 2014.<sup>22</sup>

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<sup>20</sup> Chapter 2013-41, s. 29, Laws of Fla.

<sup>21</sup> The Statement of Estimated Regulatory Cost (SERC) prepared by the DEP to implement Rules 62-772.300 and 62-772.400, F.A.C determined the rules required ratification by the legislature. The majority of the cost requirements outlined by the DEP in the SERC were costs already incurred by contractors as the cost to conduct business. However, the existing requirements were being restated in rule, thereby requiring legislative ratification during the 2014 Legislative Session (ch. 2014-149, Laws of Fla).

<sup>22</sup> Chapter 2013-40, Laws of Fla.

In 2014, the Legislature passed CS/HB 7093 to substantially amend the Petroleum Restoration program by repealing the Petroleum Preapproval program in s. 376.30711, F.S., deleting obsolete provisions related to the reimbursement program, requiring competitive procurement procedures for clean-up contracts, and revising clean-up contractor qualifications.

Section s. 376.3071, F.S., was amended to include the following:

- State-funded cleanup sites are funded pursuant to the provisions of the Petroleum Restoration program in ss. 376.3071, F.S., 376.305(6), 376.3072, and 376.3070, F.S.;
- A facility owner must abate the source of discharge for a release that occurred after March 29, 1995, and notify the DEP if free product is present;
- Clean-up contracts for contamination sites in the Petroleum Rehabilitation program must be procured pursuant to the competitive procurement requirements in chapter 287, F.S., or the rules adopted under ss. 376.3071 and 287.0595, F.S., and invoices must be paid pursuant to s. 215.422, F.S.;
- Site assessment and remediation contractors must certify to the DEP that they:
  - Comply with applicable Occupational Safety and Health Administration regulations;
  - Maintain workers compensation insurance;
  - Maintain comprehensive general liability and comprehensive automobile liability insurance;
  - Maintain professional liability insurance;
  - Have the capacity to perform or directly supervise the majority of the rehabilitation work pursuant to s. 489.113(9), F.S.
- The rules implementing s. 376.3071, F.S., must:
  - Specify that only qualified contractors may submit responses on competitive solicitation;
  - Include procedures for rejection of vendors that do not meet the minimum qualifications; and
  - Include the requirements from the vendor to maintain its qualification.
- A site owner or operator, or its designee, is prohibited from receiving remuneration in cash or in kind, directly or indirectly from a contractor performing site cleanup activities; and
- Allows the DEP to seek recovery of overpayment as a result of the findings of an audit.

Section 376.30713, F.S., was amended to allow an applicant to participate in the advanced cleanup program under a performance-based contract for the cleanup of at least 20 sites. The applicant must commit to pay 25 percent or more of the costs of cleanup. In order to meet the requirements of the cost-share agreement, the applicant may commit to pay, demonstrate a cost savings to the state, or use a combination of the two. The percentage of cost savings must be included in the application and compared to the cost of cleanup of the same sites using the current rates provided to the DEP by the agency term contractor. The DEP must determine if the cost savings demonstration is acceptable, which is not subject to ch. 120, F.S.

### ***Competitive Solicitation of Contractual Services***

Prior to 2014, the DEP did not regularly use competitive bid procedures or negotiated contract procedures under ch. 287, F.S., even though the DEP was authorized to use them.

State agencies that competitively solicit contractual services are subject to the provisions in s. 287.057, F.S., which include:

- For contractual services that exceed \$35,000, the competitive solicitation must:
  - Be available to all vendors;
  - Include the time and date for the receipt of bids, proposals, or replies, and of the public opening;
  - Include the contractual terms and conditions applicable to the procurement and the criteria used to determine acceptability and merit of the bid;
  - Be subject to the invitation to bid process when the agency is able to define the scope of work and establish the specifications of the services needed;
  - Be subject to the request for proposal process when the purpose of the services needed can be defined and the agency can identify the deliverables; and
  - Be subject to the invitation to negotiate process when the agency must determine the best method for achieving the specific goal and more than one vendor is able to provide the services.
- Requiring contractual services that exceed the \$35,000 threshold to be procured through competitive sealed bids, competitive sealed proposals, or competitive sealed replies, unless:
  - The agency head determines there is an immediate danger to public health, safety, or welfare; and
  - The agency purchases the services from a state procured contract that was contracted by another agency pursuant to s. 287.057(1), F.S.<sup>23</sup>

### ***Agency Term Contracts***

Rule 62-772, F.A.C., directs the DEP to enter into multiple agency term contracts to retain contractors to conduct petroleum site rehabilitation services for a specific task assignment.<sup>24</sup> The agency term contract specifies that all site rehabilitation activities that cost more than \$195,000 will be procured by quotes from all eligible agency term contractors in the region where the site is located. For site rehabilitation activities that cost less than \$195,000, the DEP will directly assign the task to an agency term contractor using the Relative Capacity Index (RCI) algorithm. The RCI provides an unbiased, cost effective mechanism for assigning tasks to the agency term contractors.<sup>25</sup> As of March 2014, the DEP has competitively procured 70 agency term contractors that are divided into three regions around the state.

### ***Performance Based Contracts***

The DEP may issue performance based contracts to approved agency term contracts for sites that may be remediated in an aggressive, cost effective, efficient manner. Performance based contracts are negotiated based on quotes for the total cost of cleanup, technology and design, remediation milestones, site closure options, time to complete remediation, and the total cost paid for the completion of each milestone. Performance based contracts are considered for:

- Sites procured through RCI assignment in which the current agency term contractor would like to continue through a performance based contracts;
- Sites that are unassigned or require RCI assignment;

<sup>23</sup> See s. 287.057, F.S.

<sup>24</sup> Chapter 62-772.200(b), F.A.C., defines an agency “term contract” as “an agreement between the DEP and a vendor whereby the vendor agrees to provide an indefinite quantity of commodities or contractual services, on an indefinite delivery schedule, over a specified period of time.”

<sup>25</sup> The DEP, Agency Term Contractor Selection Process, *RCI flow chart*, available at [http://www.dep.state.fl.us/waste/quick\\_topics/publications/pss/pcp/RCI\\_final\\_19Dec14.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/RCI_final_19Dec14.pdf) (Mar. 9, 2015).

- Sites that have been in natural attenuation monitoring for over four years that show minimal progress toward closure;
- Bundled sites based on phase and/or location; and
- Sites with a restrictive funding cap amount.<sup>26</sup>

### **Risk Based Corrective Action (RBCA)**

Section 376.3071, F.S., was amended in 1996 to require the DEP to adopt rules for RBCA principles for the rehabilitation of contaminated petroleum sites. The RBCA process uses a tiered approach that couples site assessment and response actions with human health, public safety, and environmental risk assessment to determine the extent and urgency of corrective action used in remediating contaminated sites. Alternative cleanup target levels,<sup>27</sup> institutional<sup>28</sup> and engineering controls,<sup>29</sup> and remediation by natural attenuation<sup>30</sup> are RBCA strategies used on a case-by-case basis and allow the DEP to use cost-effective and effective remediation measures in lieu of conventional cleanup technologies. RBCA is endorsed by the U.S. Environmental Protection Agency and is implemented in all 50 states for the remediation of contaminated sites.<sup>31</sup>

The use of RBCA has expanded to the state's dry cleaning site remediation program under s. 376.3078, F.S., the brownfields program under s. 376.81, F.S., and all other contaminated sites under s. 376.30701 F.S. The RBCA provisions in s. 376.30701, F.S., do not include the petroleum restoration, brownfields, and dry cleaning programs because they are subject to their own RBCA provisions in statute.

The Florida RBCA process includes the following components:

- The one in one million cancer risk for carcinogenic constituents;
- A hazard index of one for non-carcinogenic constituents in the development of cleanup target levels for groundwater, surface water, and soil;
- Relocating a compliance point away from the contamination source area to the edge of the plume or property boundary to allow for natural attenuation; and

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<sup>26</sup> The DEP, Performance Based Cleanup-General Information, *available at* [http://www.dep.state.fl.us/waste/quick\\_topics/publications/pss/pcp/announcements/NOIPP-PBC-Info-Sheet.docx](http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/announcements/NOIPP-PBC-Info-Sheet.docx) (last visited Mar. 9, 2015).

<sup>27</sup> Section 37.301(7), F.S., defines "cleanup target levels" as "the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete."

<sup>28</sup> Section 376.301(21), F.S., defines "institutional control" as "the restriction on use or access to a site to eliminate or minimize exposure to petroleum products' chemical of concern, dry cleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements."

<sup>29</sup> Section 376.301(16), F.S., defines "engineering controls" as "modifications to a site to reduce or eliminate the potential for exposure to petroleum products' chemicals of concern, dry cleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls."

<sup>30</sup> Section 376.301(24), F.S., defines "natural attenuation" as a "verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization."

<sup>31</sup> EPA, *Use of Risk-Based Decision-Making in UST Corrective Action Programs*, OSWER Directive 9610.17 (Mar., 1995) <http://epa.gov/swerust1/directiv/od961017.htm> (last visited Mar. 9, 2015).

- Eliminating or minimizing human exposure to the contamination site by using institutional and engineering controls.

### **Funding and Improvements to the Petroleum Restoration Program**

The Petroleum Restoration program was appropriated \$110 million for the 2014-2015 fiscal year. The DEP reports that as of March 9, 2015, approximately \$30 million has been invoiced and the balance remaining is approximately \$80 million. The DEP expects to invoice approximately \$30 million by the end of the current fiscal year and \$50 million will be certified forward to 2015-2016 fiscal year.

The state has realized an overall costs savings since the Petroleum Restoration program was transitioned to the competitive procurement requirements in ch. 287, F.S., or the rules adopted under ss. 376.3071 and 287.0595, F.S. The site assessment and engineering design costs are 10 percent less, the groundwater monitoring costs are 19 percent less, and operation and maintenance costs of remedial systems are 11 percent less. The average cost savings for the remediation of discharges in the Advanced Cleanup Program is 32.7 percent.

The DEP reports that 99.9 percent of high risk exposure facilities are in active remediation or assessment, and 100 percent of facilities in the moderate risk category are in active remediation or assessment. The DEP also reports that the average procurement time under the new system is three to five weeks, which is comparable to processing time prior to the system overhaul.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 376.305, F.S., to expand the Abandoned Tank Restoration Program (ATRP) program by removing the reporting deadline, which currently separates eligible from ineligible sites. The expansion of the program will provide state funding eligibility for remediation of a large but indeterminate number of discharges.

The bill removes the provision that a property owner of a site in the ATRP must provide evidence that he or she had a complete understanding of the use of the property prior to acquisition.

The bill removes the exclusion eligibility for sites which are owned by a person who had knowledge of the polluting condition when title was acquired, unless the person acquired title to the site after issuance of a notice of site eligibility by the DEP.

**Section 2** amends 376.3071, F.S., changing the name of the low scored site initiative to the Low-Risk Site Initiative (LRSI). The bill requires a property owner or a responsible party who wishes to participate in the LRSI to provide evidence of authorization from the property owner. To participate in the LRSI, the bill requires a property owner or responsible party to submit a "No Further Action" proposal that demonstrates the required criteria are met and revises the criteria in the following manner:

- Removes the requirement that a contaminated site must have a priority ranking score of 29 points or less;

- Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for the Gasoline Analytical Group or 50 ppm or higher for the Kerosene Analytical Group, as defined by the Department of Environmental Protection (DEP) rule 62-780.900, F.A.C., must not exist onsite as a result of a release of petroleum products;
- Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
- Removes the requirement that the area of groundwater contamination is less than one-quarter acre;
- Allows the presence of groundwater containing petroleum products' chemicals of concern that is not confined to the source property boundaries if it only migrates to a transportation facility of the Florida Department of Transportation; and
- Adds a requirement that the groundwater contamination containing the petroleum products' chemicals of concern is not a threat to any permitted potable water supply well.

If the DEP determines that the property owner or responsible party has demonstrated that these conditions are met, the DEP must issue a site rehabilitation completion order that incorporates the "No Further Action" proposal. This determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the DEP determines that a discharge for which a site rehabilitation completion order was issued may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply.

The bill authorizes the DEP to approve the cost of a limited remediation plan, in addition to the cost of the assessment authorized in current law, submitted by a property owner or responsible party if the DEP determines that the assessment and limited remediation will likely result in a no further action determination. The approval may be provided in one or more task assignments or modifications. The total amount authorized for a particular site may not exceed the threshold amount specified in chapter 287, F.S., for a Category Two purchasing category, which is currently \$35,000. This is an increase from the current LRSI funding limit of \$30,000. The bill authorizes the DEP to pay the costs associated with a professional land survey or specific purpose survey, if needed, and costs associated with obtaining a title report and recording fees.

The bill increases the amount of time within which assessment work must be completed from six months to nine months; however, if groundwater monitoring is required following the assessment in order to satisfy the LRSI conditions, the DEP may authorize an additional six months to complete the monitoring.

The bill also increases the annual amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI from \$10 million to \$15 million.

**Section 3** amends s. 376.30713, F.S., to revise the provisions of the Advanced Cleanup program. The bill allows more owners, operators, or responsible parties to participate in the Advanced

Cleanup program by decreasing the number of sites that may be bundled and eligible to compete for performance based contracts from 20 to 10. To account for the additional participation in the program, the annual allocation is increased from \$15 million to \$25 million.

The bill allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles. The sites that will be included in a future bundle are not subject to agency term contractor assignment pursuant to rule. The DEP may terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period. This provision will extend the period of time listed sites will be remediated because they are not subject to the agency term contractor assignment.

**Section 4** provides an effective date of July 1, 2015.

#### **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:

PCS/CS/SB 314 appears to have an indeterminate positive fiscal impact on the private sector because more rehabilitation contracts may be awarded as a result of increasing the total funding limits for Advanced Cleanup and the Low-Risk Site Initiative (LRSI).

C. Government Sector Impact:

The amended eligibility requirements for the Abandoned Tank Restoration Program (ATRP) and the Petroleum Clean Participation Program (PCPP) is estimated to have an increased recurring cost of \$6 million to the Inland Protection Trust Fund within the Department of Environmental Protection (DEP). In addition, the DEP estimates an additional cost of \$14 million to cover the potential backlog in the PCPP program.

The fiscal impact on the DEP is indeterminate as a result of reducing the number of sites that must be bundled to be eligible to compete for performance-based contracts for the Advanced Cleanup Program from 20 to 10. However, the decreased bundled site requirement, together with the increased amount of available funds, should result in more sites being cleaned up sooner that could result in cost savings over time.

The bill increases the amount of funding that may be encumbered from the Inland Protection Trust Fund for the LRSI contracts from \$10 million to \$15 million and increases the annual allocation for the Advanced Cleanup Program contracts from \$15 million to \$25 million. However, these changes may not increase the DEP's overall annual appropriation for the Petroleum Restoration Program, but rather revise how much of the annual appropriation may be expended within these programs.

Senate Bill 2500, the Senate's General Appropriations Bill for Fiscal Year 2015-2016, provides \$110 million from the Inland Protection Trust Fund within the DEP for the Petroleum Tanks Cleanup program, in addition to base operational funding. The bill increases costs for the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 376.305, 376.3071, and 376.30713.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The committee substitute:

- Removes the provision from CS/SB 314 that allows a property owner to approve the use of risk-based corrective action (RBCA) principles in remediating a discharge;
- Removes the requirement from CS/SB 314 that site owners or the responsible party must approve conditional site closures, site closures with institutional or engineering controls, or work stoppages;
- Removes the requirement from CS/SB 314 that the DEP establish in rule a procedure to process invoices that are less than \$500,000 per task;



- Removes the provision from CS/SB 314 allowing the DEP to negotiate a contract based on the best available rate from a pool of three agency term contractors selected by the site owner or operator;
- Removes the requirement from CS/SB 314 that the agency term contractor and the property owner or responsible party must submit a sworn affidavit to the DEP that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind in exchange for selection of the agency term contractor;
- Removes the requirement from CS/SB 314 that the agency term contractor must disclose a conflict of interest or potential conflict of interest to the DEP;
- Removes the provision from CS/SB 314 that specifies that only agency term contractors may participate in the LSSI;
- Authorizes the DEP to approve the costs for limited remediation and up to six months of groundwater monitoring in one or more task assignment not to exceed the category two funding limiting in s. 287.017, F.S.;
- Authorizes the DEP to approve limited remediation for LRSI sites following an approved initial site assessment, not to exceed the category two funding limiting in s. 287.017, F.S.;
- Authorizes an additional six months of groundwater monitoring for LRSI sites if the DEP determines that additional groundwater monitoring is warranted;
- Maintains the \$400,000 funding cap in current law for the Petroleum Cleanup Participation Program (PCPP);
- Maintains the discharge date in current law of January 1, 1995 for the PCPP discharges;
- Changes the name of the low scored site initiative to the Low-Risk Site Initiative (LRSI);
- Requires the property owner or responsible party participating in the LRSI to submit a “No Further Action” proposal to the DEP;
- Revises the criteria for participating in LRSI, including removing the requirement that a site must have a priority ranking score of 29 or less;
- Revises the criteria to issue a site rehabilitation order with a No Further Action proposal to include:
  - Soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for the Gasoline Analytical Group or 50 ppm or higher for the Kerosene Analytical Group, as defined by the Department of Environmental Protection (DEP) rule, must not exist onsite as a result of a release of petroleum products;
  - Contamination remaining at the site must not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
  - The area of groundwater contamination to be confined to the source property or migrated to a Department of Transportation Facility; and
  - The groundwater contamination containing the petroleum products’ chemicals of concern is not a threat to any permitted potable water supply well.
- Specifies the issuance of a Site Rehabilitation Completion Order (SRCO) acknowledges that minimal contamination exists onsite and the contamination is not a threat to human health, safety, or welfare, water resources, or the environment; and

- Specifies a site is still eligible for state-funded rehabilitation if the DEP determines the discharge may pose a threat after the SRCO is issue.

**CS by Environmental Preservation and Conservation on March 11, 2015:**

- Expands the Abandoned Tank Restoration Program (ATRP) by removing the June 30, 1996, reporting deadline;
- Removes the provision that a property owner of a site in the ATRP must provide evidence that he or she had a complete understanding of ownership and use of the property prior to acquisition;
- Deletes the requirement for the Department of Environmental Protection (DEP) to establish standards and criteria for benzene in specific situations;
- Allows a property owner to approve the use of Risk-Based Correction Action (RBCA) principles in remediating a discharge;
- Requires a site owner to approve work stoppages;
- Deletes the requirement for current and future operations and management of remediation systems to be performance based contracts;
- Allows the DEP to negotiate a contract based on the best available rate from a pool of three agency term contractors selected by the property owner or responsible party;
- Deletes the provision that allows a property owner to select a contractor if the amount of the cost share and the discount off the normal rate totals at least five percent of the value of the contract;
- Requires the agency term contractor and the property owner or responsible party to submit a sworn affidavit to the DEP that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind in exchange for selection of the agency term contractor;
- Requires the agency term contractor to disclose any conflict of interest to the DEP and allows the DEP to terminate a contract if the DEP determines there is a potential conflict of interest;
- Allows a site to qualify for the low-scored site initiative (LSSI) if the source boundary is greater than one-quarter acre and located below a state road or a state road's right-of-way;
- Increases the funding for the site assessment and six months of groundwater monitoring for a site in the LSSI from \$30,000 to \$35,000;
- Authorizes the DEP to approve an additional \$35,000 for interim source removal of a site in the LSSI in order to achieve No Further Action status or receive a site rehabilitation completion order;
- Authorizes the DEP to approve an additional \$35,000 for a supplemental site assessment for sites assessed before July 1, 2015, in order to achieve No Further Action status or receive a site rehabilitation completion order;
- Specifies that only agency term contractors may participate in the LSSI;
- Requires that sites completed in the LSSI must be granted priority two scoring status for ongoing assessment or remedial activity;
- Requires that all work in the LSSI must be completed nine months after the DEP approval;
- Allows the DEP to authorize an additional six months of groundwater monitoring if the supplemental site assessment determines it is warranted;

- Removes the requirement that a discharge must have occurred before January 1, 1999, to qualify for the (Petroleum Cleanup Participation Program (PCPP);
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles;
- Specifies sites that are to be included in a future Advanced Cleanup Program bundle are not subject to the agency term contractor assignment pursuant to rule; and
- Allows the DEP to terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (6) of section 376.305, Florida  
Statutes, is amended to read:

376.305 Removal of prohibited discharges.—

(6) The Legislature created the Abandoned Tank Restoration  
Program in response to the need to provide financial assistance  
for cleanup of sites that have abandoned petroleum storage



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11 systems. For purposes of this subsection, the term "abandoned  
12 petroleum storage system" means a petroleum storage system that  
13 has not stored petroleum products for consumption, use, or sale  
14 since March 1, 1990. The department shall establish the  
15 Abandoned Tank Restoration Program to facilitate the restoration  
16 of sites contaminated by abandoned petroleum storage systems.

17 (a) To be included in the program:

18 1. An application must be submitted to the department ~~by~~  
19 ~~June 30, 1996,~~ certifying that the system has not stored  
20 petroleum products for consumption, use, or sale at the facility  
21 since March 1, 1990.

22 2. The owner or operator of the petroleum storage system  
23 when it was in service must have ceased conducting business  
24 involving consumption, use, or sale of petroleum products at  
25 that facility on or before March 1, 1990.

26 3. The site is not otherwise eligible for the cleanup  
27 programs pursuant to s. 376.3071 or s. 376.3072.

28 (b) In order to be eligible for the program, petroleum  
29 storage systems from which a discharge occurred must be closed  
30 pursuant to department rules before an eligibility  
31 determination. However, if the department determines that the  
32 owner of the facility cannot financially comply with the  
33 department's petroleum storage system closure requirements and  
34 all other eligibility requirements are met, the petroleum  
35 storage system closure requirements shall be waived. The  
36 department shall take into consideration the owner's net worth  
37 and the economic impact on the owner in making the determination  
38 of the owner's financial ability. ~~The June 30, 1996, application~~  
39 ~~deadline shall be waived for owners who cannot financially~~



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40 ~~comply.~~

41 (c) Sites accepted in the program are eligible for site  
42 rehabilitation funding as provided in s. 376.3071.

43 (d) The following sites are excluded from eligibility:

44 1. Sites on property of the Federal Government;

45 2. Sites contaminated by pollutants that are not petroleum  
46 products;

47 3. Sites where the department has been denied site access;  
48 or

49 4. Sites which are owned by a person who had knowledge of  
50 the polluting condition when title was acquired unless the  
51 person acquired title to the site after issuance of a notice of  
52 site eligibility by the department.

53 (e) Participating sites are subject to a deductible as  
54 determined by rule, not to exceed \$10,000.

55

56 ~~This subsection does not relieve a person who has acquired title~~  
57 ~~after July 1, 1992, from the duty to establish by a~~  
58 ~~preponderance of the evidence that he or she undertook, at the~~  
59 ~~time of acquisition, all appropriate inquiry into the previous~~  
60 ~~ownership and use of the property consistent with good~~  
61 ~~commercial or customary practice in an effort to minimize~~  
62 ~~liability, as required by s. 376.308(1)(c).~~

63 Section 2. Paragraph (b) of subsection (12), and subsection  
64 (13) of section 376.3071, Florida Statutes, are amended, and  
65 paragraph (c) is added to subsection (12) of that section, to  
66 read:

67 376.3071 Inland Protection Trust Fund; creation; purposes;  
68 funding.-



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69 (12) SITE CLEANUP.—

70 (b) Low-risk ~~Low-scored~~ site initiative.—Notwithstanding  
71 subsections (5) and (6), a site with a priority ranking score of  
72 ~~29 points or less~~ may voluntarily participate in the low-risk  
73 ~~low-scored~~ site initiative regardless of whether the site is  
74 eligible for state restoration funding.

75 1. To participate in the low-risk ~~low-scored~~ site  
76 initiative, the ~~responsible party or~~ property owner, or a  
77 responsible party that provides evidence of authorization from  
78 the property owner, must submit a “No Further Action” proposal  
79 and affirmatively demonstrate that the following conditions of  
80 paragraph (c) are met.÷

81 a. ~~Upon reassessment pursuant to department rule, the site~~  
82 ~~retains a priority ranking score of 29 points or less.~~

83 b. ~~Excessively contaminated soil, as defined by department~~  
84 ~~rule, does not exist onsite as a result of a release of~~  
85 ~~petroleum products.~~

86 c. ~~A minimum of 6 months of groundwater monitoring~~  
87 ~~indicates that the plume is shrinking or stable.~~

88 d. ~~The release of petroleum products at the site does not~~  
89 ~~adversely affect adjacent surface waters, including their~~  
90 ~~effects on human health and the environment.~~

91 e. ~~The area of groundwater containing the petroleum~~  
92 ~~products’ chemicals of concern is less than one-quarter acre and~~  
93 ~~is confined to the source property boundaries of the real~~  
94 ~~property on which the discharge originated.~~

95 f. ~~Soils onsite that are subject to human exposure found~~  
96 ~~between land surface and 2 feet below land surface meet the soil~~  
97 ~~cleanup target levels established by department rule or human~~



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98 ~~exposure is limited by appropriate institutional or engineering~~  
99 ~~controls.~~

100 2. Upon affirmative demonstration that ~~of~~ the conditions  
101 under paragraph (c) are met ~~subparagraph 1.~~, the department  
102 shall issue a site rehabilitation completion order incorporating  
103 the determination of "No Further Action." proposal submitted by  
104 the property owner or the responsible party that provides  
105 evidence of the authorization from the property owner. ~~Such~~  
106 ~~determination acknowledges that minimal contamination exists~~  
107 ~~onsite and that such contamination is not a threat to the public~~  
108 ~~health, safety, or welfare, water resources, or the environment.~~  
109 If no contamination is detected, the department may issue a site  
110 rehabilitation completion order.

111 3. Sites that are eligible for state restoration funding  
112 may receive payment of costs for the low-risk ~~low-scored~~ site  
113 initiative as follows:

114 a. ~~A responsible party or property owner, or responsible~~  
115 party that provides evidence of authorization from the property  
116 owner, may submit an assessment and limited remediation plan  
117 designed to affirmatively demonstrate that the site meets the  
118 conditions under paragraph (c) subparagraph 1. Notwithstanding  
119 the priority ranking score of the site, the department may  
120 approve the cost of the assessment and limited remediation,  
121 including up to 6 months of groundwater monitoring, in one or  
122 more task assignments, or modifications thereof, not to exceed  
123 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
124 \$30,000 for each site where the department has determined that  
125 the assessment and limited remediation, if applicable, will  
126 likely result in a determination of "No Further Action". The





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127 department may not pay the costs associated with the  
128 establishment of institutional or engineering controls, with the  
129 exception of the costs associated with a professional land  
130 survey or specific purpose survey, if needed, and costs  
131 associated with obtaining a title report and recording fees.

132 b. Following the assessment, the department may approve up  
133 to an additional \$35,000 for interim source removal pursuant to  
134 department rule to achieve a "No Further Action" order or a site  
135 rehabilitation completion order pursuant to subparagraph 2.

136 b. Following approval of initial site assessment results  
137 provided pursuant to state funding under sub-subparagraph a.,  
138 the department may approve up to an additional amount not to  
139 exceed the threshold amount provided in s. 287.017 for CATEGORY  
140 TWO, for limited remediation, where needed to achieve a  
141 determination of "No Further Action".

142 ~~c.b.~~ The assessment and limited remediation work shall be  
143 completed no later than 9 ~~6~~ months after the department  
144 authorizes the start of a state funded low-risk site initiative  
145 task ~~issues its approval.~~ If groundwater monitoring is required  
146 after the assessment and limited remediation in order to satisfy  
147 the conditions of paragraph (c), the department may authorize an  
148 additional 6 months to complete the monitoring.

149 ~~d.e.~~ No more than \$15 ~~\$10~~ million for the low-risk ~~low-~~  
150 ~~scored~~ site initiative may be encumbered from the fund in any  
151 fiscal year. Funds shall be made available on a first-come,  
152 first-served basis and shall be limited to 10 sites in each  
153 fiscal year for each ~~responsible party or~~ property owner or each  
154 responsible party that provides evidence of authorization from  
155 the property owner.



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156 e.d. Program deductibles, copayments, and the limited  
157 contamination assessment report requirements under paragraph  
158 (13) (c) do not apply to expenditures under this paragraph.

159 (c) The department shall issue a site rehabilitation  
160 completion order incorporating the "No Further Action Proposal"  
161 submitted by a property owner or a responsible party that  
162 provides evidence of authorization from the property owner upon  
163 affirmative demonstration that all of the following conditions  
164 are met:

165 1. Soil saturated with petroleum or petroleum products, or  
166 soil that causes a total corrected hydrocarbon measurement of  
167 500 parts per million or higher for Gasoline Analytical Group or  
168 50 parts per million or higher for Kerosene Analytical Group, as  
169 defined by department rule, does not exist onsite as a result of  
170 a release of petroleum products.

171 2. A minimum of 6 months of groundwater monitoring  
172 indicates that the plume is shrinking or stable.

173 3. The release of petroleum products at the site does not  
174 adversely affect adjacent surface waters, including their  
175 effects on human health and the environment.

176 4. The area of groundwater containing the petroleum  
177 products' chemicals of concern is confined to the source  
178 property boundaries of the real property on which the discharge  
179 originated, or has migrated from the source property only to a  
180 transportation facility of the Department of Transportation.

181 5. The groundwater contamination containing the petroleum  
182 products chemicals of concern is not a threat to any permitted  
183 potable water supply well.

184 6. Soils onsite that are subject to human exposure found



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185 between land surface and 2 feet below land surface meet the soil  
186 cleanup target levels established pursuant to s.  
187 376.3071(5)(b)9., or human exposure is limited by appropriate  
188 institutional or engineering controls.

189  
190 Issuance of a site rehabilitation completion order under this  
191 paragraph acknowledges that minimal contamination exists onsite  
192 and that such contamination is not a threat to the public  
193 health, safety, or welfare, water resources, or the environment.  
194 If the department determines that a discharge for which a site  
195 rehabilitation completion order was issued pursuant to this  
196 subsection may pose a threat to the public health, safety, or  
197 welfare, water resources, or the environment, the issuance of  
198 the site rehabilitation completion order, with or without  
199 conditions, does not alter eligibility for state-funded  
200 rehabilitation that would otherwise be applicable under this  
201 section.

202 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
203 detection, reporting, and cleanup of contamination caused by  
204 discharges of petroleum or petroleum products, the department  
205 shall, within the guidelines established in this subsection,  
206 implement a cost-sharing cleanup program to provide  
207 rehabilitation funding assistance for all property contaminated  
208 by discharges of petroleum or petroleum products from a  
209 petroleum storage system occurring before January 1, 1995,  
210 subject to a copayment provided for in a Petroleum Cleanup  
211 Participation Program site rehabilitation agreement. Eligibility  
212 is subject to an annual appropriation from the fund.  
213 Additionally, funding for eligible sites is contingent upon



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214 annual appropriation in subsequent years. Such continued state  
215 funding is not an entitlement or a vested right under this  
216 subsection. Eligibility shall be determined in the program,  
217 notwithstanding any other provision of law, consent order,  
218 order, judgment, or ordinance to the contrary.

219 (a)1. The department shall accept any discharge reporting  
220 form received before January 1, 1995, as an application for this  
221 program, and the facility owner or operator need not reapply.

222 2. Owners or operators of property, regardless of whether  
223 ownership has changed, which is contaminated by petroleum or  
224 petroleum products from a petroleum storage system may apply for  
225 such program by filing a written report of the contamination  
226 incident, including evidence that such incident occurred before  
227 January 1, 1995, with the department. Incidents of petroleum  
228 contamination discovered after December 31, 1994, at sites which  
229 have not stored petroleum or petroleum products for consumption,  
230 use, or sale after such date shall be presumed to have occurred  
231 before January 1, 1995. An operator's filed report shall be an  
232 application of the owner for all purposes. Sites reported to the  
233 department after December 31, 1998, are not eligible for the  
234 program.

235 (b) Subject to annual appropriation from the fund, sites  
236 meeting the criteria of this subsection are eligible for up to  
237 \$400,000 of site rehabilitation funding assistance in priority  
238 order pursuant to subsections (5) and (6). Sites meeting the  
239 criteria of this subsection for which a site rehabilitation  
240 completion order was issued before June 1, 2008, do not qualify  
241 for the 2008 increase in site rehabilitation funding assistance  
242 and are bound by the pre-June 1, 2008, limits. Sites meeting the



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243 criteria of this subsection for which a site rehabilitation  
244 completion order was not issued before June 1, 2008, regardless  
245 of whether they have previously transitioned to nonstate-funded  
246 cleanup status, may continue state-funded cleanup pursuant to  
247 this section until a site rehabilitation completion order is  
248 issued or the increased site rehabilitation funding assistance  
249 limit is reached, whichever occurs first. The department may not  
250 pay expenses incurred beyond the scope of an approved contract.

251 (c) Upon notification by the department that rehabilitation  
252 funding assistance is available for the site pursuant to  
253 subsections (5) and (6), the owner, operator, or person  
254 otherwise responsible for site rehabilitation shall provide the  
255 department with a limited contamination assessment report and  
256 shall enter into a Petroleum Cleanup Participation Program site  
257 rehabilitation agreement with the department. The agreement must  
258 provide for a 25-percent copayment by the owner, operator, or  
259 person otherwise responsible for conducting site rehabilitation.  
260 The owner, operator, or person otherwise responsible for  
261 conducting site rehabilitation shall adequately demonstrate the  
262 ability to meet the copayment obligation. The limited  
263 contamination assessment report and the copayment costs may be  
264 reduced or eliminated if the owner and all operators responsible  
265 for restoration under s. 376.308 demonstrate that they cannot  
266 financially comply with the copayment and limited contamination  
267 assessment report requirements. The department shall take into  
268 consideration the owner's and operator's net worth in making the  
269 determination of financial ability. In the event the department  
270 and the owner, operator, or person otherwise responsible for  
271 site rehabilitation cannot complete negotiation of the cost-



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272 sharing agreement within 120 days after beginning negotiations,  
273 the department shall terminate negotiations and the site shall  
274 be ineligible for state funding under this subsection and all  
275 liability protections provided for in this subsection shall be  
276 revoked.

277 (d) A report of a discharge made to the department by a  
278 person pursuant to this subsection or any rules adopted pursuant  
279 to this subsection may not be used directly as evidence of  
280 liability for such discharge in any civil or criminal trial  
281 arising out of the discharge.

282 (e) This subsection does not preclude the department from  
283 pursuing penalties under s. 403.141 for violations of any law or  
284 any rule, order, permit, registration, or certification adopted  
285 or issued by the department pursuant to its lawful authority.

286 (f) Upon the filing of a discharge reporting form under  
287 paragraph (a), the department or local government may not pursue  
288 any judicial or enforcement action to compel rehabilitation of  
289 the discharge. This paragraph does not prevent any such action  
290 with respect to discharges determined ineligible under this  
291 subsection or to sites for which rehabilitation funding  
292 assistance is available pursuant to subsections (5) and (6).

293 (g) The following are excluded from participation in the  
294 program:

295 1. Sites at which the department has been denied reasonable  
296 site access to implement this section.

297 2. Sites that were active facilities when owned or operated  
298 by the Federal Government.

299 3. Sites that are identified by the United States  
300 Environmental Protection Agency to be on, or which qualify for



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301 listing on, the National Priorities List under Superfund. This  
302 exception does not apply to those sites for which eligibility  
303 has been requested or granted as of the effective date of this  
304 act under the Early Detection Incentive Program established  
305 pursuant to s. 15, chapter 86-159, Laws of Florida.

306 4. Sites for which contamination is covered under the Early  
307 Detection Incentive Program, the Abandoned Tank Restoration  
308 Program, or the Petroleum Liability and Restoration Insurance  
309 Program, in which case site rehabilitation funding assistance  
310 shall continue under the respective program.

311 Section 3. Paragraph (a) of subsection (2) and subsection  
312 (4) of section 376.30713, Florida Statutes, are amended to read:

313 376.30713 Advanced cleanup.—

314 (2) The department may approve an application for advanced  
315 cleanup at eligible sites, before funding based on the site's  
316 priority ranking established pursuant to s. 376.3071(5) (a),  
317 pursuant to this section. Only the facility owner or operator or  
318 the person otherwise responsible for site rehabilitation  
319 qualifies as an applicant under this section.

320 (a) Advanced cleanup applications may be submitted between  
321 May 1 and June 30 and between November 1 and December 31 of each  
322 fiscal year. Applications submitted between May 1 and June 30  
323 shall be for the fiscal year beginning July 1. An application  
324 must consist of:

325 1. A commitment to pay 25 percent or more of the total  
326 cleanup cost deemed recoverable under this section along with  
327 proof of the ability to pay the cost share. An application  
328 proposing that the department enter into a performance-based  
329 contract for the cleanup of 10 ~~20~~ or more sites may use a



497664

330 commitment to pay, a demonstrated cost savings to the  
331 department, or both to meet the cost-share requirement. For an  
332 application relying on a demonstrated cost savings to the  
333 department, the applicant shall, in conjunction with the  
334 proposed agency term contractor, establish and provide in the  
335 application the percentage of cost savings in the aggregate that  
336 is being provided to the department for cleanup of the sites  
337 under the application compared to the cost of cleanup of those  
338 same sites using the current rates provided to the department by  
339 the proposed agency term contractor. The department shall  
340 determine whether the cost savings demonstration is acceptable.  
341 Such determination is not subject to chapter 120.

342 2. A nonrefundable review fee of \$250 to cover the  
343 administrative costs associated with the department's review of  
344 the application.

345 3. A limited contamination assessment report.

346 4. A proposed course of action.

347

348 The limited contamination assessment report must be sufficient  
349 to support the proposed course of action and to estimate the  
350 cost of the proposed course of action. Costs incurred related to  
351 conducting the limited contamination assessment report are not  
352 refundable from the Inland Protection Trust Fund. Site  
353 eligibility under this subsection or any other provision of this  
354 section is not an entitlement to advanced cleanup or continued  
355 restoration funding. The applicant shall certify to the  
356 department that the applicant has the prerequisite authority to  
357 enter into an advanced cleanup contract with the department. The  
358 certification must be submitted with the application.





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359 (4) The department may enter into contracts for a total of  
360 up to ~~\$25~~ ~~\$15~~ million of advanced cleanup work in each fiscal  
361 year. However, a facility or an applicant who bundles multiple  
362 sites as specified in subparagraph (2)(a)1. may not be approved  
363 for more than \$5 million of cleanup activity in each fiscal  
364 year. A property owner or responsible party may enter into a  
365 voluntary cost-share agreement in which the property owner or  
366 responsible party commits to bundle multiple sites and lists the  
367 facilities that will be included in those future bundles. The  
368 facilities listed are not subject to agency term contractor  
369 assignment pursuant to department rule. The department reserves  
370 the right to terminate the voluntary cost-share agreement if the  
371 property owner or responsible party fails to submit an  
372 application to bundle multiple sites within an open application  
373 period in which it is eligible to participate. For the purposes  
374 of this section, the term "facility" includes, but is not  
375 limited to, multiple site facilities such as airports, port  
376 facilities, and terminal facilities even though such enterprises  
377 may be treated as separate facilities for other purposes under  
378 this chapter.

379 Section 4. This act shall take effect July 1, 2015.

380  
381 ===== T I T L E A M E N D M E N T =====

382 And the title is amended as follows:

383 Delete everything before the enacting clause  
384 and insert:

385 A bill to be entitled  
386 An act relating to the Petroleum Restoration Program;  
387 amending s. 376.305, F.S.; removing the requirement



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388 that applications for the Abandoned Tank Restoration  
389 Program must have been submitted to the Department of  
390 Environmental Protection by a certain time; deleting  
391 provisions prohibiting the relief of liability for  
392 persons who acquired title after a certain date;  
393 amending s. 376.3071, F.S.; revising the conditions  
394 for eligibility and methods for payment of costs for  
395 the low-risk site initiative; clarifying that a change  
396 in ownership does not preclude a site from entering  
397 into the program; amending s. 376.30713, F.S.;  
398 reducing the number of sites that may be proposed for  
399 certain advanced cleanup applications; increasing the  
400 total amount for which the department may contract for  
401 advanced cleanup work in a fiscal year; authorizing  
402 property owners and responsible parties to enter into  
403 voluntary cost-share agreements under certain  
404 circumstances; providing an effective date.



956250

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment to Amendment (497664)**

Delete lines 45 - 52

and insert:

2. Sites contaminated by pollutants that are not petroleum products; or

3. Sites where the department has been denied site access ~~or~~

~~4. Sites which are owned by a person who had knowledge of the polluting condition when title was acquired unless the~~



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11 ~~person acquired title to the site after issuance of a notice of~~  
12 ~~site eligibility by the department.~~



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

- 1        **Senate Amendment to Amendment (497664)**
- 2
- 3        Delete lines 132 - 135.

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

592-02178-15

2015314c1

1 A bill to be entitled  
2 An act relating to the Petroleum Restoration Program;  
3 amending s. 376.305, F.S.; removing the requirement  
4 that applications for the Abandoned Tank Restoration  
5 Program must have been submitted to the Department of  
6 Environmental Protection by a certain time; deleting  
7 provisions relieving certain persons from liability;  
8 amending s. 376.3071, F.S.; prohibiting the department  
9 from incorporating risk-based corrective actions  
10 principles not approved by the property owner;  
11 prohibiting site rehabilitation from being implemented  
12 on certain sites without the approval of the property  
13 owner; requiring the department to establish a  
14 procedure by rule for the processing of certain  
15 invoices and the direct assignment of tasks by a  
16 certain date; authorizing site owners and operators to  
17 select agency term contractors from which the  
18 department must select from under certain  
19 circumstances; requiring the property owner or  
20 responsible party selecting the agency term contractor  
21 and the selected agency term contractor to execute a  
22 sworn affidavit testifying to certain terms; requiring  
23 agency term contractors to disclose any conflict of  
24 interest to the department; revising the conditions  
25 for eligibility and methods for payment of costs for  
26 the low-scored site initiative; clarifying that a  
27 change in ownership does not preclude a site from  
28 entering into the program; revising the eligibility  
29 requirements for receiving rehabilitation funding

Page 1 of 20

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

592-02178-15

2015314c1

30 assistance; increasing the amount of funding  
31 assistance available; amending s. 376.30713, F.S.;  
32 revising the number of sites for certain advanced  
33 cleanup applications; increasing the total amount for  
34 which the department may contract for advanced cleanup  
35 work in a fiscal year; authorizing property owners and  
36 responsible parties to enter into voluntary cost-share  
37 agreements under certain circumstances; providing an  
38 effective date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Subsection (6) of section 376.305, Florida  
43 Statutes, is amended to read:

44 376.305 Removal of prohibited discharges.—

45 (6) The Legislature created the Abandoned Tank Restoration  
46 Program in response to the need to provide financial assistance  
47 for cleanup of sites that have abandoned petroleum storage  
48 systems. For purposes of this subsection, the term "abandoned  
49 petroleum storage system" means a petroleum storage system that  
50 has not stored petroleum products for consumption, use, or sale  
51 since March 1, 1990. The department shall establish the  
52 Abandoned Tank Restoration Program to facilitate the restoration  
53 of sites contaminated by abandoned petroleum storage systems.

54 (a) To be included in the program:

55 1. An application must be submitted to the department ~~by~~  
56 ~~June 30, 1996,~~ certifying that the system has not stored  
57 petroleum products for consumption, use, or sale at the facility  
58 since March 1, 1990.

Page 2 of 20

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

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59 2. The owner or operator of the petroleum storage system  
60 when it was in service must have ceased conducting business  
61 involving consumption, use, or sale of petroleum products at  
62 that facility on or before March 1, 1990.

63 3. The site is not otherwise eligible for the cleanup  
64 programs pursuant to s. 376.3071 or s. 376.3072.

65 (b) In order to be eligible for the program, petroleum  
66 storage systems from which a discharge occurred must be closed  
67 pursuant to department rules before an eligibility  
68 determination. However, if the department determines that the  
69 owner of the facility cannot financially comply with the  
70 department's petroleum storage system closure requirements and  
71 all other eligibility requirements are met, the petroleum  
72 storage system closure requirements shall be waived. The  
73 department shall take into consideration the owner's net worth  
74 and the economic impact on the owner in making the determination  
75 of the owner's financial ability. ~~The June 30, 1996, application~~  
76 ~~deadline shall be waived for owners who cannot financially~~  
77 ~~comply.~~

78 (c) Sites accepted in the program are eligible for site  
79 rehabilitation funding as provided in s. 376.3071.

80 (d) The following sites are excluded from eligibility:

- 81 1. Sites on property of the Federal Government;
- 82 2. Sites contaminated by pollutants that are not petroleum  
83 products;
- 84 3. Sites where the department has been denied site access;  
85 or
- 86 4. Sites which are owned by a person who had knowledge of  
87 the polluting condition when title was acquired unless the

592-02178-15

2015314c1

88 person acquired title to the site after issuance of a notice of  
89 site eligibility by the department.

90 (e) Participating sites are subject to a deductible as  
91 determined by rule, not to exceed \$10,000.

92  
93 ~~This subsection does not relieve a person who has acquired title~~  
94 ~~after July 1, 1992, from the duty to establish by a~~  
95 ~~preponderance of the evidence that he or she undertook, at the~~  
96 ~~time of acquisition, all appropriate inquiry into the previous~~  
97 ~~ownership and use of the property consistent with good~~  
98 ~~commercial or customary practice in an effort to minimize~~  
99 ~~liability, as required by s. 376.308(1)(c).~~

100 Section 2. Paragraph (b) of subsection (5), paragraph (d)  
101 of subsection (6), paragraph (b) of subsection (12), and  
102 subsection (13) of section 376.3071, Florida Statutes, are  
103 amended, and paragraphs (n) and (o) are added to subsection (6)  
104 of that section, to read:

105 376.3071 Inland Protection Trust Fund; creation; purposes;  
106 funding.—

107 (5) SITE SELECTION AND CLEANUP CRITERIA.—

108 (b) It is the intent of the Legislature to protect the  
109 health of all people under actual circumstances of exposure. The  
110 secretary shall establish criteria by rule for the purpose of  
111 determining, on a site-specific basis, the rehabilitation  
112 program tasks that comprise a site rehabilitation program and  
113 the level at which a rehabilitation program task and a site  
114 rehabilitation program are completed. In establishing the rule,  
115 the department shall incorporate, ~~to the maximum extent~~  
116 ~~feasible,~~ risk-based corrective action principles approved by

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117 the property owner to achieve protection of the public health,  
 118 safety, and welfare, water resources, and the environment in a  
 119 cost-effective manner as provided in this subsection. Criteria  
 120 for determining what constitutes a rehabilitation program task  
 121 or completion of site rehabilitation program tasks and site  
 122 rehabilitation programs shall be based upon the factors set  
 123 forth in paragraph (a) and the following additional factors:

124 1. The current exposure and potential risk of exposure to  
 125 humans and the environment including multiple pathways of  
 126 exposure.

127 2. The appropriate point of compliance with cleanup target  
 128 levels for petroleum products' chemicals of concern. The point  
 129 of compliance shall be at the source of the petroleum  
 130 contamination. However, the department may temporarily move the  
 131 point of compliance to the boundary of the property, or to the  
 132 edge of the plume when the plume is within the property  
 133 boundary, while cleanup, including cleanup through natural  
 134 attenuation processes in conjunction with appropriate  
 135 monitoring, is proceeding. The department may also, pursuant to  
 136 criteria provided for in this paragraph, temporarily extend the  
 137 point of compliance beyond the property boundary with  
 138 appropriate monitoring, if such extension is needed to  
 139 facilitate natural attenuation or to address the current  
 140 conditions of the plume, if the public health, safety, and  
 141 welfare, water resources, and the environment are adequately  
 142 protected. Temporary extension of the point of compliance beyond  
 143 the property boundary, as provided in this subparagraph, must  
 144 include notice to local governments and owners of any property  
 145 into which the point of compliance is allowed to extend.

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146 3. The appropriate site-specific cleanup goal. The site-  
 147 specific cleanup goal shall be that all petroleum contamination  
 148 sites ultimately achieve the applicable cleanup target levels  
 149 provided in this paragraph. However, the department may allow  
 150 concentrations of the petroleum products' chemicals of concern  
 151 to temporarily exceed the applicable cleanup target levels while  
 152 cleanup, including cleanup through natural attenuation processes  
 153 in conjunction with appropriate monitoring, is proceeding, if  
 154 the public health, safety, and welfare, water resources, and the  
 155 environment are adequately protected.

156 4. The appropriateness of using institutional or  
 157 engineering controls. Site rehabilitation programs may include  
 158 the use of institutional or engineering controls to eliminate  
 159 the potential exposure to petroleum products' chemicals of  
 160 concern to humans or the environment. Use of such controls must  
 161 have prior department approval and may not be acquired with  
 162 moneys from the fund. When institutional or engineering controls  
 163 are implemented to control exposure, the removal of such  
 164 controls must have prior department approval and must be  
 165 accompanied immediately by the resumption of active cleanup or  
 166 other approved controls unless cleanup target levels pursuant to  
 167 this paragraph have been achieved. Beginning July 1, 2013, site  
 168 rehabilitation for a site that qualifies for a conditional  
 169 closure or closure with institutional or engineering controls  
 170 that require deed restrictions or a work stoppage not due to  
 171 insufficient funds may be implemented only with the approval of  
 172 the property owner.

173 5. The additive effects of the petroleum products'  
 174 chemicals of concern. The synergistic effects of petroleum

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175 products' chemicals of concern must also be considered when the  
176 scientific data becomes available.

177 6. Individual site characteristics which must include, but  
178 not be limited to, the current and projected use of the affected  
179 groundwater in the vicinity of the site, current and projected  
180 land uses of the area affected by the contamination, the exposed  
181 population, the degree and extent of contamination, the rate of  
182 contaminant migration, the apparent or potential rate of  
183 contaminant degradation through natural attenuation processes,  
184 the location of the plume, and the potential for further  
185 migration in relation to site property boundaries.

186 7. Applicable state water quality standards.

187 a. Cleanup target levels for petroleum products' chemicals  
188 of concern found in groundwater shall be the applicable state  
189 water quality standards. Where such standards do not exist, the  
190 cleanup target levels for groundwater shall be based on the  
191 minimum criteria specified in department rule. The department  
192 shall consider the following, as appropriate, in establishing  
193 the applicable minimum criteria: calculations using a lifetime  
194 cancer risk level of 1.0E-6; a hazard index of 1 or less; the  
195 best achievable detection limit; the naturally occurring  
196 background concentration; or nuisance, organoleptic, and  
197 aesthetic considerations.

198 b. Where surface waters are exposed to petroleum  
199 contaminated groundwater, the cleanup target levels for the  
200 petroleum products' chemicals of concern shall be based on the  
201 surface water standards as established by department rule. The  
202 point of measuring compliance with the surface water standards  
203 shall be in the groundwater immediately adjacent to the surface

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204 water body.

205 8. Whether deviation from state water quality standards or  
206 from established criteria is appropriate. The department may  
207 issue a "No Further Action Order" based upon the degree to which  
208 the desired cleanup target level is achievable and can be  
209 reasonably and cost-effectively implemented within available  
210 technologies or engineering and institutional control  
211 strategies. Where a state water quality standard is applicable,  
212 a deviation may not result in the application of cleanup target  
213 levels more stringent than the standard. In determining whether  
214 it is appropriate to establish alternate cleanup target levels  
215 at a site, the department may consider the effectiveness of  
216 source removal that has been completed at the site and the  
217 practical likelihood of the use of low yield or poor quality  
218 groundwater; the use of groundwater near marine surface water  
219 bodies; the current and projected use of the affected  
220 groundwater in the vicinity of the site; or the use of  
221 groundwater in the immediate vicinity of the storage tank area,  
222 where it has been demonstrated that the groundwater  
223 contamination is not migrating away from such localized source,  
224 if the public health, safety, and welfare, water resources, and  
225 the environment are adequately protected.

226 9. Appropriate cleanup target levels for soils.

227 a. In establishing soil cleanup target levels for human  
228 exposure to petroleum products' chemicals of concern found in  
229 soils from the land surface to 2 feet below land surface, the  
230 department shall consider the following, as appropriate:  
231 calculations using a lifetime cancer risk level of 1.0E-6; a  
232 hazard index of 1 or less; the best achievable detection limit;

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233 or the naturally occurring background concentration.

234       b. Leachability-based soil target levels shall be based on  
235 protection of the groundwater cleanup target levels or the  
236 alternate cleanup target levels for groundwater established  
237 pursuant to this paragraph, as appropriate. Source removal and  
238 other cost-effective alternatives that are technologically  
239 feasible shall be considered in achieving the leachability soil  
240 target levels established by the department. The leachability  
241 goals do not apply if the department determines, based upon  
242 individual site characteristics, that petroleum products'  
243 chemicals of concern will not leach into the groundwater at  
244 levels which pose a threat to public health, safety, and  
245 welfare, water resources, or the environment.

247 This paragraph does not restrict the department from temporarily  
248 postponing completion of any site rehabilitation program for  
249 which funds are being expended whenever such postponement is  
250 necessary in order to make funds available for rehabilitation of  
251 a contamination site with a higher priority status.

252       (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

253       (d) The department rules implementing this section must:

254       1. Specify that only qualified vendors may submit responses  
255 on a competitive solicitation. ~~The department rules must also~~

256       2. Include procedures for the rejection of vendors not  
257 meeting the minimum qualifications on the opening of a  
258 competitive solicitation. ~~and~~

259       3. Include requirements for a vendor to maintain its  
260 qualifications in order to enter contracts or perform  
261 rehabilitation work.

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262       4. Establish a procedure by October 1, 2015, for the  
263 processing of invoices and the direct assignment of tasks that  
264 are less than \$500,000. This procedure may not involve the use  
265 of MyFloridaMarketPlace. Invoices and assignment of tasks may be  
266 processed pursuant to chapter 287.

267       (n) For sites that are within the priority scoring range  
268 eligible for funding, excluding sites that are within a cost-  
269 share program, a site owner or operator may select three agency  
270 term contractors. The department will then select one of the  
271 three agency term contractors based on the best value to be  
272 determined by a combination of the agency term contractor's  
273 Invitation to Negotiate ranking and Schedule E rates.

274       (o)1. Both the selected agency term contractor and the  
275 property owner, or responsible party, who selects the agency  
276 term contractor must execute a sworn affidavit testifying that  
277 neither party has solicited, offered, accepted, paid, or  
278 received any compensation, remuneration, or gift of any kind,  
279 directly or indirectly, in exchange for the selection of the  
280 agency term contractor in connection with the cleanup of the  
281 petroleum contaminated property, except for the compensation  
282 paid by the department to the agency term contractor pursuant to  
283 the agency term contractor's contract with the department. If  
284 the department subsequently determines that remuneration did  
285 occur, the department may seek recovery of the costs of cleanup  
286 of specific properties from all parties responsible for the  
287 property contamination, and the property is ineligible for  
288 participation in any cleanup program.

289       2. Pursuant to the terms and conditions of the agency term  
290 contractor's contract with the department, the agency term

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291 contractor must disclose any conflict of interest to the  
 292 department. The agency term contractor shall be conclusively  
 293 determined to have a conflict of interest with regard to any  
 294 site if it has given or offered remuneration, in cash or in  
 295 kind, directly or indirectly, to the property owner or  
 296 responsible party, or the owner's or responsible party's  
 297 designee, to obtain work associated with such property. The  
 298 department retains the right to investigate and determine if an  
 299 agency term contractor has a conflict of interest with regard to  
 300 any property. The department may terminate the agency term  
 301 contractor's contract with the department or may terminate the  
 302 agency term contractor's work assignment to a particular  
 303 property based upon the department's assessment of the potential  
 304 conflict of interest.

305 (12) SITE CLEANUP.—

306 (b) *Low-scored site initiative.*—Notwithstanding subsections  
 307 (5) and (6), a site with a priority ranking score of 29 points  
 308 or less may voluntarily participate in the low-scored site  
 309 initiative regardless of whether the site is eligible for state  
 310 restoration funding.

311 1. To participate in the low-scored site initiative, the  
 312 responsible party or property owner must affirmatively  
 313 demonstrate that the following conditions are met:

314 a. Upon reassessment pursuant to department rule, the site  
 315 retains a priority ranking score of 29 points or less.

316 b. Excessively contaminated soil, as defined by department  
 317 rule, does not exist onsite as a result of a release of  
 318 petroleum products.

319 c. A minimum of 6 months of groundwater monitoring

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320 indicates that the plume is shrinking or stable.

321 d. The release of petroleum products at the site does not  
 322 adversely affect adjacent surface waters, including their  
 323 effects on human health and the environment.

324 e. The area of groundwater containing the petroleum  
 325 products' chemicals of concern ~~is less than one-quarter acre and~~  
 326 is confined to the source property boundaries of the real  
 327 property on which the discharge originated or is located below a  
 328 state road or a state road's right-of-way.

329 f. Soils onsite that are subject to human exposure found  
 330 between land surface and 2 feet below land surface meet the soil  
 331 cleanup target levels established by department rule or human  
 332 exposure is limited by appropriate institutional or engineering  
 333 controls.

334 2. Upon affirmative demonstration of the conditions under  
 335 subparagraph 1., the department shall issue a determination of  
 336 "No Further Action." Such determination acknowledges that  
 337 minimal contamination exists onsite and that such contamination  
 338 is not a threat to the public health, safety, or welfare, water  
 339 resources, or the environment. If no contamination is detected,  
 340 the department may issue a site rehabilitation completion order.

341 3. Sites that are eligible for state restoration funding  
 342 may receive payment of costs for the low-scored site initiative  
 343 as follows:

344 a. A responsible party or property owner may submit an  
 345 assessment plan designed to affirmatively demonstrate that the  
 346 site meets the conditions under subparagraph 1. Notwithstanding  
 347 the priority ranking score of the site, the department may  
 348 approve the cost of the assessment, including 6 months of

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349 groundwater monitoring, not to exceed \$35,000 ~~\$30,000~~ for each  
 350 site. The department may not pay the costs associated with the  
 351 establishment of institutional or engineering controls.

352 b. Following the assessment, the department may approve up  
 353 to an additional \$35,000 for interim source removal pursuant to  
 354 department rule to achieve a "No Further Action" order or a site  
 355 rehabilitation completion order pursuant to subparagraph 2.

356 c. For low-scored site initiative sites that were completed  
 357 before July 1, 2015, the department may approve up to an  
 358 additional \$35,000 for supplemental site assessment pursuant to  
 359 department rule or to achieve a "No Further Action" order or a  
 360 site rehabilitation completion order pursuant to subparagraph 2.

361 d. To provide pricing levels on the best terms to the  
 362 department, only an agency term contractor may participate in  
 363 the low-scored site initiative.

364 e. Completed low-scored site initiative sites shall be  
 365 granted priority 2 scoring status for ongoing assessment or  
 366 remedial activity pursuant to department rule.

367 f. ~~b.~~ All ~~The assessment~~ work shall be completed no later  
 368 than 9 ~~6~~ months after the department issues its approval. If  
 369 groundwater monitoring is required after the assessment in order  
 370 to satisfy the conditions of sub-subparagraph 1.c., the  
 371 department may authorize an additional 6 months to complete the  
 372 monitoring.

373 g. ~~e.~~ No more than \$10 million for the low-scored site  
 374 initiative may be encumbered from the fund in any fiscal year.  
 375 Funds shall be made available on a first-come, first-served  
 376 basis and shall be limited to 10 sites in each fiscal year for  
 377 each responsible party or property owner.

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378 ~~h. ~~d.~~~~ Program deductibles, copayments, and the limited  
 379 contamination assessment report requirements under paragraph  
 380 (13) (c) do not apply to expenditures under this paragraph.

381 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
 382 detection, reporting, and cleanup of contamination caused by  
 383 discharges of petroleum or petroleum products, the department  
 384 shall, within the guidelines established in this subsection,  
 385 implement a cost-sharing cleanup program to provide  
 386 rehabilitation funding assistance for all property contaminated  
 387 by discharges of petroleum or petroleum products from a  
 388 petroleum storage system occurring before January 1, 1995,  
 389 subject to a copayment provided for in a Petroleum Cleanup  
 390 Participation Program site rehabilitation agreement. Eligibility  
 391 is subject to an annual appropriation from the fund.  
 392 Additionally, funding for eligible sites is contingent upon  
 393 annual appropriation in subsequent years. Such continued state  
 394 funding is not an entitlement or a vested right under this  
 395 subsection. Eligibility shall be determined in the program,  
 396 notwithstanding any other provision of law, consent order,  
 397 order, judgment, or ordinance to the contrary.

398 (a)1. The department shall accept any discharge reporting  
 399 form received before January 1, 1995, as an application for this  
 400 program, and the facility owner or operator need not reapply.

401 2. Owners or operators of property, regardless of whether  
 402 ownership has changed, which is contaminated by petroleum or  
 403 petroleum products from a petroleum storage system may apply for  
 404 such program by filing a written report of the contamination  
 405 incident, including evidence that such incident occurred before  
 406 January 1, 1995, with the department. Incidents of petroleum

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407 contamination discovered after December 31, 1994, at sites which  
 408 have not stored petroleum or petroleum products for consumption,  
 409 use, or sale after such date shall be presumed to have occurred  
 410 before January 1, 1995. An operator's filed report shall be an  
 411 application of the owner for all purposes. ~~Sites reported to the~~  
 412 ~~department after December 31, 1998, are not eligible for the~~  
 413 ~~program.~~

414 (b) Subject to annual appropriation from the fund, sites  
 415 meeting the criteria of this subsection are eligible for up to  
 416 \$1 million ~~\$400,000~~ of site rehabilitation funding assistance in  
 417 priority order pursuant to subsections (5) and (6). Sites  
 418 meeting the criteria of this subsection for which a site  
 419 rehabilitation completion order was issued before June 1, 2008,  
 420 do not qualify for the 2008 increase in site rehabilitation  
 421 funding assistance and are bound by the pre-June 1, 2008,  
 422 limits. Sites meeting the criteria of this subsection for which  
 423 a site rehabilitation completion order was not issued before  
 424 June 1, 2008, regardless of whether they have previously  
 425 transitioned to nonstate-funded cleanup status, may continue  
 426 state-funded cleanup pursuant to this section until a site  
 427 rehabilitation completion order is issued or the increased site  
 428 rehabilitation funding assistance limit is reached, whichever  
 429 occurs first. The department may not pay expenses incurred  
 430 beyond the scope of an approved contract.

431 (c) Upon notification by the department that rehabilitation  
 432 funding assistance is available for the site pursuant to  
 433 subsections (5) and (6), the owner, operator, or person  
 434 otherwise responsible for site rehabilitation shall provide the  
 435 department with a limited contamination assessment report and

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436 shall enter into a Petroleum Cleanup Participation Program site  
 437 rehabilitation agreement with the department. The agreement must  
 438 provide for a 25-percent copayment by the owner, operator, or  
 439 person otherwise responsible for conducting site rehabilitation.  
 440 The owner, operator, or person otherwise responsible for  
 441 conducting site rehabilitation shall adequately demonstrate the  
 442 ability to meet the copayment obligation. The limited  
 443 contamination assessment report and the copayment costs may be  
 444 reduced or eliminated if the owner and all operators responsible  
 445 for restoration under s. 376.308 demonstrate that they cannot  
 446 financially comply with the copayment and limited contamination  
 447 assessment report requirements. The department shall take into  
 448 consideration the owner's and operator's net worth in making the  
 449 determination of financial ability. In the event the department  
 450 and the owner, operator, or person otherwise responsible for  
 451 site rehabilitation cannot complete negotiation of the cost-  
 452 sharing agreement within 120 days after beginning negotiations,  
 453 the department shall terminate negotiations and the site shall  
 454 be ineligible for state funding under this subsection and all  
 455 liability protections provided for in this subsection shall be  
 456 revoked.

457 (d) A report of a discharge made to the department by a  
 458 person pursuant to this subsection or any rules adopted pursuant  
 459 to this subsection may not be used directly as evidence of  
 460 liability for such discharge in any civil or criminal trial  
 461 arising out of the discharge.

462 (e) This subsection does not preclude the department from  
 463 pursuing penalties under s. 403.141 for violations of any law or  
 464 any rule, order, permit, registration, or certification adopted

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465 or issued by the department pursuant to its lawful authority.

466 (f) Upon the filing of a discharge reporting form under  
467 paragraph (a), the department or local government may not pursue  
468 any judicial or enforcement action to compel rehabilitation of  
469 the discharge. This paragraph does not prevent any such action  
470 with respect to discharges determined ineligible under this  
471 subsection or to sites for which rehabilitation funding  
472 assistance is available pursuant to subsections (5) and (6).

473 (g) The following are excluded from participation in the  
474 program:

475 1. Sites at which the department has been denied reasonable  
476 site access to implement this section.

477 2. Sites that were active facilities when owned or operated  
478 by the Federal Government.

479 3. Sites that are identified by the United States  
480 Environmental Protection Agency to be on, or which qualify for  
481 listing on, the National Priorities List under Superfund. This  
482 exception does not apply to those sites for which eligibility  
483 has been requested or granted as of the effective date of this  
484 act under the Early Detection Incentive Program established  
485 pursuant to s. 15, chapter 86-159, Laws of Florida.

486 4. Sites for which contamination is covered under the Early  
487 Detection Incentive Program, the Abandoned Tank Restoration  
488 Program, or the Petroleum Liability and Restoration Insurance  
489 Program, in which case site rehabilitation funding assistance  
490 shall continue under the respective program.

491 Section 3. Paragraph (a) of subsection (2) and subsection  
492 (4) of section 376.30713, Florida Statutes, are amended to read:  
493 376.30713 Advanced cleanup.—

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494 (2) The department may approve an application for advanced  
495 cleanup at eligible sites, before funding based on the site's  
496 priority ranking established pursuant to s. 376.3071(5) (a),  
497 pursuant to this section. Only the facility owner or operator or  
498 the person otherwise responsible for site rehabilitation  
499 qualifies as an applicant under this section.

500 (a) Advanced cleanup applications may be submitted between  
501 May 1 and June 30 and between November 1 and December 31 of each  
502 fiscal year. Applications submitted between May 1 and June 30  
503 shall be for the fiscal year beginning July 1. An application  
504 must consist of:

505 1. A commitment to pay 25 percent or more of the total  
506 cleanup cost deemed recoverable under this section along with  
507 proof of the ability to pay the cost share. An application  
508 proposing that the department enter into a performance-based  
509 contract for the cleanup of 10 ~~20~~ or more sites may use a  
510 commitment to pay, a demonstrated cost savings to the  
511 department, or both to meet the cost-share requirement. For an  
512 application relying on a demonstrated cost savings to the  
513 department, the applicant shall, in conjunction with the  
514 proposed agency term contractor, establish and provide in the  
515 application the percentage of cost savings in the aggregate that  
516 is being provided to the department for cleanup of the sites  
517 under the application compared to the cost of cleanup of those  
518 same sites using the current rates provided to the department by  
519 the proposed agency term contractor. The department shall  
520 determine whether the cost savings demonstration is acceptable.  
521 Such determination is not subject to chapter 120.

522 2. A nonrefundable review fee of \$250 to cover the

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523 administrative costs associated with the department's review of  
524 the application.

525 3. A limited contamination assessment report.

526 4. A proposed course of action.

527

528 The limited contamination assessment report must be sufficient  
529 to support the proposed course of action and to estimate the  
530 cost of the proposed course of action. Costs incurred related to  
531 conducting the limited contamination assessment report are not  
532 refundable from the Inland Protection Trust Fund. Site  
533 eligibility under this subsection or any other provision of this  
534 section is not an entitlement to advanced cleanup or continued  
535 restoration funding. The applicant shall certify to the  
536 department that the applicant has the prerequisite authority to  
537 enter into an advanced cleanup contract with the department. The  
538 certification must be submitted with the application.

539 (4) The department may enter into contracts for a total of  
540 up to ~~\$25~~ ~~\$15~~ million of advanced cleanup work in each fiscal  
541 year. However, a facility or an applicant who bundles multiple  
542 sites as specified in subparagraph (2)(a)1. may not be approved  
543 for more than \$5 million of cleanup activity in each fiscal  
544 year. A property owner or responsible party may enter into a  
545 voluntary cost-share agreement in which the property owner or  
546 responsible party commits to bundle multiple sites and lists the  
547 facilities that will be included in those future bundles. The  
548 facilities listed are not subject to agency term contractor  
549 assignment pursuant to department rule. The department reserves  
550 the right to terminate the voluntary cost-share agreement if the  
551 property owner or responsible party fails to submit an

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552 application to bundle multiple sites within an open application  
553 period in which it is eligible to participate. For the purposes  
554 of this section, the term "facility" includes, but is not  
555 limited to, multiple site facilities such as airports, port  
556 facilities, and terminal facilities even though such enterprises  
557 may be treated as separate facilities for other purposes under  
558 this chapter.

559 Section 4. This act shall take effect July 1, 2015.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/15

Meeting Date

314

Bill Number (if applicable)

497664

Amendment Barcode (if applicable)

Topic PETROLEUM RESTORATION PROGRAM

Name MIKE SCARINOBELLA

Job Title FLORIDA RESIDENT

Address 2248 SANDRIDGE CIRCLE

Phone 352-459-8488

Street

EUSTIS

FL

City

State

Zip

Email EHS@MINE@YAHOO.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

APPEARANCE RECORD

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4/8/2015

Meeting Date

314

Bill Number (if applicable)

Topic Petroleum Restoration

Amendment Barcode (if applicable)

Name Phil Henry

Job Title Lobbyist

Address 1821 Cape St

Phone 386/937-7829

Street

Palatka

FL

32117

Email philhenry@henrygac.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Ground Water Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD

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4-8-15

Meeting Date

314

Bill Number (if applicable)

Topic Petroleum Restoration Program

Amendment Barcode (if applicable)

Name Natalie King

Job Title VP

Address 235 W Brandon Blvd 1410 Phone 839 24 8218

Street

Brandon FL 33511

City

State

Zip

Email natalie@rsaconsulting.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing Environmental Professional of Florida

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/8/15

Meeting Date

SB 314

Bill Number (if applicable)

Topic PETROLEUM RESTORATION PROGRAM

Amendment Barcode (if applicable)

Name RANDY MILLER

Job Title EX VICE PRESIDENCY

Address 227 S. ADAMS ST

Phone 850-222-4082

Street

TALLAHASSEE

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA RETAIL FEDERATION / FLORIDA PETROLEUM MARKETERS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

**SENATOR WILTON SIMPSON**

18th District

March 12, 2015

Honorable Alan Hays  
Subcommittee on Appropriations General Government  
201 The Capitol  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chairman Hays,

Please place Senate Bill 314 relating to Petroleum Restoration Program, on the next Appropriations Subcommittee on General Government agenda.

Please contact my office with any questions. Thank you.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson

Senator, 18<sup>th</sup> District

CC: Jamie DeLoach, Staff Director

### REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
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**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: SB 718

INTRODUCER: Senator Lee

SUBJECT: Administrative Procedures

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 718 makes a number of changes to the Administrative Procedure Act (APA), which relate to a state agency's reliance on unadopted or invalid rules, a state agency's liability for attorney fees and costs, and the provision of notices and information to the public. Among the most notable changes, the bill:

- Provides that the decision of an administrative law judge in a challenge to a proposed rule is final agency action that cannot be overturned by an agency.
- Removes the presumption of validity for existing agency rules.
- Expands the circumstances under which a state agency must issue a declaratory statement by eliminating the requirement that a petitioner for a declaratory statement state with particularity the petitioner's set of circumstances.
- Makes a state agency liable for attorney fees and costs when the agency improperly denies a petition for a declaratory statement or loses a challenge to an existing or unadopted rule which is asserted as a defense to agency action.
- Makes a state agency liable for attorney fees and costs in proceedings to determine the entitlement to or amount of fees in related litigation against a prevailing party.
- Requires a person to provide advance notice of the intent to challenge a proposed, existing, or unadopted rule before the person can be entitled to attorney fees and costs in a rule challenge proceeding.

This bill has an indeterminate fiscal impact related to attorney fees and costs.

The bill is effective July 1, 2015.

## II. Present Situation:

### Rulemaking and the Administrative Procedure Act

The Administrative Procedure Act (APA) in ch. 120, F.S., sets forth uniform procedures that agencies must follow when exercising rulemaking authority. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency.<sup>1</sup> Rulemaking authority is delegated by the Legislature<sup>2</sup> through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”<sup>3</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>4</sup> To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.<sup>5</sup> The grant of rulemaking authority itself need not be detailed.<sup>6</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>7</sup>

### Declaratory Statements

The APA authorizes a substantially affected person to request an agency’s opinion as to the applicability of a statute, rule, or order of the agency as it applies to the petitioner’s particular set of circumstances.<sup>8</sup> When issued, a declaratory statement is the agency’s legal opinion that binds the agency under principles of estoppel. A declaratory statement may “help parties avoid costly administrative litigation, while simultaneously providing useful guidance to others who may find themselves in the same or similar situations.”<sup>9</sup>

A number of grounds exist for an agency to dismiss or deny a petition for a declaratory statement, including:

- The issues raised in the petition are being simultaneously litigated in a judicial or another administrative proceeding.<sup>10</sup>
- The petition was filed to challenge another agency decision.<sup>11</sup>
- The petition seeks approval or disapproval of conduct which has already occurred.<sup>12</sup>

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<sup>1</sup> Section 120.52(16), F.S.; *Florida Dep’t of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

<sup>2</sup> *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

<sup>3</sup> Section 120.52(17), F.S.

<sup>4</sup> Section 120.54(1)(a), F.S.

<sup>5</sup> Sections 120.52(8) and 120.536(1), F.S.

<sup>6</sup> *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 at 599.

<sup>7</sup> *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008) (internal citations omitted); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

<sup>8</sup> Section 120.565, F.S.

<sup>9</sup> *1000 Friends of Fla., Inc., v. State Dept. of Cmty. Affairs*, 760 So. 2d 154, 158 (Fla. 1st DCA 2000).

<sup>10</sup> *Fox v. State Bd. of Osteopathic Med. Examiners*, 395 So. 2d 192 (Fla. 1st DCA 1981).

<sup>11</sup> *Kahn v. Office of Ins. Reg.*, 881 So. 2d 699 (Fla. 1st DCA 2004).

<sup>12</sup> *Novick v. Dept. of Health, Bd. of Med.*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002).

### *Attorney Fees*

The Florida Equal Access to Justice Act is intended to diminish the deterrent effect of seeking review of, or defending against governmental actions.<sup>13</sup> Under the act, a small business that prevails in a legal action initiated by a state agency is entitled to attorney fees and costs if the actions of the agency were not substantially justified or special circumstances exist which would make the award unjust. An agency action is reasonably justified if it had a reasonable basis in law and fact at the time it was initiated by a state agency.

In addition to the special attorney fee provisions in the Equal Access to Justice Act, the APA authorizes the recovery of attorney fees when:

- A non-prevailing party has participated for an improper purpose;
- An agency's actions are not substantially justified;
- An agency relies upon an unadopted rule and is successfully challenged after 30 days' notice of the need to adopt rules; and
- An agency loses an appeal in a proceeding challenging an unadopted rule.<sup>14</sup>

An agency defense to attorney fees available in actions challenging agency statements defined as rules is that the agency did not know and should not have known that the agency statement was an unadopted rule. Additionally, attorney fees in such actions may be awarded only upon a finding that the agency received notice that the agency statement may constitute an unadopted rule at least 30 days before a petition challenging the agency statement is filed, and the agency fails to publish a notice of rulemaking within that 30 day period.<sup>15</sup>

The authorization for attorney fees in the Equal Access to Justice Act supplement other statutes authorizing attorney fees.<sup>16</sup>

### *Notice of Rules*

Under current law, the Department of State is required to publish the Florida Administrative Register on the Internet.<sup>17</sup> This document must contain:

- Notices relating to the adoption or repeal of a rule.
- Notices of public meetings, hearing, and workshops.
- Notices of requests for authorization to amend or repeal an existing rule or for the adoption of a new uniform rule.
- Notices of petitions for declaratory statements or administrative determinations.
- Summaries of objections to rules filed by the Administrative Procedures Committee.
- Other material required by law or deemed useful by the department.

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<sup>13</sup> Section 57.111, F.S.

<sup>14</sup> Section 120.595, F.S.

<sup>15</sup> Section 120.595(4)(b), F.S.

<sup>16</sup> See s. 120.595(6), F.S. (providing that a statute authorizing attorney fees in challenges to agency actions does not affect the availability of attorney fees and costs under other statutes including ss. 57.105, and 57.111, F.S.).

<sup>17</sup> Section 120.55, F.S.

### ***Burden of Proof***

In general, laws carry a presumption of validity, and those challenging the validity of a law carry the burden of proving invalidity. The APA retains this presumption of validity by requiring those challenging adopted rules to carry the burden of proving a rule's invalidity.<sup>18</sup> However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.<sup>19</sup> In addition, a rule may not be filed for adoption until any pending challenge is resolved.<sup>20</sup>

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.<sup>21</sup>

### ***Proceedings Involving Rule Challenges***

The APA presently applies different procedures in rule challenges when proposed rules, existing rules, and unadopted rules are challenged by petition, compared to a challenge to the validity of an existing rule, or an unadopted rule defensively in a proceeding initiated by agency action. In addition to the attorney fees awardable to small businesses under the Equal Access to Justice Act, the APA provides attorney fee awards when a party petitions for the invalidation of a rule or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or grant or denial of a permit or license.

The APA does provide that an administrative law judge with the Division of Administrative Hearings (DOAH) may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if it's clearly erroneous. If the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.<sup>22</sup> Additionally, in proceedings initiated by agency action, if a DOAH administrative law judge determines that a rule constitutes an invalid exercise of delegated legislative authority, the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejection or modifying such determination.<sup>23</sup>

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH administrative law judge enters a final order that cannot be overturned by the agency. The only appeal is to a District Court of Appeal.

### ***Final Orders***

An agency has 90 days to render a final order in any proceeding, after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH

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<sup>18</sup> Section 120.56(3), F.S.

<sup>19</sup> Section 120.56(2), F.S.

<sup>20</sup> Section 120.54(3)(e)2., F.S.

<sup>21</sup> Section 120.56(4), F.S.

<sup>22</sup> Section 120.57(1)(e)3., F.S.

<sup>23</sup> Section 120.57(1)(k-1), F.S.



conducts the hearing (excepting the rule challenge proceedings described above in which the DOAH administrative law judge enters the final order).

### ***Judicial Review***

A notice of appeal of an appealable order under the APA must be filed within 30 days after the rendering of the order.<sup>24</sup> An order, however, is rendered when filed with the agency clerk. On occasion, a party might not receive notice of the order in time to meet the 30 day appeal deadline. Under the current statute, a party may not seek judicial review of the validity of a rule by appealing its adoption, but the statute authorizes an appeal from a final order in a rule challenge.<sup>25</sup>

### **Minor Violations**

The APA directs agencies to issue a “notice of noncompliance” as the first response when the agency encounters a first minor violation of a rule.<sup>26</sup> The law provides that a violation is a minor violation if it “does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm.” Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency’s designation of rules under the provision is excluded from challenge under the APA but may be subject to review and revision by the Governor or Governor and Cabinet.<sup>27</sup> An agency under the direction of a cabinet officer has the discretion not to use the “notice of noncompliance” once each licensee is provided a copy of all rules upon issuance of a license, and annually thereafter.

### **Rules Ombudsman**

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman in the Executive Office of the Governor, for considering the impact of agency rules on the state’s citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

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<sup>24</sup> Section 120.68(2)(a), F.S.

<sup>25</sup> Section 120.68(9), F.S.

<sup>26</sup> Section 120.695, F.S. The statute contains the following legislative intent: “It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.”

<sup>27</sup> Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

### **III. Effect of Proposed Changes:**

This bill makes a number of changes to the Administrative Procedure Act (APA), which relate to a state agency's reliance on unadopted or invalid rules, a state agency's liability for attorney fees and costs, and the provision of notices and information to the public.

#### **Declaratory Statements; Attorney Fees (Section 1)**

The Florida Equal Access to Justice Act, s. 57.111, F.S., requires a Division of Administrative Hearings (DOAH) judge to award attorney fees to a prevailing small business party in any action under the APA, if a state agency initiated the action and the agency's action was not substantially justified.

The bill redefines the term "substantially justified" as used in the act by identifying specific agency actions that are not substantially justified. As a result of the changed definition, a state agency is liable for the attorney fees and costs of a small business if an agency action is:

- Based on a subject that the prevailing small business party previously raised in a petition for a declaratory statement.
- Contrary to its position in a declaratory statement.
- Based on facts and circumstances similar to those raised in a petition for a declaratory statement, which the agency denied.

These changes defining agency actions that are not substantially justified appear likely to cause changes in agency conduct. An agency might be more likely to issue a declaratory statement when proper grounds would otherwise exist for an agency to decline to do so. Alternatively, an agency might decline to initiate an enforcement action when grounds would otherwise exist for an enforcement action.

#### **Schedule for Rulemaking Workshops; Unadopted Rule (Section 2)**

Under existing s. 120.54(7)(b), F.S., a person may petition an agency to initiate rulemaking with respect to an unadopted rule. If after a public hearing on the unadopted rule, the agency chooses to initiate rulemaking, the statutes do not establish a timeframe or schedule for the rulemaking activities. Under the bill, an agency, within 30 days after the public hearing, must establish a schedule for rulemaking workshops. By operation of existing s. 120.54(2), F.S., an agency will provide the notice required by the bill through a Notice of Rule Development, which will be published in the Florida Administrative Register. The bill also requires an agency that chooses to initiate rulemaking related to an unadopted rule to discontinue reliance on the unadopted rule.

#### **Distribution of Notices (Section 3)**

The bill adds additional items to the list of required contents of the Florida Administrative Register, including:

- Notices of Rule Development Workshops.
- A listing of all rules filed for adoption within the previous 7 days.
- A listing of rules pending ratification by the Legislature.

The bill also requires agencies that provide notices by email to interested persons to include within those email messages, notices of rule development workshops and notices of the intent to adopt, amend, or repeal a rule.

#### **Rule Challenges (Section 4)**

##### ***Burdens of Proof***

The bill amends s. 120.56(1), (2) and (4), F.S., relating to petitions challenging the validity of rules, proposed rules and statements defined as rules (“unadopted rules”). The changes clarify the pleading requirements for the petitions. It also clarifies a person who challenges a proposed or adopted rule has the burden of going forward with the evidence.

##### ***Presumption of Validity***

The bill amends s. 120.56(3), F.S., with respect to challenges to existing rules. Under current law, existing agency rules are generally presumed valid and a challenger has the burden of proving that the rule is an invalid exercise of legislative authority.<sup>28</sup> Under the bill, existing rules lose the presumption of validity, and the agency in a rule challenge must prove that the rule is not invalid. Thus, under the bill an agency has the same burden in defending the validity of an existing rule as it has under current law in defending the validity of a proposed rule.

##### ***Invalidity Determination***

Section 120.56(3), F.S., as amended by the bill, provides that an agency may not rely on an invalidated rule for any purpose. Thus, the determination of the validity of an existing rule by a DOAH judge is final agency action.

##### ***Bifurcated Proceedings***

Lastly, s. 120.56(4), F.S., as amended by the bill, prohibits a DOAH administrative law judge from bifurcating a petition challenging agency action into a challenge to an unadopted rule and a challenge to agency action.

#### **Entitlement to a Declaratory Statement (Section 5)**

##### ***Particularity Requirement***

Under existing law, a petitioner must “state with particularity the petitioner’s set of circumstances” in a petition seeking a declaratory statement of an agency’s opinion as to the application of a rule or statute. There seems to be two purposes of the particularity requirement, according to case law. First, the particularity requirement is intended to prevent an agency from responding to a purely hypothetical question unrelated to the petitioner’s personal situation.<sup>29</sup> The second purpose of the particularity requirement seems intended to prevent an agency from

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<sup>28</sup> See *St. Johns River Water Mgmt. Dist. v. Consolidated–Tomoka Land Co.*, 717 So. 2d 72, 76 (Fla. 1st DCA 1998), superseded by statute on other grounds; *Willette v. Air Products*, 700 So. 2d 397, 399 (Fla. 1st DCA 1997); *Injured Workers Ass’n of Fla. v. Dep’t of Labor & Employment Sec.*, 630 So. 2d 1189, 1191 (Fla. 1st DCA 1994) (“Rules are entitled to a presumption of constitutional validity and should be interpreted, if possible, in a manner that preserves their validity.”).

<sup>29</sup> *Fla. Dept. of Bus. & Prof’l Reg., Div. of Pari-Mutuel Wagering v. Inv. Corp. of Palm Beach*, 747 So. 2d 374, 383 (Fla. 1999).

using a declaratory statement to define agency policy instead of rulemaking procedures.<sup>30</sup> The bill deletes the particularity requirement for declaratory statements.

The bill deletes the requirement that a petition for a declaratory statement state with particularity the petitioner's set of circumstances. The elimination of this requirement appears likely to cause agencies to issue more declaratory statements. Those statements might also be more broadly worded if the agency does not have specific information needed to tailor the statement to a petitioner's specific needs. The issuance of broadly-worded declaratory statements might also cause the agency to initiate rulemaking on the substance of the petitions.

### ***Agency Response Time***

Existing law requires agencies to issue a declaratory statement or deny a petition for a declaratory statement within 90 days after the filing of the petition. The bill reduces that time period to 60 days if a petitioner sets forth its understanding of the application of a statute or rule in its petition.

### ***Attorney Fees and Costs***

Lastly, the bill entitles a petitioner to its reasonable attorney fees and costs if an agency improperly denies a petition for a declaratory statement and the denial is reversed on appeal.

### **Time Period for Issuance of Final Order (Section 6)**

Under existing law, an agency must issue a final order within 90 days after a DOAH administrative law judge issues a recommended order. The bill, however, contemplates that a DOAH administrative law judge's decision on a rule challenge is final agency action, reversible only by an appellate court. But the bill, consistent with existing law, provides that the DOAH administrative law judge's decision with respect to other disputed matters in the same proceeding is a recommended decision. As a result, the agency might not as a practical matter be able to issue a final order until an appellate court rules on the validity of a challenged rule. For those cases, the bill provides that an agency must issue its final order within ten days after the appellate court issues its mandate.

### **Rule Challenges in Proceedings Involving Disputed Facts (Section 7)**

Section 7 amends s. 120.57, F.S., relating to DOAH hearings of agency-initiated actions involving disputed issues of material fact. The bill incorporates many of the rule challenge provisions of s. 120.56, F.S., allowing the administrative law judge to enter a final order on a challenge to the validity of a rule or to an unadopted rule in all contests before DOAH. This treats a challenge to a rule in defending against or attacking an agency action much as a challenge in an action initiated solely to challenge the rule. Notably, the decision on the rule challenge in the DOAH proceeding is binding on the agency.

The bill allows the agency, within 15 days after notice of the rule challenge in such matters, to waive its reliance on an unadopted rule or a rule alleged to be invalid and, thereby, eliminate that

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<sup>30</sup> *Chiles v. Dept. of State, Div. of Elections*, 711 So. 2d 151 (Fla. 1st DCA 1998).

aspect of the litigation, without prejudice to the agency reasserting its position in another matter or rule challenge.

### **Mediation (Section 8)**

The bill authorizes a person challenging a rule, proposed rule, or unadopted rule or a person seeking a declaratory statement to request mediation. However, the bill does not appear to limit an agency's discretion to approve or deny a request for mediation.

### **Attorney Fees (Section 9)**

The bill amends s. 120.595, F.S., to make many technical and clarifying changes, but it also increases the circumstances under which an agency may be liable for attorney fees and costs.

#### ***Rule Challenge as Defense to Agency Action***

The bill makes agencies liable for reasonable attorney fees and costs when a challenge to an existing rule or unadopted rule is successfully asserted as a defense to agency action. Under existing law, attorney fees and costs are available only in a rule challenge proceeding.

#### ***Exceptions to Liability***

Under existing law, an agency generally is liable for attorney fees and costs if it loses a challenge to a proposed or existing rule. However, the agency is not liable for attorney fees and costs if its actions were substantially justified. The bill eliminates this exception to circumstances in which an agency might otherwise be liable for attorney fees and costs.

Existing law provides an additional exception protecting an agency from liability for attorney fees and costs with respect to an unadopted rule. Specifically, if an agency initiates rulemaking after a challenge to an unadopted rule is initiated, an agency has liability protection if it proves to the DOAH administrative law judge that it did not know and should not have known that an agency statement was an unadopted rule. The bill eliminates this exception to an agency's liability for attorney fees and costs.

#### ***Prerequisite to Attorney Fees and Costs***

As a prerequisite to the entitlement to attorney fees and costs in a rule challenge proceeding, the bill requires a person challenging the proposed, existing, or unadopted rule to provide advance notice of the intent to challenge the rule to the agency head. However, the advance notice requirement does not apply to a rule challenge asserted as a defense to an agency action.

#### ***Fees for Fees***

Existing law generally limits the maximum amount of an agency's liability for attorney fees and costs to \$50,000. The bill authorizes a person to recover attorney fees and costs for litigating the entitlement to or amount of attorney fees to which it is entitled in the underlying litigation against the agency. The additional amounts are not subject to any limits.

**Judicial Review (Section 10)**

Existing law requires an agency to notify the Administrative Procedures Committee of the appeal of orders from a rule challenge proceeding. The bill requires an agency to report to the committee the appeal of orders relating to the assertion of a rule challenge as a defense to agency action. Section 10 also contains provisions conforming to other provisions of the bill which allow the direct appeal of a decision of a DOAH administrative law judge ruling on a rule challenge asserted as a defense to agency action.

**Designation of Minor Violation of Rules (Section 11)**

Section 11 amends s. 120.695, F.S., to direct each agency to timely review its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the Administrative Procedures Committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation. Each agency that fails to timely complete the review and file the certification will be reported by the rules ombudsman to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Administrative Procedures Committee.

Beginning July 1, 2015, each agency will be required to publish all rules of that agency designated as rules the violation of which would be a minor violation either as a complete list on the agency's Internet webpage or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule. Each agency must ensure that all investigative and enforcement personnel are knowledgeable of the agencies designations of these rules. The agency head must certify for each rule filed for adoption whether any part of the rule is designated as one the violation of which would be a minor violation and update the listing on the webpage or disciplinary guidelines.

**Effective Date (Section 12)**

The bill takes effect July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not apply to counties or municipalities. As such, the bill is not subject to the constitutional restrictions on the Legislature to enact mandates.

**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:**

SB 718 bill may require an agency to provide precise guidance either through more precise rules or declaratory statements to those regulated before the agency may sanction a regulated entity for a rule or statutory violation.

**C. Government Sector Impact:**

The bill creates additional grounds or expands existing grounds for awarding attorney fees and costs against a state agency. Under existing sections of the Administrative Procedure Act, the fees that may be awarded against an agency are limited to \$50,000. In addition to those amounts, the bill allows the award of attorney fees and costs for litigating the entitlement to or amount of attorney fees and costs in the underlying legal action. These additional fees and costs are not subject to any cap on fees. This could potentially have a negative fiscal impact to the state when a state agency is the non-prevailing party; however, the overall fiscal impact of the bill is indeterminate.

The risk of incurring additional attorney fees and costs might deter agencies from engaging in enforcement actions. The bill may also encourage agencies to enact more rules or more precisely define their existing rules and issue more declaratory statements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

As the Administrative Procedure Act has evolved over time through amendments by the Legislature, it has become more complex. This bill seems to add to the complexity of the act. At some point, the Legislature may wish to simplify the structure of the act to ensure that persons regulated by an agency can easily understand their rights to challenge agency actions.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 57.111, 120.54, 120.55, 120.56, 120.565, 120.569, 120.57, 120.573, 120.595, 120.68, and 120.695.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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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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By Senator Lee

24-00407-15

2015718\_\_

1 A bill to be entitled  
 2 An act relating to administrative procedures; amending  
 3 s. 57.111, F.S.; providing conditions under which a  
 4 proceeding is not substantially justified for purposes  
 5 of attorney fees and costs; amending s. 120.54, F.S.;  
 6 requiring agencies to set a time for workshops for  
 7 certain unadopted rules; amending s. 120.55, F.S.;  
 8 providing additional items that must be noticed by an  
 9 agency in the Florida Administrative Register;  
 10 requiring agencies to provide such notice to  
 11 registered recipients under certain circumstances;  
 12 amending s. 120.56, F.S.; clarifying that petitions  
 13 for administrative determinations apply to rules and  
 14 proposed rules; identifying which entities have the  
 15 burden in hearings in which a rule, proposed rule, or  
 16 agency statement is at issue; prohibiting an  
 17 administrative law judge from bifurcating certain  
 18 petitions; amending s. 120.565, F.S.; authorizing  
 19 certain parties to state to an agency their  
 20 understanding of how certain rules apply to specific  
 21 facts; specifying the timeframe for an agency to  
 22 provide a declaratory statement; authorizing the award  
 23 of attorney fees under certain circumstances; amending  
 24 s. 120.569, F.S.; granting agencies additional time to  
 25 render final orders under certain circumstances;  
 26 amending s. 120.57, F.S.; conforming proceedings based  
 27 on invalid or unadopted rules to proceedings used for  
 28 challenging existing rules; requiring an agency to  
 29 issue a notice regarding its reliance on the

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

24-00407-15

2015718\_\_

30 challenged rule or alleged unadopted rule; authorizing  
 31 the administrative law judge to make certain findings  
 32 on the validity of certain alleged unadopted rules;  
 33 requiring the administrative law judge to issue a  
 34 separate final order on certain rules and alleged  
 35 unadopted rules; prohibiting agencies from rejecting  
 36 specific conclusions of law; limiting situations under  
 37 which an agency may reject or modify conclusions of  
 38 law; providing for stay of proceedings not involving  
 39 disputed issues of fact upon timely filing of a rule  
 40 challenge; providing that the final order terminates  
 41 the stay; amending s. 120.573, F.S.; providing  
 42 additional situations in which a party may request  
 43 mediation; amending s. 120.595, F.S.; providing  
 44 criteria for establishing whether a nonprevailing  
 45 party participated in a proceeding for an improper  
 46 purpose; revising provisions providing for the award  
 47 of attorney fees and costs by the appellate court or  
 48 administrative law judge; providing exceptions;  
 49 removing a provision authorizing an agency to  
 50 demonstrate its actions were substantially justified;  
 51 requiring notice of a proposed challenge by the  
 52 petitioner as a condition precedent to filing a  
 53 challenge and being eligible for the reimbursement of  
 54 attorney fees and costs; authorizing the recovery of  
 55 attorney fees and costs incurred in litigating rights  
 56 to attorney fees and costs in certain actions;  
 57 providing such attorney fees and costs are not limited  
 58 in amount; amending s. 120.68, F.S.; requiring

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59 specified agencies to provide notice of appeal to the  
 60 Administrative Procedures Committee under certain  
 61 circumstances; amending s. 120.695, F.S.; removing  
 62 obsolete provisions; requiring agency review and  
 63 certification of minor rule violations by a specified  
 64 date; requiring the reporting of agency failure to  
 65 complete such review and certification; requiring  
 66 certification of minor violations for all rules  
 67 adopted after a specified date; requiring public  
 68 notice; providing for nonapplicability; providing an  
 69 effective date.

70  
 71 Be It Enacted by the Legislature of the State of Florida:

72  
 73 Section 1. Paragraph (e) of subsection (3) of section  
 74 57.111, Florida Statutes, is amended to read:

75 57.111 Civil actions and administrative proceedings  
 76 initiated by state agencies; attorney ~~attorneys'~~ fees and  
 77 costs.-

78 (3) As used in this section:

79 (e) A proceeding is "substantially justified" if it had a  
 80 reasonable basis in law and fact at the time it was initiated by  
 81 a state agency. A proceeding is not "substantially justified" if  
 82 the law, rule, or order at issue in the current agency action is  
 83 the subject upon which the prevailing party previously  
 84 petitioned the agency for a declaratory statement under s.  
 85 120.565; the current agency action involves identical or  
 86 substantially similar facts and circumstances as those raised in  
 87 the previous petition; and:

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88 1. The agency action contradicts the declaratory statement  
 89 issued by the agency upon the previous petition; or  
 90 2. The agency denied the previous petition under s. 120.565  
 91 before initiating the current agency action against the  
 92 substantially affected party.

93 Section 2. Paragraph (c) of subsection (7) of section  
 94 120.54, Florida Statutes, is amended to read:

95 120.54 Rulemaking.-

96 (7) PETITION TO INITIATE RULEMAKING.-

97 (c) Within 30 days following the public hearing provided  
 98 for in ~~by~~ paragraph (b), if the petition's requested action  
 99 requires rulemaking and the agency initiates rulemaking, the  
 100 agency shall establish a time certain for rulemaking workshops  
 101 and shall discontinue reliance upon the agency statement or  
 102 unadopted rule until it adopts rules pursuant to subsection (3).  
 103 If the agency does not initiate rulemaking or otherwise comply  
 104 with the requested action, the agency shall publish in the  
 105 Florida Administrative Register a statement of its reasons for  
 106 not initiating rulemaking or otherwise complying with the  
 107 requested action, and of any changes it will make in the scope  
 108 or application of the unadopted rule. The agency shall file the  
 109 statement with the committee. The committee shall forward a copy  
 110 of the statement to the substantive committee with primary  
 111 oversight jurisdiction of the agency in each house of the  
 112 Legislature. The committee or the committee with primary  
 113 oversight jurisdiction may hold a hearing directed to the  
 114 statement of the agency. The committee holding the hearing may  
 115 recommend to the Legislature the introduction of legislation  
 116 making the rule a statutory standard or limiting or otherwise

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117 modifying the authority of the agency.

118 Section 3. Section 120.55, Florida Statutes, is amended to  
119 read:

120 120.55 Publication.—

121 (1) The Department of State shall:

122 (a)1. Through a continuous revision and publication system,  
123 compile and publish electronically, on an Internet website  
124 managed by the department, the "Florida Administrative Code."  
125 The Florida Administrative Code shall contain all rules adopted  
126 by each agency, citing the grant of rulemaking authority and the  
127 specific law implemented pursuant to which each rule was  
128 adopted, all history notes as authorized in s. 120.545(7),  
129 complete indexes to all rules contained in the code, and any  
130 other material required or authorized by law or deemed useful by  
131 the department. The electronic code shall display each rule  
132 chapter currently in effect in browse mode and allow full text  
133 search of the code and each rule chapter. The department may  
134 contract with a publishing firm for a printed publication;  
135 however, the department shall retain responsibility for the code  
136 as provided in this section. The electronic publication shall be  
137 the official compilation of the administrative rules of this  
138 state. The Department of State shall retain the copyright over  
139 the Florida Administrative Code.

140 2. Rules general in form but applicable to only one school  
141 district, community college district, or county, or a part  
142 thereof, or state university rules relating to internal  
143 personnel or business and finance shall not be published in the  
144 Florida Administrative Code. Exclusion from publication in the  
145 Florida Administrative Code shall not affect the validity or

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146 effectiveness of such rules.

147 3. At the beginning of the section of the code dealing with  
148 an agency that files copies of its rules with the department,  
149 the department shall publish the address and telephone number of  
150 the executive offices of each agency, the manner by which the  
151 agency indexes its rules, a listing of all rules of that agency  
152 excluded from publication in the code, and a statement as to  
153 where those rules may be inspected.

154 4. Forms shall not be published in the Florida  
155 Administrative Code; but any form which an agency uses in its  
156 dealings with the public, along with any accompanying  
157 instructions, shall be filed with the committee before it is  
158 used. Any form or instruction which meets the definition of  
159 "rule" provided in s. 120.52 shall be incorporated by reference  
160 into the appropriate rule. The reference shall specifically  
161 state that the form is being incorporated by reference and shall  
162 include the number, title, and effective date of the form and an  
163 explanation of how the form may be obtained. Each form created  
164 by an agency which is incorporated by reference in a rule notice  
165 of which is given under s. 120.54(3)(a) after December 31, 2007,  
166 must clearly display the number, title, and effective date of  
167 the form and the number of the rule in which the form is  
168 incorporated.

169 5. The department shall allow adopted rules and material  
170 incorporated by reference to be filed in electronic form as  
171 prescribed by department rule. When a rule is filed for adoption  
172 with incorporated material in electronic form, the department's  
173 publication of the Florida Administrative Code on its Internet  
174 website must contain a hyperlink from the incorporating

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175 reference in the rule directly to that material. The department  
 176 may not allow hyperlinks from rules in the Florida  
 177 Administrative Code to any material other than that filed with  
 178 and maintained by the department, but may allow hyperlinks to  
 179 incorporated material maintained by the department from the  
 180 adopting agency's website or other sites.

181 (b) Electronically publish on an Internet website managed  
 182 by the department a continuous revision and publication entitled  
 183 the "Florida Administrative Register," which shall serve as the  
 184 official publication and must contain:

185 1. All notices required by s. 120.54(2) and (3)(a)  
 186 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
 187 consideration.

188 2. All notices of public meetings, hearings, and workshops  
 189 conducted in accordance with s. 120.525, including a statement  
 190 of the manner in which a copy of the agenda may be obtained.

191 3. A notice of each request for authorization to amend or  
 192 repeal an existing uniform rule or for the adoption of new  
 193 uniform rules.

194 4. Notice of petitions for declaratory statements or  
 195 administrative determinations.

196 5. A summary of each objection to any rule filed by the  
 197 Administrative Procedures Committee.

198 6. A listing of rules filed for adoption in the previous 7  
 199 days.

200 7. A listing of all rules filed for adoption pending  
 201 legislative ratification under s. 120.541(3). Each rule on the  
 202 list shall be taken off the list once it is ratified or  
 203 withdrawn.

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204 ~~8.6-~~ Any other material required or authorized by law or  
 205 deemed useful by the department.

206  
 207 The department may contract with a publishing firm for a printed  
 208 publication of the Florida Administrative Register and make  
 209 copies available on an annual subscription basis.

210 (c) Prescribe by rule the style and form required for  
 211 rules, notices, and other materials submitted for filing.

212 (d) Charge each agency using the Florida Administrative  
 213 Register a space rate to cover the costs related to the Florida  
 214 Administrative Register and the Florida Administrative Code.

215 (e) Maintain a permanent record of all notices published in  
 216 the Florida Administrative Register.

217 (2) The Florida Administrative Register Internet website  
 218 must allow users to:

219 (a) Search for notices by type, publication date, rule  
 220 number, word, subject, and agency.

221 (b) Search a database that makes available all notices  
 222 published on the website for a period of at least 5 years.

223 (c) Subscribe to an automated e-mail notification of  
 224 selected notices to be sent out before or concurrently with  
 225 publication of the electronic Florida Administrative Register.  
 226 Such notification must include in the text of the e-mail a  
 227 summary of the content of each notice.

228 (d) View agency forms and other materials submitted to the  
 229 department in electronic form and incorporated by reference in  
 230 proposed rules.

231 (e) Comment on proposed rules.

232 (3) Publication of material required by paragraph (1)(b) on

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233 the Florida Administrative Register Internet website does not  
 234 preclude publication of such material on an agency's website or  
 235 by other means.

236 (4) Each agency shall provide copies of its rules upon  
 237 request, with citations to the grant of rulemaking authority and  
 238 the specific law implemented for each rule.

239 (5) Each agency that provides an e-mail notification  
 240 service to inform registered recipients of notices shall use  
 241 that service to notify recipients of each notice required under  
 242 s. 120.54(2) and (3) (a) and provide Internet links to the  
 243 appropriate rule page on the Secretary of State's website or  
 244 Internet links to an agency website that contains the proposed  
 245 rule or final rule.

246 ~~(6)~~ Any publication of a proposed rule promulgated by an  
 247 agency, whether published in the Florida Administrative Register  
 248 or elsewhere, shall include, along with the rule, the name of  
 249 the person or persons originating such rule, the name of the  
 250 agency head who approved the rule, and the date upon which the  
 251 rule was approved.

252 ~~(7)~~ Access to the Florida Administrative Register  
 253 Internet website and its contents, including the e-mail  
 254 notification service, shall be free for the public.

255 ~~(8)~~ (7) (a) All fees and moneys collected by the Department  
 256 of State under this chapter shall be deposited in the Records  
 257 Management Trust Fund for the purpose of paying for costs  
 258 incurred by the department in carrying out this chapter.

259 (b) The unencumbered balance in the Records Management  
 260 Trust Fund for fees collected pursuant to this chapter may not  
 261 exceed \$300,000 at the beginning of each fiscal year, and any

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262 excess shall be transferred to the General Revenue Fund.

263 Section 4. Subsections (1), (3), and (4) of section 120.56,  
 264 Florida Statutes, are amended to read:

265 120.56 Challenges to rules.—

266 (1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A~~  
 267 ~~RULE OR A PROPOSED RULE.~~—

268 (a) Any person substantially affected by a rule or a  
 269 proposed rule may seek an administrative determination of the  
 270 invalidity of the rule on the ground that the rule is an invalid  
 271 exercise of delegated legislative authority.

272 (b) The petition seeking an administrative determination of  
 273 the invalidity of a rule or proposed rule must state the facts  
 274 and with particularity the provisions alleged to be invalid with  
 275 sufficient explanation of the ~~facts or~~ grounds for the alleged  
 276 invalidity and facts sufficient to show that the petitioner  
 277 ~~person~~ challenging a rule is substantially affected by it, or  
 278 that the petitioner person challenging a proposed rule would be  
 279 substantially affected by it.

280 (c) The petition shall be filed by electronic means with  
 281 the division which shall, immediately upon filing, forward by  
 282 electronic means copies to the agency whose rule is challenged,  
 283 the Department of State, and the committee. Within 10 days after  
 284 receiving the petition, the division director shall, if the  
 285 petition complies with ~~the requirements of~~ paragraph (b), assign  
 286 an administrative law judge who shall conduct a hearing within  
 287 30 days thereafter, unless the petition is withdrawn or a  
 288 continuance is granted by agreement of the parties or for good  
 289 cause shown. Evidence of good cause includes, but is not limited  
 290 to, written notice of an agency's decision to modify or withdraw

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291 the proposed rule or a written notice from the chair of the  
 292 committee stating that the committee will consider an objection  
 293 to the rule at its next scheduled meeting. The failure of an  
 294 agency to follow the applicable rulemaking procedures or  
 295 requirements set forth in this chapter shall be presumed to be  
 296 material; however, the agency may rebut this presumption by  
 297 showing that the substantial interests of the petitioner and the  
 298 fairness of the proceedings have not been impaired.

299 (d) Within 30 days after the hearing, the administrative  
 300 law judge shall render a decision and state the reasons therefor  
 301 in writing. The division shall forthwith transmit by electronic  
 302 means copies of the administrative law judge's decision to the  
 303 agency, the Department of State, and the committee.

304 (e) Hearings held under this section shall be de novo in  
 305 nature. The standard of proof shall be the preponderance of the  
 306 evidence. The petitioner has the burden of going forward with  
 307 the evidence. The agency has the burden of proving by a  
 308 preponderance of the evidence that the rule, proposed rule, or  
 309 agency statement is not an invalid exercise of delegated  
 310 legislative authority. Hearings shall be conducted in the same  
 311 manner as provided by ss. 120.569 and 120.57, except that the  
 312 administrative law judge's order shall be final agency action.  
 313 The petitioner and the agency whose rule is challenged shall be  
 314 adverse parties. Other substantially affected persons may join  
 315 the proceedings as intervenors on appropriate terms which shall  
 316 not unduly delay the proceedings. Failure to proceed under this  
 317 section ~~does shall~~ not constitute failure to exhaust  
 318 administrative remedies.

319 (3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

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320 (a) A substantially affected person may seek an  
 321 administrative determination of the invalidity of an existing  
 322 rule at any time during the existence of the rule. The  
 323 petitioner has the a burden of going forward with the evidence  
 324 as set forth in paragraph (1) (b), and the agency has the burden  
 325 of proving by a preponderance of the evidence that the existing  
 326 rule is not an invalid exercise of delegated legislative  
 327 authority as to the objections raised.

328 (b) The administrative law judge may declare all or part of  
 329 a rule invalid. The rule or part thereof declared invalid shall  
 330 become void when the time for filing an appeal expires. The  
 331 agency whose rule has been declared invalid in whole or part  
 332 shall give notice of the decision in the Florida Administrative  
 333 Register in the first available issue after the rule has become  
 334 void.

335 (c) If an existing agency rule is declared invalid, the  
 336 agency may no longer rely on the rule for final agency action,  
 337 including any final action on cases pending under s. 120.57.

338 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL  
 339 PROVISIONS.—

340 (a) Any person substantially affected by an agency  
 341 statement may seek an administrative determination that the  
 342 statement violates s. 120.54(1) (a). The petition shall include  
 343 the text of the statement or a description of the statement and  
 344 shall state ~~with particularity~~ facts sufficient to show that the  
 345 statement constitutes a rule under s. 120.52 and that the agency  
 346 has not adopted the statement by the rulemaking procedure  
 347 provided by s. 120.54.

348 (b) The administrative law judge may extend the hearing

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349 date beyond 30 days after assignment of the case for good cause.  
 350 Upon notification to the administrative law judge provided  
 351 before the final hearing that the agency has published a notice  
 352 of rulemaking under s. 120.54(3), such notice shall  
 353 automatically operate as a stay of proceedings pending adoption  
 354 of the statement as a rule. The administrative law judge may  
 355 vacate the stay for good cause shown. A stay of proceedings  
 356 pending rulemaking shall remain in effect so long as the agency  
 357 is proceeding expeditiously and in good faith to adopt the  
 358 statement as a rule. If a hearing is held and the petitioner  
 359 proves the allegations of the petition, the agency shall have  
 360 the burden of proving that rulemaking is not feasible or not  
 361 practicable under s. 120.54(1)(a).

362 (c) The administrative law judge may determine whether all  
 363 or part of a statement violates s. 120.54(1)(a). The decision of  
 364 the administrative law judge shall constitute a final order. The  
 365 division shall transmit a copy of the final order to the  
 366 Department of State and the committee. The Department of State  
 367 shall publish notice of the final order in the first available  
 368 issue of the Florida Administrative Register.

369 (d) If an administrative law judge enters a final order  
 370 that all or part of an agency statement violates s.  
 371 120.54(1)(a), the agency must immediately discontinue all  
 372 reliance upon the statement or any substantially similar  
 373 statement as a basis for agency action.

374 (e) If proposed rules addressing the challenged statement  
 375 are determined to be an invalid exercise of delegated  
 376 legislative authority as defined in s. 120.52(8)(b)-(f), the  
 377 agency must immediately discontinue reliance on the statement

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378 and any substantially similar statement until rules addressing  
 379 the subject are properly adopted, and the administrative law  
 380 judge shall enter a final order to that effect.

381 (f) If a petitioner files a petition challenging agency  
 382 action and a part of that petition alleges the presence of or  
 383 reliance upon agency statements or unadopted rules, the  
 384 administrative law judge may not bifurcate the petition into two  
 385 cases but shall consider the challenge to the proposed agency  
 386 action and the allegation that such agency action was based upon  
 387 the presence of or reliance upon agency statements or unadopted  
 388 rules.

389 (g)~~(f)~~ All proceedings to determine a violation of s.  
 390 120.54(1)(a) shall be brought pursuant to this subsection. A  
 391 proceeding pursuant to this subsection may be consolidated with  
 392 a proceeding under subsection (3) or under any other section of  
 393 this chapter. This paragraph does not prevent a party whose  
 394 substantial interests have been determined by an agency action  
 395 from bringing a proceeding pursuant to s. 120.57(1)(e).

396 Section 5. Subsection (2) of section 120.565, Florida  
 397 Statutes, is amended, and subsections (4) and (5) are added to  
 398 that section, to read:

399 120.565 Declaratory statement by agencies.—

400 (2) The petition seeking a declaratory statement shall  
 401 state ~~with particularity~~ the petitioner's set of circumstances  
 402 and shall specify the statutory provision, rule, or order that  
 403 the petitioner believes may apply to the set of circumstances.

404 (4) The petitioner may submit to the agency clerk a  
 405 statement that describes or asserts the petitioner's  
 406 understanding of how the statutory provision, rule, or order

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407 applies to the set of circumstances. The agency has 60 days to  
 408 review the petitioner's statement and to either accept the  
 409 statement or offer changes and other clarifications to establish  
 410 the plain meaning of how the statutory provision, rule, or order  
 411 applies to the set of circumstances described in the  
 412 petitioner's statement.

413 (5) If the agency denies a request for a declaratory  
 414 statement and the petitioner appeals the denial and it is  
 415 determined that the agency improperly denied the request, the  
 416 petitioner is entitled to an award of reasonable attorney fees  
 417 and costs.

418 Section 6. Paragraph (1) of subsection (2) of section  
 419 120.569, Florida Statutes, is amended to read:

420 120.569 Decisions which affect substantial interests.—

421 (2)

422 (1) Unless the time period is waived or extended with the  
 423 consent of all parties, the final order in a proceeding which  
 424 affects substantial interests must be in writing and include  
 425 findings of fact, if any, and conclusions of law separately  
 426 stated, and it must be rendered within 90 days:

427 1. After the hearing is concluded, if conducted by the  
 428 agency;

429 2. After a recommended order is submitted to the agency and  
 430 mailed to all parties, if the hearing is conducted by an  
 431 administrative law judge, except that, at the election of the  
 432 agency, the time for rendering the final order may be extended  
 433 up to 10 days after the entry of a mandate on any appeal from a  
 434 final order under s. 120.57(1)(e)4.; or

435 3. After the agency has received the written and oral

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436 material it has authorized to be submitted, if there has been no  
 437 hearing.

438 Section 7. Paragraphs (e), (h), and (l) of subsection (1)  
 439 and subsection (2) of section 120.57, Florida Statutes, are  
 440 amended to read:

441 120.57 Additional procedures for particular cases.—

442 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING  
 443 DISPUTED ISSUES OF MATERIAL FACT.—

444 (e)1. An agency or an administrative law judge may not base  
 445 agency action that determines the substantial interests of a  
 446 party on an unadopted rule or a rule that is an invalid exercise  
 447 of delegated legislative authority. The administrative law judge  
 448 shall determine whether an agency statement constitutes an  
 449 unadopted rule. This subparagraph does not preclude application  
 450 of valid adopted rules and applicable provisions of law to the  
 451 facts.

452 2. In a matter initiated as a result of agency action  
 453 proposing to determine the substantial interests of a party, a  
 454 party's timely petition for hearing may challenge the proposed  
 455 agency action based on a rule that is an invalid exercise of  
 456 delegated legislative authority or based on an alleged unadopted  
 457 rule. For challenges brought under this subparagraph:

458 a. The challenge shall be pled as a defense using the  
 459 procedures set forth in s. 120.56(1)(b).

460 b. Section 120.56(3)(a) applies to a challenge alleging  
 461 that a rule is an invalid exercise of delegated legislative  
 462 authority.

463 c. Section 120.56(4)(c) applies to a challenge alleging an  
 464 unadopted rule.



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465 d. The agency has 15 days from the date of receipt of a  
 466 challenge under this subparagraph to serve the challenging party  
 467 with a notice as to whether the agency will continue to rely  
 468 upon the rule or the alleged unadopted rule as a basis for the  
 469 action determining the party's substantive interests. Failure to  
 470 serve or to timely serve the notice constitutes a binding  
 471 determination that the agency may not rely upon the rule or  
 472 unadopted rule further in the proceeding. The agency shall  
 473 include a copy of the notice, if one was served, when it refers  
 474 the matter to the division under s. 120.569(2)(a).

475 e. This subparagraph does not preclude the consolidation of  
 476 any proceeding under s. 120.56 with any proceeding under this  
 477 paragraph.

478 3.2- Notwithstanding subparagraph 1., if an agency  
 479 demonstrates that the statute being implemented directs it to  
 480 adopt rules, that the agency has not had time to adopt those  
 481 rules because the requirement was so recently enacted, and that  
 482 the agency has initiated rulemaking and is proceeding  
 483 expeditiously and in good faith to adopt the required rules,  
 484 then the agency's action may be based upon those unadopted rules  
 485 if, subject to de novo review by the administrative law judge  
 486 determines that the unadopted rules would not constitute an  
 487 invalid exercise of delegated legislative authority if adopted  
 488 as rules. An unadopted rule is ~~The agency action shall not be~~  
 489 presumed ~~to be valid or invalid.~~ The agency must demonstrate  
 490 that the unadopted rule:

491 a. Is within the powers, functions, and duties delegated by  
 492 the Legislature or, if the agency is operating pursuant to  
 493 authority vested in the agency by ~~derived from~~ the State

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494 Constitution, is within that authority;

495 b. Does not enlarge, modify, or contravene the specific  
 496 provisions of law implemented;

497 c. Is not vague, establishes adequate standards for agency  
 498 decisions, or does not vest unbridled discretion in the agency;

499 d. Is not arbitrary or capricious. A rule is arbitrary if  
 500 it is not supported by logic or the necessary facts; a rule is  
 501 capricious if it is adopted without thought or reason or is  
 502 irrational;

503 e. Is not being applied to the substantially affected party  
 504 without due notice; and

505 f. Does not impose excessive regulatory costs on the  
 506 regulated person, county, or city.

507 4. If the agency timely serves notice of continued reliance  
 508 upon a challenged rule or an alleged unadopted rule under sub-  
 509 paragraph 2.d., the administrative law judge shall determine  
 510 whether the challenged rule is an invalid exercise of delegated  
 511 legislative authority or whether the challenged agency statement  
 512 constitutes an unadopted rule and if that unadopted rule meets  
 513 the requirements of subparagraph 3. The determination shall be  
 514 rendered as a separate final order no earlier than the date on  
 515 which the administrative law judge serves the recommended order.

516 ~~5.3-~~ The recommended and final orders in any proceeding  
 517 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),  
 518 except that the administrative law judge's determination  
 519 ~~regarding an unadopted rule~~ under subparagraph ~~4. 1- or~~  
 520 ~~subparagraph 2-~~ shall be included as a conclusion of law that  
 521 ~~the agency may not reject~~ not be rejected by the agency unless  
 522 ~~the agency first determines from a review of the complete~~

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523 ~~record, and states with particularity in the order, that such~~  
 524 ~~determination is clearly erroneous or does not comply with~~  
 525 ~~essential requirements of law. In any proceeding for review~~  
 526 ~~under s. 120.68, if the court finds that the agency's rejection~~  
 527 ~~of the determination regarding the unadopted rule does not~~  
 528 ~~comport with the provisions of this subparagraph, the agency~~  
 529 ~~action shall be set aside and the court shall award to the~~  
 530 ~~prevailing party the reasonable costs and a reasonable~~  
 531 ~~attorney's fee for the initial proceeding and the proceeding for~~  
 532 ~~review.~~

533 (h) Any party to a proceeding in which an administrative  
 534 law judge ~~of the Division of Administrative Hearings~~ has final  
 535 order authority may move for a summary final order when there is  
 536 no genuine issue as to any material fact. A summary final order  
 537 shall be rendered if the administrative law judge determines  
 538 from the pleadings, depositions, answers to interrogatories, and  
 539 admissions on file, together with affidavits, if any, that no  
 540 genuine issue as to any material fact exists and that the moving  
 541 party is entitled as a matter of law to the entry of a final  
 542 order. A summary final order shall consist of findings of fact,  
 543 if any, conclusions of law, a disposition or penalty, if  
 544 applicable, and any other information required by law to be  
 545 contained in the final order. This paragraph does not apply to  
 546 proceedings set forth in paragraph (e).

547 (l) The agency may adopt the recommended order as the final  
 548 order of the agency. The agency in its final order may only  
 549 reject or modify the conclusions of law over which it has  
 550 substantive jurisdiction and interpretation of administrative  
 551 rules over which it has substantive jurisdiction if the agency

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552 determines that the conclusions of law are clearly erroneous.  
 553 When rejecting or modifying such conclusion of law or  
 554 interpretation of administrative rule, the agency must state  
 555 with particularity its reasons for rejecting or modifying such  
 556 conclusion of law or interpretation of administrative rule and  
 557 must make a finding that its substituted conclusion of law or  
 558 interpretation of administrative rule is as reasonable as, or  
 559 more reasonable than, that which was rejected or modified.  
 560 Rejection or modification of conclusions of law may not form the  
 561 basis for rejection or modification of findings of fact. The  
 562 agency may not reject or modify the findings of fact unless the  
 563 agency first determines from a review of the entire record, and  
 564 states with particularity in the order, that the findings of  
 565 fact were not based upon competent substantial evidence or that  
 566 the proceedings on which the findings were based did not comply  
 567 with essential requirements of law. The agency may accept the  
 568 recommended penalty in a recommended order, but may not reduce  
 569 or increase it without a review of the complete record and  
 570 without stating with particularity its reasons therefor in the  
 571 order, by citing to the record in justifying the action.

572 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT  
 573 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which  
 574 subsection (1) does not apply:

575 (a) The agency shall:

576 1. Give reasonable notice to affected persons of the action  
 577 of the agency, whether proposed or already taken, or of its  
 578 decision to refuse action, together with a summary of the  
 579 factual, legal, and policy grounds therefor.

580 2. Give parties or their counsel the option, at a

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581 convenient time and place, to present to the agency or  
 582 ~~administrative law judge hearing officer~~ written or oral  
 583 evidence in opposition to the action of the agency or to its  
 584 refusal to act, or a written statement challenging the grounds  
 585 upon which the agency has chosen to justify its action or  
 586 inaction.

587 3. If the objections of the parties are overruled, provide  
 588 a written explanation within 7 days.

589 (b) An agency may not base agency action that determines  
 590 the substantial interests of a party on an unadopted rule or a  
 591 rule that is an invalid exercise of delegated legislative  
 592 authority. No later than the date provided by the agency under  
 593 subparagraph (a)2., the party may file a petition under s.  
 594 120.56 challenging the rule, portion of rule, or unadopted rule  
 595 upon which the agency bases its proposed action or refusal to  
 596 act. The filing of a challenge under s. 120.56 pursuant to this  
 597 paragraph shall stay all proceedings on the agency's proposed  
 598 action or refusal to act until entry of the final order by the  
 599 administrative law judge. The final order shall provide notice  
 600 that the stay of the pending agency action is terminated and any  
 601 further stay pending appeal of the final order must be sought  
 602 from the appellate court.

603 ~~(c)(b)~~ The record shall only consist of:

- 604 1. The notice and summary of grounds.
- 605 2. Evidence received.
- 606 3. All written statements submitted.
- 607 4. Any decision overruling objections.
- 608 5. All matters placed on the record after an ex parte  
 609 communication.

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610 6. The official transcript.

611 7. Any decision, opinion, order, or report by the presiding  
 612 officer.

613 Section 8. Section 120.573, Florida Statutes, is amended to  
 614 read:

615 120.573 Mediation of disputes.—

616 (1) Each announcement of an agency action that affects  
 617 substantial interests shall advise whether mediation of the  
 618 administrative dispute for the type of agency action announced  
 619 is available and that choosing mediation does not affect the  
 620 right to an administrative hearing. If the agency and all  
 621 parties to the administrative action agree to mediation, in  
 622 writing, within 10 days after the time period stated in the  
 623 announcement for election of an administrative remedy under ss.  
 624 120.569 and 120.57, the time limitations imposed by ss. 120.569  
 625 and 120.57 shall be tolled to allow the agency and parties to  
 626 mediate the administrative dispute. The mediation shall be  
 627 concluded within 60 days after ~~of~~ such agreement unless  
 628 otherwise agreed by the parties. The mediation agreement shall  
 629 include provisions for mediator selection, the allocation of  
 630 costs and fees associated with mediation, and the mediating  
 631 parties' understanding regarding the confidentiality of  
 632 discussions and documents introduced during mediation. If  
 633 mediation results in settlement of the administrative dispute,  
 634 the agency shall enter a final order incorporating the agreement  
 635 of the parties. If mediation terminates without settlement of  
 636 the dispute, the agency shall notify the parties in writing that  
 637 the administrative hearing processes under ss. 120.569 and  
 638 120.57 are resumed.

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639 (2) A party in a proceeding conducted pursuant to a  
 640 petition seeking an administrative determination of the  
 641 invalidity of an existing rule, proposed rule, or agency  
 642 statement under s. 120.56 or a proceeding conducted pursuant to  
 643 a petition seeking a declaratory statement under s. 120.565 may  
 644 request mediation of the dispute under this section.

645 Section 9. Section 120.595, Florida Statutes, is amended to  
 646 read:

647 120.595 Attorney ~~Attorney's~~ fees.—

648 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
 649 120.57(1).—

650 (a) The provisions of this subsection are supplemental to,  
 651 and do not abrogate, other provisions allowing the award of fees  
 652 or costs in administrative proceedings.

653 (b) The final order in a proceeding pursuant to s.  
 654 120.57(1) shall award reasonable costs and a reasonable attorney  
 655 fees attorney's fee to the prevailing party if the  
 656 administrative law judge determines only where the nonprevailing  
 657 adverse party has been determined by the administrative law  
 658 judge to have participated in the proceeding for an improper  
 659 purpose.

660 1.(e) Other than as provided in paragraph (d), in  
 661 proceedings pursuant to s. 120.57(1), and upon motion, the  
 662 administrative law judge shall determine whether any party  
 663 participated in the proceeding for an improper purpose as  
 664 defined by this subsection. ~~In making such determination, the~~  
 665 ~~administrative law judge shall consider whether~~ The  
 666 nonprevailing adverse party shall be presumed to have  
 667 participated in the pending proceeding for an improper purpose

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668 if:

669 a. Such party was an adverse party has participated in  
 670 three ~~two~~ or more other ~~such~~ proceedings involving the same  
 671 prevailing party and the same subject;

672 b. In those ~~project as an adverse party and in which such~~  
 673 ~~two or more~~ proceedings, the nonprevailing adverse party did not  
 674 establish either the factual or legal merits of its position;  
 675 and shall consider whether

676 c. The factual or legal position asserted in the pending  
 677 instant proceeding would have been cognizable in the previous  
 678 proceedings; and

679 d. The nonprevailing adverse party has not rebutted the  
 680 presumption of participating. In such event, it shall be  
 681 rebuttably presumed that the nonprevailing adverse party  
 682 participated in the pending proceeding for an improper purpose.

683 2.(d) If in any proceeding in which the administrative law  
 684 judge determines that a party is determined to have participated  
 685 in the proceeding for an improper purpose, the recommended order  
 686 shall include such findings of fact and conclusions of law to  
 687 establish the conclusion ~~so designate~~ and shall determine the  
 688 award of costs and attorney ~~attorney's~~ fees.

689 (c)(e) For the purpose of this subsection:

690 1. "Improper purpose" means participation in a proceeding  
 691 pursuant to s. 120.57(1) primarily to harass or to cause  
 692 unnecessary delay or for frivolous purpose or to needlessly  
 693 increase the cost of litigation, licensing, or securing the  
 694 approval of an activity.

695 2. "Costs" has the same meaning as the costs allowed in  
 696 civil actions in this state as provided in chapter 57.

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697 3. "Nonprevailing adverse party" means a party that has  
 698 failed to have substantially changed the outcome of the proposed  
 699 or final agency action which is the subject of a proceeding. In  
 700 the event that a proceeding results in any substantial  
 701 modification or condition intended to resolve the matters raised  
 702 in a party's petition, it shall be determined that the party  
 703 having raised the issue addressed is not a nonprevailing adverse  
 704 party. The recommended order shall state whether the change is  
 705 substantial for purposes of this subsection. In no event shall  
 706 the term "nonprevailing party" or "prevailing party" be deemed  
 707 to include any party that has intervened in a previously  
 708 existing proceeding to support the position of an agency.

709 (d) For challenges brought under s. 120.57(1)(e), when the  
 710 agency relies on a challenged rule or an alleged unadopted rule  
 711 pursuant to s. 120.57(1)(e)2.d., if the appellate court or the  
 712 administrative law judge declares the rule or portion of the  
 713 rule to be invalid or that the agency statement is an unadopted  
 714 rule that does not meet the requirements of s. 120.57(1)(e)4., a  
 715 judgment or order shall be rendered against the agency for  
 716 reasonable costs and reasonable attorney fees. An award of  
 717 attorney fees as provided by this paragraph may not exceed  
 718 \$50,000.

719 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION  
 720 120.56(2).—If the appellate court or administrative law judge  
 721 declares a proposed rule or portion of a proposed rule invalid  
 722 pursuant to s. 120.56(2), a judgment or order shall be rendered  
 723 against the agency for reasonable costs and reasonable attorney  
 724 attorney's fees, unless the agency demonstrates that ~~its actions~~  
 725 ~~were substantially justified or~~ special circumstances exist

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726 which would make the award unjust. ~~An agency's actions are~~  
 727 ~~"substantially justified" if there was a reasonable basis in law~~  
 728 ~~and fact at the time the actions were taken by the agency.~~ If  
 729 the agency prevails in the proceedings, the appellate court or  
 730 administrative law judge shall award reasonable costs and  
 731 reasonable attorney attorney's fees against a party if the  
 732 appellate court or administrative law judge determines that a  
 733 party participated in the proceedings for an improper purpose as  
 734 defined by paragraph (1)(c) (1)(e). ~~An~~ ~~Ne~~ award of attorney  
 735 attorney's fees as provided by this subsection may not shall  
 736 exceed \$50,000.

737 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION  
 738 120.56(3) AND (5).—If the appellate court or administrative law  
 739 judge declares a rule or portion of a rule invalid pursuant to  
 740 s. 120.56(3) or (5), a judgment or order shall be rendered  
 741 against the agency for reasonable costs and reasonable attorney  
 742 attorney's fees, unless the agency demonstrates that ~~its actions~~  
 743 ~~were substantially justified or~~ special circumstances exist  
 744 which would make the award unjust. ~~An agency's actions are~~  
 745 ~~"substantially justified" if there was a reasonable basis in law~~  
 746 ~~and fact at the time the actions were taken by the agency.~~ If  
 747 the agency prevails in the proceedings, the appellate court or  
 748 administrative law judge shall award reasonable costs and  
 749 reasonable attorney attorney's fees against a party if the  
 750 appellate court or administrative law judge determines that a  
 751 party participated in the proceedings for an improper purpose as  
 752 defined by paragraph (1)(c) (1)(e). ~~An~~ ~~Ne~~ award of attorney  
 753 attorney's fees as provided by this subsection may not shall  
 754 exceed \$50,000.

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755 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION PURSUANT TO~~  
756 SECTION 120.56(4).—

757 (a) If the appellate court or administrative law judge  
758 determines that all or part of an unadopted rule ~~agency~~  
759 ~~statement~~ violates s. 120.54(1)(a), or that the agency must  
760 immediately discontinue reliance upon ~~on~~ the unadopted rule  
761 ~~statement~~ and any substantially similar statement pursuant to s.  
762 120.56(4)(e), a judgment or order shall be entered against the  
763 agency for reasonable costs and reasonable attorney ~~attorney's~~  
764 fees, unless the agency demonstrates that the statement is  
765 required by the Federal Government to implement or retain a  
766 delegated or approved program or to meet a condition to receipt  
767 of federal funds.

768 (b) Upon notification to the administrative law judge  
769 provided before the final hearing that the agency has published  
770 a notice of rulemaking under s. 120.54(3)(a), such notice shall  
771 automatically operate as a stay of proceedings pending  
772 rulemaking. The administrative law judge may vacate the stay for  
773 good cause shown. A stay of proceedings under this paragraph  
774 remains in effect so long as the agency is proceeding  
775 expeditiously and in good faith to adopt the statement as a  
776 rule. The administrative law judge shall award reasonable costs  
777 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the  
778 petitioner before ~~prior to~~ the date the notice was published,  
779 ~~unless the agency proves to the administrative law judge that it~~  
780 ~~did not know and should not have known that the statement was an~~  
781 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~  
782 ~~and paragraph (a) shall be awarded only upon a finding that the~~  
783 ~~agency received notice that the statement may constitute an~~

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784 ~~unadopted rule at least 30 days before a petition under s.~~  
785 ~~120.56(4) was filed and that the agency failed to publish the~~  
786 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~  
787 ~~addresses the statement within that 30-day period. Notice to the~~  
788 ~~agency may be satisfied by its receipt of a copy of the s.~~  
789 ~~120.56(4) petition, a notice or other paper containing~~  
790 ~~substantially the same information, or a petition filed pursuant~~  
791 ~~to s. 120.54(7). An award of attorney ~~attorney's~~ fees as~~  
792 ~~provided by this paragraph may not exceed \$50,000.~~

793 (c) Notwithstanding the ~~provisions of~~ chapter 284, an award  
794 shall be paid from the budget entity of the secretary, executive  
795 director, or equivalent administrative officer of the agency,  
796 and the agency is ~~shall not be~~ entitled to payment of an award  
797 or reimbursement for payment of an award under any provision of  
798 law.

799 (d) If the agency prevails in the proceedings, the  
800 appellate court or administrative law judge shall award  
801 reasonable costs and attorney ~~attorney's~~ fees against a party if  
802 the appellate court or administrative law judge determines that  
803 the party participated in the proceedings for an improper  
804 purpose as defined in paragraph (1)(c) ~~(1)(e)~~ or that the party  
805 or the party's attorney knew or should have known that a claim  
806 was not supported by the material facts necessary to establish  
807 the claim or would not be supported by the application of then-  
808 existing law to those material facts.

809 (5) APPEALS.—When there is an appeal, the court in its  
810 discretion may award reasonable attorney ~~attorney's~~ fees and  
811 reasonable costs to the prevailing party if the court finds that  
812 the appeal was frivolous, meritless, or an abuse of the

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813 appellate process, or that the agency action ~~that which~~  
 814 precipitated the appeal was a gross abuse of the agency's  
 815 discretion. Upon review of agency action that precipitates an  
 816 appeal, if the court finds that the agency improperly rejected  
 817 or modified findings of fact in a recommended order, the court  
 818 shall award reasonable ~~attorney attorney's~~ fees and reasonable  
 819 costs to a prevailing appellant for the administrative  
 820 proceeding and the appellate proceeding.

821 (6) NOTICE OF INVALIDITY.—A party failing to serve a notice  
 822 of proposed challenge under this subsection is not entitled to  
 823 an award of reasonable attorney fees and reasonable costs under  
 824 this section.

825 (a) Before filing a petition challenging the validity of a  
 826 proposed rule under s. 120.56(2), an adopted rule under s.  
 827 120.56(3), or an agency statement defined as an unadopted rule  
 828 under s. 120.56(4), a substantially affected person shall serve  
 829 the agency head with notice of the proposed challenge. The  
 830 notice shall identify the proposed or adopted rule or the  
 831 unadopted rule that the person proposes to challenge and a brief  
 832 explanation of the basis for that challenge. The notice must be  
 833 received by the agency head at least 5 days before the filing of  
 834 a petition under s. 120.56(2) and at least 30 days before the  
 835 filing of a petition under s. 120.56(3) or s. 120.56(4).

836 (b) This subsection does not apply to defenses raised and  
 837 challenges authorized by s. 120.57(1) (e) or s. 120.57(2) (b).

838 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For  
 839 purposes of this chapter, s. 57.105(5), and s. 57.111, in  
 840 addition to an award of reasonable attorney fees and reasonable  
 841 costs, the prevailing party shall also recover reasonable

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842 attorney fees and reasonable costs incurred in litigating  
 843 entitlement to, and the determination or quantification of,  
 844 reasonable attorney fees and reasonable costs for the underlying  
 845 matter. Reasonable attorney fees and reasonable costs awarded  
 846 for litigating entitlement to, and the determination or  
 847 quantification of, reasonable attorney fees and reasonable costs  
 848 for the underlying matter are not subject to the limitations on  
 849 amounts provided in this chapter or s. 57.111.

850 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,  
 851 including ss. 57.105 and 57.111, authorize the award of attorney  
 852 attorney's fees and costs in administrative proceedings. ~~Nothing~~  
 853 in This section ~~does not shall~~ affect the availability of  
 854 attorney attorney's fees and costs as provided in those  
 855 sections.

856 Section 10. Paragraph (a) of subsection (2) and subsection  
 857 (9) of section 120.68, Florida Statutes, are amended to read:  
 858 120.68 Judicial review.—

859 (2) (a) Judicial review shall be sought in the appellate  
 860 district where the agency maintains its headquarters or where a  
 861 party resides or as otherwise provided by law. All proceedings  
 862 shall be instituted by filing a notice of appeal or petition for  
 863 review in accordance with the Florida Rules of Appellate  
 864 Procedure within 30 days after the rendition of the order being  
 865 appealed. If the appeal is of an order rendered in a proceeding  
 866 initiated under s. 120.56 or a final order under s.  
 867 120.57(1) (e)4., the agency whose rule is being challenged shall  
 868 transmit a copy of the notice of appeal to the committee.

869 (9) A ~~No~~ petition challenging an agency rule as an invalid  
 870 exercise of delegated legislative authority ~~may not shall~~ be

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871 instituted pursuant to this section, except to review an order  
 872 entered pursuant to a proceeding under s. 120.56, s.  
 873 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of  
 874 immediate danger, necessity, and procedural fairness  
 875 prerequisite to the adoption of an emergency rule pursuant to s.  
 876 120.54(4), unless the sole issue presented by the petition is  
 877 the constitutionality of a rule and there are no disputed issues  
 878 of fact.

879 Section 11. Section 120.695, Florida Statutes, is amended  
 880 to read:

881 120.695 Notice of noncompliance; designation of minor  
 882 violation of rules.-

883 (1) It is the policy of the state that the purpose of  
 884 regulation is to protect the public by attaining compliance with  
 885 the policies established by the Legislature. Fines and other  
 886 penalties may be provided in order to assure compliance;  
 887 however, the collection of fines and the imposition of penalties  
 888 are intended to be secondary to the primary goal of attaining  
 889 compliance with an agency's rules. It is the intent of the  
 890 Legislature that an agency charged with enforcing rules shall  
 891 issue a notice of noncompliance as its first response to a minor  
 892 violation of a rule in any instance in which it is reasonable to  
 893 assume that the violator was unaware of the rule or unclear as  
 894 to how to comply with it.

895 (2)(a) Each agency shall issue a notice of noncompliance as  
 896 a first response to a minor violation of a rule. A "notice of  
 897 noncompliance" is a notification by the agency charged with  
 898 enforcing the rule issued to the person or business subject to  
 899 the rule. A notice of noncompliance may not be accompanied with

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900 a fine or other disciplinary penalty. It must identify the  
 901 specific rule that is being violated, provide information on how  
 902 to comply with the rule, and specify a reasonable time for the  
 903 violator to comply with the rule. A rule is agency action that  
 904 regulates a business, occupation, or profession, or regulates a  
 905 person operating a business, occupation, or profession, and  
 906 that, if not complied with, may result in a disciplinary  
 907 penalty.

908 (b) Each agency shall review all of its rules and designate  
 909 those for which a violation would be a minor violation and for  
 910 which a notice of noncompliance must be the first enforcement  
 911 action taken against a person or business subject to regulation.  
 912 A violation of a rule is a minor violation if it does not result  
 913 in economic or physical harm to a person or adversely affect the  
 914 public health, safety, or welfare or create a significant threat  
 915 of such harm. ~~If an agency under the direction of a cabinet~~  
 916 ~~officer mails to each licensee a notice of the designated rules~~  
 917 ~~at the time of licensure and at least annually thereafter, the~~  
 918 ~~provisions of paragraph (a) may be exercised at the discretion~~  
 919 ~~of the agency. Such notice shall include a subject matter index~~  
 920 ~~of the rules and information on how the rules may be obtained.~~

921 (c)1. Within 3 months after any request of the rules  
 922 ombudsman in the Executive Office of the Governor, The agency's  
 923 review and designation must be completed by December 1, 1995;  
 924 each agency shall review under the direction of the Governor  
 925 shall make a report to the Governor, and each agency under the  
 926 joint direction of the Governor and Cabinet shall report to the  
 927 Governor and Cabinet by January 1, 1996, on which of its rules  
 928 and certify to the President of the Senate, the Speaker of the



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929 House of Representatives, the Administrative Procedures  
 930 Committee, and the rules ombudsman any designated rules, have  
 931 ~~been designated as rules~~ the violation of which would be a minor  
 932 violation under paragraph (b), consistent with the legislative  
 933 intent stated in subsection (1). The rules ombudsman shall  
 934 promptly report to the Governor, the President of the Senate,  
 935 the Speaker of the House of Representatives, and the  
 936 Administrative Procedures Committee each failure of an agency to  
 937 timely complete the review and file the certification as  
 938 required by this section.

939 2. Beginning July 1, 2015, each agency shall:

940 a. Publish all rules that the agency has designated as  
 941 rules that the violation of which would be a minor violation,  
 942 either as a complete list on the agency's Internet web page or  
 943 by incorporation of the designations in the agency's  
 944 disciplinary guidelines adopted as a rule.

945 b. Ensure that all investigative and enforcement personnel  
 946 are knowledgeable about the agency's designations under this  
 947 section.

948 3. For each rule filed for adoption, the agency head shall  
 949 certify whether any part of the rule is designated as a rule  
 950 that the violation of which would be a minor violation and shall  
 951 update the listing required by sub-subparagraph 2.a.

952 (d) The Governor or the Governor and Cabinet, as  
 953 appropriate ~~pursuant to paragraph (e)~~, may evaluate the review  
 954 and designation effects of each agency subject to the direction  
 955 and supervision of such authority and may ~~direct apply~~ a  
 956 different designation than that applied by such the agency.

957 (e) Notwithstanding s. 120.52(1)(a), this section does not

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958 apply to:

959 1. The Department of Corrections;

960 2. Educational units;

961 3. The regulation of law enforcement personnel; or

962 4. The regulation of teachers.

963 (f) Designation pursuant to this section is not subject to  
 964 challenge under this chapter.

965 Section 12. This act shall take effect July 1, 2015.

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: PCS/CS/SB 798 (275316)

INTRODUCER: Appropriations Subcommittee on General Government; Commerce and Tourism Committee; and Senator Lee

SUBJECT: Household Moving Services

DATE: April 10, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 798 broadens protections for consumers who use intrastate moving services (shippers) by:

- Providing for a required insurance protection plan for shippers' moved goods;
- Requiring a binding estimate of the cost of services to be provided by the mover; and
- Clarifying what payment a mover can demand prior to returning the moved goods to the shipper.

The bill has an insignificant fiscal impact on state funds.

The effective date of the bill is July 1, 2015.

**II. Present Situation:**

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover or moving broker engaged in intrastate transportation or shipment of household goods originating and terminating in the state.<sup>1</sup> These regulations co-exist with federal law, which governs interstate moving of household goods.

---

<sup>1</sup> Section 507.02, F.S.

Section 507.01(9), F.S., defines “mover” as a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move.<sup>2</sup> A “moving broker” arranges for another person to load, transport, ship, or unload household goods as part of a household move or refers a shipper to a mover by telephone, postal, or electronic mail, website, or other means.<sup>3</sup>

Section 507.03, F.S., requires any mover or moving broker who wishes to do business in Florida to register annually with the Department of Agriculture and Consumer Services (DACS). As of March 2015, 1,037 movers and 12 moving brokers were registered.<sup>4</sup> In order to obtain a registration certificate, the mover or moving broker must file an application, pay a \$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.<sup>5</sup>

### **Insurance Coverage and Liability Limitations**

Section 507.04, F.S., requires movers and moving brokers to maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment, and not less than 60 cents per pound, per article.<sup>6</sup> Movers who operate fewer than two vehicles are required only to carry either a performance bond or a \$25,000 certificate of deposit in lieu of liability insurance.<sup>7</sup>

Any contractual limitation to a mover’s liability for loss incurred to a shipper’s goods must be disclosed in writing to the shipper, along with the valuation rate, but a mover’s attempt to limit its liability beyond the minimum 60 cents per pound, per article rate is void under s. 507.04(4), F.S. The mover must inform the shipper of the opportunity to purchase valuation coverage, if the mover offers such additional insurance.<sup>8</sup>

### **Violations and Penalties**

Section 507.05, F.S., requires an intrastate mover to provide an estimate and contract to the shipper before commencing the move. Should a dispute arise over payment or costs, s. 507.06, F.S., provides that the mover may place the shipper’s goods in a storage unit until payment is tendered. Because of ambiguity regarding what payment may legally be demanded, some shippers have been taken advantage of by deceptive or fraudulent moving practices.<sup>9</sup> Often, moving fraud manifests as an increased fee assessed by the mover, who then refuses to relinquish the shipper’s goods until the inflated price has been paid in full.

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<sup>2</sup> Section 507.01(9), F.S.

<sup>3</sup> Section 507.01(10), F.S.

<sup>4</sup> DACS, *SB 798 Agency Analysis* (February 24, 2015), on file with the Senate Commerce and Tourism Committee; Interview with DACS staff, March 17, 2015.

<sup>5</sup> Section 507.03(1), F.S.

<sup>6</sup> Section 507.04(4), F.S.

<sup>7</sup> Section 507.04(1)(b), F.S.

<sup>8</sup> Section 507.04(4), F.S.

<sup>9</sup> According to the Federal Motor Carrier Safety Administration (FMCSA), Florida is a hot spot for moving fraud. See, e.g. Christina Hernandez, *3 South Florida Moving Companies Accused of Holding Customer Shipments Hostage* (November 26, 2013), available at <http://www.nbcmiami.com/news/local/3-South-Florida-Moving-Companies-Accused-of-Holding-Customer-Shipments-Hostage-233525971.html> (last accessed March 16, 2015).

While administrative, civil, and criminal penalties exist in ch. 507, F.S., for such fraudulent moving practices and other violations, the aggrieved shipper is not guaranteed the return of his or her goods until after such remedies have been finalized.

### **Local Ordinances and Regulations**

Municipalities and counties may adopt local ordinances or regulations relating to the moving of household goods in addition to the state regulations required by statute.<sup>10</sup> Broward, Miami-Dade, Palm Beach, Hillsborough, and Pinellas counties currently have such ordinances. Movers or moving brokers whose principal place of business is located in a county or municipality with such an ordinance are required to register under local and state laws. State law also allows for local taxes, fees, and bonding related to movers and moving brokers, so long as any local registration fees are reasonable and do not exceed the cost of administering the ordinance or regulation.<sup>11</sup>

## **III. Effect of Proposed Changes:**

### **Definitions and Legislative Intent**

**Section 1** defines terms used in the bill, deletes the definition of “estimate” (but provides for a binding estimate in later sections). Additionally, “personal laborers” who assist shippers exclusively with the loading or unloading of their household goods are excluded from the definition of “mover.”

**Section 2** provides that the bill is intended to provide consistency and transparency in moving practices.

### **Insurance Requirement**

**Section 3** clarifies that movers must maintain current and valid *cargo* liability insurance coverage. The bill also removes the 60 cents per pound, per article minimum liability insurance requirement for the loss or damage of household goods, but adds a requirement that a mover place valuation coverage<sup>12</sup> equal to the cost of repair or replacement of the shipper’s goods, unless such coverage is waived by the shipper. Valuation coverage can be more valuable to shippers than liability insurance in instances of loss of relatively light items, e.g., electronics, are lost or damaged during the move because they will be insured based on value rather than weight.

### **Before the Move**

**Section 6** requires a mover to provide a prospective shipper with an informational publication (see section 5) and a binding estimate (see section 4) prior to entering into any contract for moving services.

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<sup>10</sup> Section 507.09, F.S.

<sup>11</sup> Section 507.09, F.S.

<sup>12</sup> Valuation coverage will only cover loss caused by the mover’s fault, whereas moving coverage, available through an insurance agent, will cover loss caused by “acts of God.”

<https://www.protectyourmove.gov/consumer/awareness/valuation/valuation-insurance.htm>.

**Section 5** creates s. 507.054, F.S., which mandates the DACS to prepare a publication entitled “Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law.” This booklet, distributed by movers, must:

- Describe the shipper’s and mover’s rights and responsibilities, as well as available remedies;
- Bear an attestation signed by both parties signifying that they have read and understand the document as well as the criminal and administrative penalties for specific violations;
- Include a warning of the risks of shipping sentimental or family heirlooms;
- Be attached to the general contract for moving services as an integral part thereof; and
- Measure at least 36 square inches.

The shipper must acknowledge receipt of this publication by signed acknowledgement in the contract.

The binding estimate, described in **section 4** of the bill, must be based on the mover’s physical survey of the household goods to be moved. In addition, it must:

- Be provided to the shipper before the execution of a contract for services, and at least 48 hours before the move;
- Include at least an itemized total cost for the loading, transport or shipment, and unloading of household goods and accessorial services;
- Provide a table of measures used by the mover in preparing the estimate;
- Evince the date the estimate was prepared and the proposed date of the move;
- State that the estimate is binding on the mover and shipper;
- Identify accepted forms of payment; and
- Bear the signature of both parties.

A physical survey may only be waived if the goods are outside a 50-mile radius from the mover or if the shipper waives the right by signed writing. A binding estimate must be provided in every move performed by a mover, but the 48-hour period between provision of the binding estimate, and the move may be waived by a shipper’s signed or electronic acknowledgement in the contract.

The waiting period between the provision of a binding estimate and the move may be waived if the shipper contacts the mover within 48 hours of the move.

The binding estimate may not be amended by the mover within 48 hours of the move unless the shipper requests additional services or unless both parties agree to amend the estimate.

A mover and shipper must enter into a contract for services prior to the performance of any services. In accordance with **section 4** of the bill, the contract must include:

- Contact information of both parties;
- Date contract was prepared and date of the move;
- Where the goods will be stored, including in the case of a contract dispute;
- A copy of the binding estimate;
- Total cost to shipper that may be collected by the mover at delivery, and terms of the payment; and

- Acceptable forms of payment.

The mover must retain a copy of the binding estimate and the contract for one year after their preparation dates and keep a copy with him or her during the entire move, should a dispute over cost or payment arise.

### **Payment and Delivery of Goods**

**Sections 7 and 8** provide for notice requirements if the mover is unable to perform the requested services on the date reflected in the contract. Additionally, the bill requires a mover to relinquish a shipper's goods inside the location directed by the shipper in a timely manner, if the shipper has paid the exact amount of the binding estimate; paid any additional charges properly agreed to by both parties in writing, if applicable; and paid any charges related to impracticable operations, if applicable.

**Section 8** provides that a mover may require payment in excess of the binding estimate prior to his or her relinquishment of the household goods, if:

- Prior to beginning the move, the parties negotiate a revised binding estimate to reflect extra services requested by the shipper.
- The shipper, after at least a one-hour cool off period, consents by written contract addendum to the mover's performance of (and charging for) additional services that the mover has advised are essential to the move.
- After execution of the contract, the shipper requests additional services and the mover informs the shipper of associated charges in writing.
- Impracticable operations require additional services to be performed by the mover.

The mover cannot demand payment of any additional charges assessed under ch. 507, F.S., prior to relinquishing the shipper's household goods, but may collect payment by billing the shipper within 15 days after delivery of the goods. Payment for legitimate charges must be paid by the shipper within 30 days after receipt of the bill.

### **Violations and Penalties**

**Section 9** prohibits increasing the contracted cost of the move, if not in accordance with ch. 507, F.S., improperly withholding a shipper's goods, and otherwise failing to comply with chapter 507.

**Section 10** creates administrative penalties for violations of ch. 507, F.S., including the suspension of a mover's license if the company's officer or director is charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property, or a crime arising from conduct during movement of household goods.

**Section 11** makes conforming changes.

**Section 12** creates criminal penalties for violations of ch. 507, F.S., including penalizing as a third degree felony any mover's refusal to relinquish a shipper's goods after a law enforcement officer determines that payment has been made in accordance with this chapter.

**Rulemaking Authority**

**Section 13** grants the DACS rulemaking authority to administer this bill.

**Effective Date**

**Section 14** creates an effective date of July 1, 2015.

**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 public may see a faster resolution to moving disputes that arise due to the provisions in PCS/CS/SB 798.

**C. Government Sector Impact:**

The bill requires the DACS to prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to, movers and shippers. The DACS indicates the cost of this publication can be absorbed within existing resources.

The Criminal Justice Impact Conference (CJIC) considered SB 798, which had the same criminal penalties as PCS/CS/SB 798, and determined that SB 798 would have a positive insignificant impact (less than 10 per year) on prison beds.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

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<sup>13</sup> Florida Criminal Justice Impact Conference, *March 11, 2015 Results*, (March 11, 2015), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm> (last accessed March 19, 2015).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 507.01, 507.02, 507.04, 507.05, 507.06, 507.07, 507.09, 507.10 and 507.11.

This bill creates the following sections of the Florida Statutes: 507.054, 507.055, 507.065, 507.066, and 507.14.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The committee substitute:

- Defines “personal laborers” as individuals hired directly by shippers to assist in the moving of household goods, and removes them from the requirements of the bill;
- Requires movers to provide valuation coverage, equal to the cost of repair or replacement of the shipper’s goods, unless waived in writing by the shipper;
- Allows a shipper to waive the binding estimate by signed or electronic acknowledgement;
- Allows shippers to waive the 48-hour waiting period between provision of a binding estimate and the move, if the shipper initially contacts the mover within the 48-hour waiting period; and
- Deletes provisions relating to payment in case of partial or total loss of goods by the mover.

**CS by Commerce and Tourism on March 23, 2015:**

- The committee substitute maintains the requirement that moving brokers provide proof of insurance to the DACS;
- Removes requirement that movers publish a tariff;
- Allows shippers to waive the 48-hour waiting period between provision of a binding estimate and the move; and
- Clarifies what costs may be collected by the mover upon delivery of the moved household goods.

**B. Amendments:**

None.





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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Lee)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 82 - 456

and insert:

Section 1. Present subsections (2) through (5) of section 507.01, Florida Statutes, are redesignated as subsections (3) through (6), respectively, present subsections (9) through (11) of that section are redesignated as subsections (10) through (12), respectively, present subsections (12) and (13) of that section are redesignated as subsections (14) and (15),



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11 respectively, new subsections (2), (9), and (13) are added to  
12 that section, and present subsections (6) and (9) are amended,  
13 to read:

14 507.01 Definitions.—As used in this chapter, the term:

15 (2) "Additional services" means any additional  
16 transportation of household goods which is performed by a mover,  
17 is not specifically included in a binding estimate or contract,  
18 and results in a charge to the shipper.

19 ~~(6) "Estimate" means a written document that sets forth the~~  
20 ~~total costs and describes the basis of those costs, relating to~~  
21 ~~a shipper's household move, including, but not limited to, the~~  
22 ~~loading, transportation or shipment, and unloading of household~~  
23 ~~goods and accessorial services.~~

24 (9) "Impracticable operations" means conditions arising  
25 after execution of a contract for household moving services  
26 which make it impractical for a mover to perform pickup or  
27 delivery services for a household move.

28 ~~(10)(9)~~ "Mover" means a person who, for compensation,  
29 contracts for or engages in the loading, transportation or  
30 shipment, or unloading of household goods as part of a household  
31 move. The term does not include a postal, courier, envelope, or  
32 package service that, or a person labor who, does not advertise  
33 itself as a mover or moving service.

34 (13) "Personal laborer" means an individual hired directly  
35 by the shipper to assist in the loading and unloading of the  
36 shipper's own household goods. The term does not include any  
37 individual who has contracted with or is compensated by a third-  
38 party or whose services are brokered as part of a household  
39 move.



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40 Section 2. Subsection (3) of section 507.02, Florida  
41 Statutes, is amended to read:

42 507.02 Construction; intent; application.—

43 (3) This chapter is intended to provide consistency and  
44 transparency in moving practices and to secure the satisfaction  
45 and confidence of shippers and members of the public when using  
46 a mover.

47 Section 3. Subsections (1), (3), (4), and (5) of section  
48 507.04, Florida Statutes, are amended to read:

49 507.04 Required insurance coverages; liability limitations;  
50 valuation coverage.—

51 (1) CARGO LIABILITY INSURANCE.—

52 (a)1. Except as provided in paragraph (b), each mover  
53 operating in this state must maintain current and valid cargo  
54 liability insurance coverage of at least \$10,000 per shipment  
55 for the loss or damage of household goods resulting from the  
56 negligence of the mover or its employees or agents.

57 2. The mover must provide the department with evidence of  
58 liability insurance coverage before the mover is registered with  
59 the department under s. 507.03. All insurance coverage  
60 maintained by a mover must remain in effect throughout the  
61 mover's registration period. ~~A mover's failure to maintain~~  
62 ~~insurance coverage in accordance with this paragraph constitutes~~  
63 ~~an immediate threat to the public health, safety, and welfare.~~  
64 ~~If a mover fails to maintain insurance coverage, the department~~  
65 ~~may immediately suspend the mover's registration or eligibility~~  
66 ~~for registration, and the mover must immediately cease operating~~  
67 ~~as a mover in this state. In addition, and notwithstanding the~~  
68 ~~availability of any administrative relief pursuant to chapter~~



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69 ~~120, the department may seek from the appropriate circuit court~~  
70 ~~an immediate injunction prohibiting the mover from operating in~~  
71 ~~this state until the mover complies with this paragraph, a civil~~  
72 ~~penalty not to exceed \$5,000, and court costs.~~

73 (b) A mover that operates two or fewer vehicles, in lieu of  
74 maintaining the cargo liability insurance coverage required  
75 under paragraph (a), may, and each moving broker must, maintain  
76 one of the following alternative coverages:

77 1. A performance bond in the amount of \$25,000, for which  
78 the surety of the bond must be a surety company authorized to  
79 conduct business in this state; or

80 2. A certificate of deposit in a Florida banking  
81 institution in the amount of \$25,000.

82  
83 The original bond or certificate of deposit must be filed with  
84 the department and must designate the department as the sole  
85 beneficiary. The department must use the bond or certificate of  
86 deposit exclusively for the payment of claims to consumers who  
87 are injured by the fraud, misrepresentation, breach of contract,  
88 misfeasance, malfeasance, or financial failure of the mover or  
89 moving broker or by a violation of this chapter by the mover or  
90 broker. Liability for these injuries may be determined in an  
91 administrative proceeding of the department or through a civil  
92 action in a court of competent jurisdiction. However, claims  
93 against the bond or certificate of deposit must only be paid, in  
94 amounts not to exceed the determined liability for these  
95 injuries, by order of the department in an administrative  
96 proceeding. The bond or certificate of deposit is subject to  
97 successive claims, but the aggregate amount of these claims may



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98 not exceed the amount of the bond or certificate of deposit.

99 (3) INSURANCE COVERAGES.—The insurance coverages required  
100 under paragraph (1)(a) and subsection (2) must be issued by an  
101 insurance company or carrier licensed to transact business in  
102 this state under the Florida Insurance Code as designated in s.  
103 624.01. The department shall require a mover to present a  
104 certificate of insurance of the required coverages before  
105 issuance or renewal of a registration certificate under s.  
106 507.03. The department shall be named as a certificateholder in  
107 the certificate and must be notified at least 10 days before  
108 cancellation of insurance coverage. A mover's failure to  
109 maintain insurance coverage constitutes an immediate threat to  
110 the public health, safety, and welfare. If a mover fails to  
111 maintain insurance coverage, the department may immediately  
112 suspend the mover's registration or eligibility for  
113 registration, and the mover must immediately cease operating as  
114 a mover in this state. In addition, and notwithstanding the  
115 availability of any administrative relief pursuant to chapter  
116 120, the department may seek from the appropriate circuit court  
117 an immediate injunction prohibiting the mover from operating in  
118 this state until the mover complies with this paragraph, a civil  
119 penalty not to exceed \$5,000, and court costs.

120 (4) ~~LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not~~  
121 ~~limit its liability for the loss or damage of household goods to~~  
122 ~~a valuation rate that is less than 60 cents per pound per~~  
123 ~~article. A provision of a contract for moving services is void~~  
124 ~~if the provision limits a mover's liability to a valuation rate~~  
125 ~~that is less than the minimum rate under this subsection. If a~~  
126 ~~mover limits its liability for a shipper's goods, the mover must~~



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127 ~~disclose the limitation, including the valuation rate, to the~~  
128 ~~shipper in writing at the time that the estimate and contract~~  
129 ~~for services are executed and before any moving or accessorial~~  
130 ~~services are provided. The disclosure must also inform the~~  
131 ~~shipper of the opportunity to purchase valuation coverage if the~~  
132 ~~mover offers that coverage under subsection (5).~~

133       ~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation  
134 coverage to compensate a shipper for the loss or damage of the  
135 shipper's household goods that are lost or damaged during a  
136 household move. ~~If a mover offers valuation coverage,~~ The  
137 coverage must indemnify the shipper for at least the cost of  
138 repair or replacement of the goods, unless waived or amended by  
139 the shipper. The shipper may waive or amend the valuation  
140 coverage, and the waiver must be made in a signed acknowledgment  
141 in the contract ~~minimum valuation rate required under subsection~~  
142 ~~(4)~~. The mover must disclose the terms of the coverage to the  
143 shipper in writing, including any deductibles, within at the  
144 ~~time that~~ the binding estimate and again when the contract for  
145 services is ~~are~~ executed and before any moving or accessorial  
146 services are provided. The disclosure must inform the shipper of  
147 the cost of the valuation coverage, if any ~~the valuation rate of~~  
148 ~~the coverage, and the opportunity to reject the coverage. If~~  
149 ~~valuation coverage compensates a shipper for at least the~~  
150 ~~minimum valuation rate required under subsection (4), the~~  
151 ~~coverage satisfies the mover's liability for the minimum~~  
152 ~~valuation rate.~~

153       Section 4. Section 507.05, Florida Statutes, is amended to  
154 read:

155       507.05 Physical surveys, binding estimates, and contracts



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156 ~~for service. Before providing any moving or accessorial~~  
157 ~~services, a contract and estimate must be provided to a~~  
158 ~~prospective shipper in writing, must be signed and dated by the~~  
159 ~~shipper and the mover, and must include:~~

160 (1) PHYSICAL SURVEY.—A mover must conduct a physical survey  
161 of the household goods to be moved and provide the prospective  
162 shipper with a binding estimate of the cost of the move.

163 (2) WAIVER OF SURVEY.—A shipper may elect to waive the  
164 physical survey, and such waiver must be in writing and signed  
165 by the shipper before the household goods are loaded. The mover  
166 shall retain a copy of the waiver as an addendum to the contract  
167 for service.

168 (3) BINDING ESTIMATE.—Before executing a contract for  
169 service for a household move, and at least 48 hours before the  
170 scheduled time and date of a shipment of household goods, a  
171 mover must provide a binding estimate of the total charges,  
172 including, but not limited to, the loading, transportation or  
173 shipment, and unloading of household goods and accessorial  
174 services. The binding estimate shall be based on a physical  
175 survey conducted pursuant to subsection (1), unless waived  
176 pursuant to subsection (2).

177 (a) The shipper may waive the binding estimate if the  
178 waiver is made by signed or electronic acknowledgment before the  
179 commencement of the 48-hour period before the household goods  
180 are loaded. The mover shall retain a copy of the waiver as an  
181 addendum to the contract for services. To be enforceable, a  
182 waiver executed under this paragraph must, at a minimum, include  
183 a statement in uppercase type that is at least 5 points larger  
184 than, and clearly distinguishable from, the rest of the text of



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185 the waiver or release containing the statement. The exact  
186 statement to be included in a waiver of a binding estimate to be  
187 used by all movers shall be determined by the department in  
188 rulemaking and must include a delineation of the specific rights  
189 that a shipper may lose by waiving the binding estimate.

190 (b) The shipper may also waive the 48-hour period if the  
191 moving services requested commence within 48 hours of the  
192 shipper's initial contact with the mover contracted to perform  
193 the moving services.

194 (c) At a minimum, the binding estimate must include all of  
195 the following:

196 1. The table of measures used by the mover or the mover's  
197 agent in preparing the estimate.

198 2. The date the estimate was prepared and the proposed date  
199 of the move, if any.

200 3. An itemized breakdown and description of services, and  
201 the total cost to the shipper of loading, transporting or  
202 shipping, unloading, and accessorial services.

203 4. A statement that the estimate is binding on the mover  
204 and the shipper and that the charges shown apply only to those  
205 services specifically identified in the estimate.

206 5. Identification of acceptable forms of payment.

207 (d) A mover may charge a one-time fee, not to exceed \$100,  
208 for providing a binding estimate.

209 (e) The binding estimate must be signed by the mover and  
210 the shipper, and a copy must be provided to the shipper by the  
211 mover at the time that the estimate is signed.

212 (f) A binding estimate may only be amended by the mover  
213 before the scheduled loading of household goods for shipment





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214 when the shipper has requested additional services of the mover  
215 not previously disclosed in the original binding estimate, or  
216 upon mutual agreement of the mover and the shipper. Once a mover  
217 begins to load the household goods for a move, failure to  
218 execute a new binding estimate signifies the mover has  
219 reaffirmed the original binding estimate.

220 (g) A mover may not collect more than the amount of the  
221 binding estimate unless:

222 1. The shipper waives receipt of a binding estimate under  
223 this subsection.

224 2. The shipper tenders additional household goods, requests  
225 additional services, or requires services that are not  
226 specifically included in the binding estimate, in which case the  
227 mover is not required to honor the estimate. If, despite the  
228 addition of household goods or the need for additional services,  
229 the mover chooses to perform the move, it must, before loading  
230 the household goods, inform the shipper of the associated  
231 charges in writing. The mover may require full payment at the  
232 destination for the costs associated with the additional  
233 requested services and the full amount of the original binding  
234 estimate.

235 3. Upon issuance of the contract for services, the mover  
236 advises the shipper, in advance of performing additional  
237 services, including accessorial services, that such services are  
238 essential to properly performing the move. The mover must allow  
239 the shipper at least 1 hour to determine whether to authorize  
240 the additional services.

241 a. If the shipper agrees to pay for the additional  
242 services, the mover must execute a written addendum to the



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243 contract for services, which must be signed by the shipper. The  
244 addendum may be sent to the shipper by facsimile, e-mail,  
245 overnight courier, or certified mail, with return receipt  
246 requested. The mover must bill the shipper for the agreed upon  
247 additional services within 15 days after the delivery of those  
248 additional services pursuant to s. 507.06.

249 b. If the shipper does not agree to pay for the additional  
250 services, the mover may perform and, pursuant to s. 507.06, bill  
251 the shipper for those additional services necessary to complete  
252 the delivery.

253 (h) A mover shall retain a copy of the binding estimate for  
254 each move performed for at least 1 year after its preparation  
255 date as an attachment to the contract for service.

256 (4) CONTRACT FOR SERVICE.—Before providing any moving or  
257 accessorial services, a mover must provide a contract for  
258 service to the shipper, which the shipper must sign and date.

259 (a) At a minimum, the contract for service must include:

260 1.~~(1)~~ The name, telephone number, and physical address  
261 where the mover's employees are available during normal business  
262 hours.

263 2.~~(2)~~ The date the contract ~~was~~ ~~or estimate is~~ prepared and  
264 the ~~any~~ proposed date of the move, if any.

265 3.~~(3)~~ The name and address of the shipper, the addresses  
266 where the articles are to be picked up and delivered, and a  
267 telephone number where the shipper may be reached.

268 4.~~(4)~~ The name, telephone number, and physical address of  
269 any location where the household goods will be held pending  
270 further transportation, including situations in which ~~where~~ the  
271 mover retains possession of household goods pending resolution



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272 of a fee dispute with the shipper.

273 5.(5) A binding estimate provided in accordance with  
274 subsection (3) An itemized breakdown and description and total  
275 of all costs and services for loading, transportation or  
276 shipment, unloading, and accessorial services to be provided  
277 during a household move or storage of household goods.

278 6. The total charges owed by the shipper based on the  
279 binding estimate and the terms and conditions for their payment,  
280 including any required minimum payment.

281 7. If the household goods are transported under an  
282 agreement to collect payment upon delivery, the maximum payment  
283 that the mover may demand at the time of delivery.

284 8.(6) Acceptable forms of payment, which must be clearly  
285 and conspicuously disclosed to the shipper on the binding  
286 estimate and the contract for services. A mover must shall  
287 accept at least a minimum of two of the three following forms of  
288 payment:

289 a.(a) Cash, cashier's check, money order, or traveler's  
290 check;

291 b.(b) Valid personal check, showing upon its face the name  
292 and address of the shipper or authorized representative; or

293 c.(c) Valid credit card, which shall include, but not be  
294 limited to, Visa or MasterCard. A mover must clearly and  
295 conspicuously disclose to the shipper in the estimate and  
296 contract for services the forms of payments the mover will  
297 accept, including the forms of payment described in paragraphs  
298 (a)-(c).

299 (b) Each addendum to the contract for service is an  
300 integral part of the contract.



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301 (c) A copy of the contract for service must accompany the  
302 household goods whenever they are in the mover's or the mover's  
303 agent's possession. Before a vehicle that is being used for the  
304 move leaves the point of origin, the driver responsible for the  
305 move must have the contract for service in his or her  
306 possession.

307 (d) A mover shall retain a contract for service for each  
308 move it performs for at least 1 year after the date the contract  
309 for service was signed.

310 Section 5. Section 507.054, Florida Statutes, is created to  
311 read:

312 507.054 Publication.—

313 (1) The department shall prepare a publication that  
314 includes a summary of the rights and responsibilities of, and  
315 remedies available to movers and shippers under this chapter.  
316 The publication must include a statement that a mover's failure  
317 to relinquish household goods as required by this chapter  
318 constitutes a felony of the third degree, punishable as provided  
319 in s. 775.082, s. 775.083, or s. 775.084, that any other  
320 violation of this chapter constitutes a misdemeanor of the first  
321 degree, punishable as provided in s. 775.082 or s. 775.083, and  
322 that any violation of this chapter constitutes a violation of  
323 the Florida Deceptive and Unfair Trade Practices Act. The  
324 publication must also include a notice to the shipper about the  
325 potential risks of shipping sentimental or family heirloom  
326 items.

327 (2) A mover may provide exact copies of the department's  
328 publication to shippers or may customize the color, design, and  
329 dimension of the front and back covers of the standard



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330 department publication. If the mover customizes the publication,  
331 the customized publication must include the content specified in  
332 subsection (1) and meet the following requirements:

333 (a) The font size used must be at least 10 points, with the  
334 exception that the following must appear prominently on the  
335 front cover in at least 12-point boldface type: "Your Rights and  
336 Responsibilities When You Move. Furnished by Your Mover, as  
337 Required by Florida Law."

338 (b) The size of the booklet must be at least 36 square  
339 inches.

340 (3) The shipper must acknowledge receipt of the publication  
341 by signed acknowledgement in the contract.

342 Section 6. Section 507.055, Florida Statutes, is created to  
343 read:

344 507.055 Required disclosure and acknowledgment of rights  
345 and remedies.—Before executing a contract for service for a  
346 move, a mover must provide to a prospective shipper all of the  
347 following:

348 (1) The publication required under s. 507.054.

349 (2) A concise, easy-to-read, and accurate binding estimate  
350 required under s. 507.05(3).

351 Section 7. Subsections (1) and (3) of section 507.06,  
352 Florida Statutes, are amended, and subsection (4) is added to  
353 that section, to read:

354 507.06 Delivery and storage of household goods.—

355 (1) On the agreed upon delivery date or within the  
356 timeframe specified in the contract for service, a mover must  
357 relinquish household goods to a shipper and must place the  
358 household goods inside a shipper's dwelling or, if directed by



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359 the shipper, inside a storehouse or warehouse that is owned or  
360 rented by the shipper or the shipper's agent, unless the shipper  
361 has not tendered payment pursuant to s. 507.065 or s. 507.066 ~~in~~  
362 ~~the amount specified in a written contract or estimate signed~~  
363 ~~and dated by the shipper.~~ This requirement may be waived by the  
364 shipper. A mover may not, under any circumstances, refuse to  
365 relinquish prescription medicines and household goods for use by  
366 children, including children's furniture, clothing, or toys,  
367 ~~under any circumstances.~~

368 (3) A mover that lawfully fails to relinquish a shipper's  
369 household goods may place the goods in storage until payment in  
370 accordance with ss. 507.065 or 507.066 is tendered; however, the  
371 mover must notify the shipper of the location where the goods  
372 are stored and the amount due within 5 days after receipt of a  
373 written request for that information from the shipper, which  
374 request must include the address where the shipper may receive  
375 the notice. A mover may not require a prospective shipper to  
376 waive any rights or requirements under this section.

377 (4) If a mover becomes aware that it cannot perform the  
378 pickup or the delivery of household goods on the date agreed  
379 upon or during the timeframe specified in the contract for  
380 service due to circumstances not anticipated by the contract,  
381 the mover shall notify the shipper of the delay and advise the  
382 shipper of the amended date or timeframe within which the mover  
383 expects to pick up or deliver the household goods in a timely  
384 manner.

385 Section 8. Section 507.065, Florida Statutes, is created to  
386 read:

387 507.065 Payment.-



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388           (1) Except as provided in s. 507.05(3), the maximum amount  
389 that a mover may charge before relinquishing household goods to  
390 a shipper is the exact amount of the binding estimate, unless  
391 waived by the shipper, plus  
392

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

394 And the title is amended as follows:

395           Delete lines 15 - 50

396 and insert:

397           cost of repair or replacement goods unless waived or  
398           amended by the shipper; authorizing the shipper to  
399           waive or amend the valuation coverage; requiring that  
400           the waiver be made in a signed acknowledgment in the  
401           contract; revising the time at which the mover must  
402           disclose the terms of the coverage to the shipper in  
403           writing including any deductibles; revising the  
404           information that the disclosure must provide to the  
405           shipper; amending s. 507.05, F.S.; requiring a mover  
406           to conduct a physical survey and provide a binding  
407           estimate in certain circumstances unless waived by the  
408           shipper; requiring specified content for the binding  
409           estimate; authorizing a shipper to waive the binding  
410           estimate in certain circumstances; authorizing the  
411           mover to provide a maximum one-time fee for providing  
412           a binding estimate; requiring the mover and shipper to  
413           sign the estimate; requiring the mover to provide the  
414           shipper with a copy of the estimate at the time of  
415           signature; providing that a binding estimate may only  
416           be amended under certain circumstances; authorizing a



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417 mover to charge more than the binding estimate in  
418 certain circumstances; requiring a mover to allow a  
419 shipper to consider whether additional services are  
420 needed; requiring a mover to retain a copy of the  
421 binding estimate for a specified period; requiring a  
422 mover to provide a contract for service to the shipper  
423 before providing moving or accessorial services;  
424 requiring a driver to have possession of the contract  
425 before leaving the point of origin; requiring a mover  
426 to retain a contract of service for a specified  
427 period; creating s. 507.054, F.S.; requiring the  
428 department to prepare a publication that summarizes  
429 the rights and responsibilities of, and remedies  
430 available to, movers and shippers; requiring the  
431 publication to meet certain specifications; creating  
432 s. 507.055, F.S.; requiring a mover to provide certain  
433 disclosures to a prospective shipper; amending s.  
434 507.06, F.S.; requiring a mover to tender household  
435 goods for delivery on the agreed upon delivery date or  
436 within a specified period unless waived by the  
437 shipper; requiring a mover to notify and provide  
438 certain information to a shipper if the mover is  
439 unable to perform delivery on the agreed upon date or  
440 during the specified period; creating s. 507.065,  
441 F.S.; providing a maximum amount that a mover may  
442 charge a shipper unless waived by the shipper;  
443 requiring a mover to notify and provide





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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Lee)  
recommended the following:

1           **Senate Substitute for Amendment (949376) (with title**  
2 **amendment)**

3  
4           Delete lines 82 - 567  
5 and insert:

6           Section 1. Present subsections (2) through (5) of section  
7 507.01, Florida Statutes, are redesignated as subsections (3)  
8 through (6), respectively, present subsections (9), (10), and  
9 (11) of that section are redesignated as subsections (10), (11),  
10 and (12), respectively, present subsections (12) and (13) of



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11 that section are redesignated as subsections (14) and (15),  
12 respectively, new subsections (2), (9), and (13) are added to  
13 that section, and present subsections (6) and (9) are amended,  
14 to read:

15 507.01 Definitions.—As used in this chapter, the term:

16 (2) "Additional services" means any additional  
17 transportation of household goods which is performed by a mover,  
18 is not specifically included in a binding estimate or contract,  
19 and results in a charge to the shipper.

20 ~~(6) "Estimate" means a written document that sets forth the~~  
21 ~~total costs and describes the basis of those costs, relating to~~  
22 ~~a shipper's household move, including, but not limited to, the~~  
23 ~~loading, transportation or shipment, and unloading of household~~  
24 ~~goods and accessorial services.~~

25 (9) "Impracticable operations" means conditions arising  
26 after execution of a contract for household moving services  
27 which make it impractical for a mover to perform pickup or  
28 delivery services for a household move.

29 ~~(10)~~ (9) "Mover" means a person who, for compensation,  
30 contracts for or engages in the loading, transportation or  
31 shipment, or unloading of household goods as part of a household  
32 move. The term does not include a postal, courier, envelope, or  
33 package service that, or a personal laborer who, does not  
34 advertise itself as a mover or moving service.

35 (13) "Personal laborer" means an individual hired directly  
36 by the shipper to assist in the loading and unloading of the  
37 shipper's own household goods. The term does not include any  
38 individual who has contracted with or is compensated by a third-  
39 party or whose services are brokered as part of a household



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40 move.

41 Section 2. Subsection (3) of section 507.02, Florida  
42 Statutes, is amended to read:

43 507.02 Construction; intent; application.—

44 (3) This chapter is intended to provide consistency and  
45 transparency in moving practices and to secure the satisfaction  
46 and confidence of shippers and members of the public when using  
47 a mover.

48 Section 3. Subsections (1), (3), (4), and (5) of section  
49 507.04, Florida Statutes, are amended to read:

50 507.04 Required insurance coverages; liability limitations;  
51 valuation coverage.—

52 (1) CARGO LIABILITY INSURANCE.—

53 (a)1. Except as provided in paragraph (b), each mover  
54 operating in this state must maintain current and valid cargo  
55 liability insurance coverage of at least \$10,000 per shipment  
56 for the loss or damage of household goods resulting from the  
57 negligence of the mover or its employees or agents.

58 2. The mover must provide the department with evidence of  
59 liability insurance coverage before the mover is registered with  
60 the department under s. 507.03. All insurance coverage  
61 maintained by a mover must remain in effect throughout the  
62 mover's registration period. ~~A mover's failure to maintain~~  
63 ~~insurance coverage in accordance with this paragraph constitutes~~  
64 ~~an immediate threat to the public health, safety, and welfare.~~  
65 ~~If a mover fails to maintain insurance coverage, the department~~  
66 ~~may immediately suspend the mover's registration or eligibility~~  
67 ~~for registration, and the mover must immediately cease operating~~  
68 ~~as a mover in this state. In addition, and notwithstanding the~~



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69 ~~availability of any administrative relief pursuant to chapter~~  
70 ~~120, the department may seek from the appropriate circuit court~~  
71 ~~an immediate injunction prohibiting the mover from operating in~~  
72 ~~this state until the mover complies with this paragraph, a civil~~  
73 ~~penalty not to exceed \$5,000, and court costs.~~

74 (b) A mover that operates two or fewer vehicles, in lieu of  
75 maintaining the cargo liability insurance coverage required  
76 under paragraph (a), may, and each moving broker must, maintain  
77 one of the following alternative coverages:

78 1. A performance bond in the amount of \$25,000, for which  
79 the surety of the bond must be a surety company authorized to  
80 conduct business in this state; or

81 2. A certificate of deposit in a Florida banking  
82 institution in the amount of \$25,000.

83  
84 The original bond or certificate of deposit must be filed with  
85 the department and must designate the department as the sole  
86 beneficiary. The department must use the bond or certificate of  
87 deposit exclusively for the payment of claims to consumers who  
88 are injured by the fraud, misrepresentation, breach of contract,  
89 misfeasance, malfeasance, or financial failure of the mover or  
90 moving broker or by a violation of this chapter by the mover or  
91 broker. Liability for these injuries may be determined in an  
92 administrative proceeding of the department or through a civil  
93 action in a court of competent jurisdiction. However, claims  
94 against the bond or certificate of deposit must only be paid, in  
95 amounts not to exceed the determined liability for these  
96 injuries, by order of the department in an administrative  
97 proceeding. The bond or certificate of deposit is subject to



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98 successive claims, but the aggregate amount of these claims may  
99 not exceed the amount of the bond or certificate of deposit.

100 (3) INSURANCE COVERAGES.—The insurance coverages required  
101 under paragraph (1)(a) and subsection (2) must be issued by an  
102 insurance company or carrier licensed to transact business in  
103 this state under the Florida Insurance Code as designated in s.  
104 624.01. The department shall require a mover to present a  
105 certificate of insurance of the required coverages before  
106 issuance or renewal of a registration certificate under s.  
107 507.03. The department shall be named as a certificateholder in  
108 the certificate and must be notified at least 10 days before  
109 cancellation of insurance coverage. A mover's failure to  
110 maintain insurance coverage constitutes an immediate threat to  
111 the public health, safety, and welfare. If a mover fails to  
112 maintain insurance coverage, the department may immediately  
113 suspend the mover's registration or eligibility for  
114 registration, and the mover must immediately cease operating as  
115 a mover in this state. In addition, and notwithstanding the  
116 availability of any administrative relief pursuant to chapter  
117 120, the department may seek from the appropriate circuit court  
118 an immediate injunction prohibiting the mover from operating in  
119 this state until the mover complies with this paragraph. The  
120 mover may also be assessed a civil penalty not to exceed \$5,000  
121 and court costs.

122 (4) ~~LIABILITY LIMITATIONS; VALUATION RATES.~~ ~~A mover may not~~  
123 ~~limit its liability for the loss or damage of household goods to~~  
124 ~~a valuation rate that is less than 60 cents per pound per~~  
125 ~~article. A provision of a contract for moving services is void~~  
126 ~~if the provision limits a mover's liability to a valuation rate~~



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127 ~~that is less than the minimum rate under this subsection. If a~~  
128 ~~mover limits its liability for a shipper's goods, the mover must~~  
129 ~~disclose the limitation, including the valuation rate, to the~~  
130 ~~shipper in writing at the time that the estimate and contract~~  
131 ~~for services are executed and before any moving or accessorial~~  
132 ~~services are provided. The disclosure must also inform the~~  
133 ~~shipper of the opportunity to purchase valuation coverage if the~~  
134 ~~mover offers that coverage under subsection (5).~~

135       ~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation  
136 coverage to compensate a shipper for the loss or damage of the  
137 shipper's household goods that are lost or damaged during a  
138 household move. ~~If a mover offers valuation coverage,~~ The  
139 coverage must indemnify the shipper for at least the cost of  
140 repair or replacement of the goods, unless waived or amended by  
141 the shipper. The shipper may waive or amend the valuation  
142 coverage, and the waiver must be made in a signed acknowledgment  
143 in the contract ~~minimum valuation rate required under subsection~~  
144 ~~(4)~~. The mover must disclose the terms of the coverage to the  
145 shipper in writing, including any deductibles, in at the time  
146 ~~that~~ the binding estimate and again when the contract for  
147 services is ~~are~~ executed and before any moving or accessorial  
148 services are provided. The disclosure must inform the shipper of  
149 the cost of the valuation coverage, if any ~~the valuation rate of~~  
150 ~~the coverage, and the opportunity to reject the coverage. If~~  
151 ~~valuation coverage compensates a shipper for at least the~~  
152 ~~minimum valuation rate required under subsection (4), the~~  
153 ~~coverage satisfies the mover's liability for the minimum~~  
154 ~~valuation rate.~~

155       Section 4. Section 507.05, Florida Statutes, is amended to



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156 read:

157       507.05 Physical surveys, binding estimates, and contracts  
158 for service. ~~Before providing any moving or accessorial~~  
159 ~~services, a contract and estimate must be provided to a~~  
160 ~~prospective shipper in writing, must be signed and dated by the~~  
161 ~~shipper and the mover, and must include:~~

162       (1) PHYSICAL SURVEY.—A mover must conduct a physical survey  
163 of the household goods to be moved and provide the prospective  
164 shipper with a binding estimate of the cost of the move.

165       (2) WAIVER OF SURVEY.—A shipper may elect to waive the  
166 physical survey, and such waiver must be in writing and signed  
167 by the shipper before the household goods are loaded. The mover  
168 shall retain a copy of the waiver as an addendum to the contract  
169 for service.

170       (3) BINDING ESTIMATE.—Before executing a contract for  
171 service for a household move, and at least 48 hours before the  
172 scheduled time and date of a shipment of household goods, a  
173 mover must provide a binding estimate of the total charges,  
174 including, but not limited to, the loading, transportation or  
175 shipment, and unloading of household goods and accessorial  
176 services. The binding estimate shall be based on a physical  
177 survey conducted pursuant to subsection (1), unless waived  
178 pursuant to subsection (2).

179       (a) The shipper may waive the binding estimate if the  
180 waiver is made by signed or electronic acknowledgment before the  
181 commencement of the 48-hour period before the household goods  
182 are loaded. The mover shall retain a copy of the waiver as an  
183 addendum to the contract for services. To be enforceable, a  
184 waiver executed under this paragraph must, at a minimum, include



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185 a statement in uppercase type that is at least 5 points larger  
186 than, and clearly distinguishable from, the rest of the text of  
187 the waiver or release containing the statement. The exact  
188 statement to be included in a waiver of a binding estimate to be  
189 used by all movers shall be determined by the department in  
190 rulemaking and must include a delineation of the specific rights  
191 that a shipper may lose by waiving the binding estimate.

192 (b) The shipper may also waive the 48-hour period if the  
193 moving services requested commence within 48 hours of the  
194 shipper's initial contact with the mover contracted to perform  
195 the moving services.

196 (c) At a minimum, the binding estimate must include all of  
197 the following:

198 1. The table of measures used by the mover or the mover's  
199 agent in preparing the estimate.

200 2. The date the estimate was prepared and the proposed date  
201 of the move, if any.

202 3. An itemized breakdown and description of services, and  
203 the total cost to the shipper of loading, transporting or  
204 shipping, unloading, and accessorial services.

205 4. A statement that the estimate is binding on the mover  
206 and the shipper and that the charges shown apply only to those  
207 services specifically identified in the estimate.

208 5. Identification of acceptable forms of payment.

209 (d) A mover may charge a one-time fee, not to exceed \$100,  
210 for providing a binding estimate.

211 (e) The binding estimate must be signed by the mover and  
212 the shipper, and a copy must be provided to the shipper by the  
213 mover at the time that the estimate is signed.





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214       (f) A binding estimate may only be amended by the mover  
215 before the scheduled loading of household goods for shipment  
216 when the shipper has requested additional services of the mover  
217 not previously disclosed in the original binding estimate, or  
218 upon mutual agreement of the mover and the shipper. Once a mover  
219 begins to load the household goods for a move, failure to  
220 execute a new binding estimate signifies the mover has  
221 reaffirmed the original binding estimate.

222       (g) A mover may not collect more than the amount of the  
223 binding estimate unless:

224       1. The shipper waives receipt of a binding estimate under  
225 this subsection.

226       2. The shipper tenders additional household goods, requests  
227 additional services, or requires services that are not  
228 specifically included in the binding estimate, in which case the  
229 mover is not required to honor the estimate. If, despite the  
230 addition of household goods or the need for additional services,  
231 the mover chooses to perform the move, it must, before loading  
232 the household goods, inform the shipper of the associated  
233 charges in writing. The mover may require full payment at the  
234 destination for the costs associated with the additional  
235 requested services and the full amount of the original binding  
236 estimate.

237       3. Upon issuance of the contract for services, the mover  
238 advises the shipper, in advance of performing additional  
239 services, including accessorial services, that such services are  
240 essential to properly performing the move. The mover must allow  
241 the shipper at least 1 hour to determine whether to authorize  
242 the additional services.



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243 a. If the shipper agrees to pay for the additional  
244 services, the mover must execute a written addendum to the  
245 contract for services, which must be signed by the shipper. The  
246 addendum may be sent to the shipper by facsimile, e-mail,  
247 overnight courier, or certified mail, with return receipt  
248 requested. The mover must bill the shipper for the agreed upon  
249 additional services within 15 days after the delivery of those  
250 additional services pursuant to s. 507.06.

251 b. If the shipper does not agree to pay for the additional  
252 services, the mover may perform and, pursuant to s. 507.06, bill  
253 the shipper for those additional services necessary to complete  
254 the delivery.

255 (h) A mover shall retain a copy of the binding estimate for  
256 each move performed for at least 1 year after its preparation  
257 date as an attachment to the contract for service.

258 (4) CONTRACT FOR SERVICE.—Before providing any moving or  
259 accessorial services, a mover must provide a contract for  
260 service to the shipper, which the shipper must sign and date.

261 (a) At a minimum, the contract for service must include:

262 1.~~(1)~~ The name, telephone number, and physical address  
263 where the mover's employees are available during normal business  
264 hours.

265 2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and  
266 the ~~any~~ proposed date of the move, if any.

267 3.~~(3)~~ The name and address of the shipper, the addresses  
268 where the articles are to be picked up and delivered, and a  
269 telephone number where the shipper may be reached.

270 4.~~(4)~~ The name, telephone number, and physical address of  
271 any location where the household goods will be held pending



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272 further transportation, including situations in which ~~where~~ the  
273 mover retains possession of household goods pending resolution  
274 of a fee dispute with the shipper.

275 5.~~(5)~~ A binding estimate provided in accordance with  
276 subsection (3) ~~An itemized breakdown and description and total~~  
277 ~~of all costs and services for loading, transportation or~~  
278 ~~shipment, unloading, and accessorial services to be provided~~  
279 ~~during a household move or storage of household goods.~~

280 6. The total charges owed by the shipper based on the  
281 binding estimate and the terms and conditions for their payment,  
282 including any required minimum payment.

283 7. If the household goods are transported under an  
284 agreement to collect payment upon delivery, the maximum payment  
285 that the mover may demand at the time of delivery.

286 8.~~(6)~~ Acceptable forms of payment, which must be clearly  
287 and conspicuously disclosed to the shipper on the binding  
288 estimate and the contract for services. A mover must ~~shall~~  
289 accept at least ~~a minimum~~ of two of the three following forms of  
290 payment:

291 a.~~(a)~~ Cash, cashier's check, money order, or traveler's  
292 check;

293 b.~~(b)~~ Valid personal check, showing upon its face the name  
294 and address of the shipper or authorized representative; or

295 c.~~(c)~~ Valid credit card, which shall include, but not be  
296 limited to, Visa or MasterCard. ~~A mover must clearly and~~  
297 ~~conspicuously disclose to the shipper in the estimate and~~  
298 ~~contract for services the forms of payments the mover will~~  
299 ~~accept, including the forms of payment described in paragraphs~~  
300 ~~(a)-(c).~~



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301       (b) Each addendum to the contract for service is an  
302 integral part of the contract.

303       (c) A copy of the contract for service must accompany the  
304 household goods whenever they are in the mover's or the mover's  
305 agent's possession. Before a vehicle that is being used for the  
306 move leaves the point of origin, the driver responsible for the  
307 move must have the contract for service in his or her  
308 possession.

309       (d) A mover shall retain a contract for service for each  
310 move it performs for at least 1 year after the date the contract  
311 for service was signed.

312       Section 5. Section 507.054, Florida Statutes, is created to  
313 read:

314       507.054 Publication.—

315       (1) The department shall prepare a publication that  
316 includes a summary of the rights and responsibilities of, and  
317 remedies available to movers and shippers under this chapter.  
318 The publication must include a statement that a mover's failure  
319 to relinquish household goods as required by this chapter  
320 constitutes a felony of the third degree, punishable as provided  
321 in s. 775.082, s. 775.083, or s. 775.084, that any other  
322 violation of this chapter constitutes a misdemeanor of the first  
323 degree, punishable as provided in s. 775.082 or s. 775.083, and  
324 that any violation of this chapter constitutes a violation of  
325 the Florida Deceptive and Unfair Trade Practices Act. The  
326 publication must also include a notice to the shipper about the  
327 potential risks of shipping sentimental or family heirloom  
328 items.

329       (2) A mover may provide exact copies of the department's



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330 publication to shippers or may customize the color, design, and  
331 dimension of the front and back covers of the standard  
332 department publication. If the mover customizes the publication,  
333 the customized publication must include the content specified in  
334 subsection (1) and meet the following requirements:

335 (a) The font size used must be at least 10 points, with the  
336 exception that the following must appear prominently on the  
337 front cover in at least 12-point boldface type: "Your Rights and  
338 Responsibilities When You Move. Furnished by Your Mover, as  
339 Required by Florida Law."

340 (b) The size of the booklet must be at least 36 square  
341 inches.

342 (3) The shipper must acknowledge receipt of the publication  
343 by signed acknowledgement in the contract.

344 Section 6. Section 507.055, Florida Statutes, is created to  
345 read:

346 507.055 Required disclosure and acknowledgment of rights  
347 and remedies.—Before executing a contract for service for a  
348 move, a mover must provide to a prospective shipper all of the  
349 following:

350 (1) The publication required under s. 507.054.

351 (2) A concise, easy-to-read, and accurate binding estimate  
352 required under s. 507.05(3).

353 Section 7. Subsections (1) and (3) of section 507.06,  
354 Florida Statutes, are amended, and subsection (4) is added to  
355 that section, to read:

356 507.06 Delivery and storage of household goods.—

357 (1) On the agreed upon delivery date or within the  
358 timeframe specified in the contract for service, a mover must



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359 relinquish household goods to a shipper and must place the  
360 household goods inside a shipper's dwelling or, if directed by  
361 the shipper, inside a storehouse or warehouse that is owned or  
362 rented by the shipper or the shipper's agent, unless the shipper  
363 has not tendered payment pursuant to s. 507.065 ~~in the amount~~  
364 ~~specified in a written contract or estimate signed and dated by~~  
365 ~~the shipper.~~ This requirement may be waived by the shipper. A  
366 mover may not, under any circumstances, refuse to relinquish  
367 prescription medicines and household goods for use by children,  
368 including children's furniture, clothing, or toys, ~~under any~~  
369 ~~circumstances.~~

370 (3) A mover that lawfully fails to relinquish a shipper's  
371 household goods may place the goods in storage until payment in  
372 accordance with s. 507.065 is tendered; however, the mover must  
373 notify the shipper of the location where the goods are stored  
374 and the amount due within 5 days after receipt of a written  
375 request for that information from the shipper, which request  
376 must include the address where the shipper may receive the  
377 notice. A mover may not require a prospective shipper to waive  
378 any rights or requirements under this section.

379 (4) If a mover becomes aware that it will be unable to  
380 perform either the pickup or the delivery of household goods on  
381 the date agreed upon or during the timeframe specified in the  
382 contract for service due to circumstances not anticipated by the  
383 contract, the mover shall notify the shipper of the delay and  
384 advise the shipper of the amended date or timeframe within which  
385 the mover expects to pick up or deliver the household goods in a  
386 timely manner.

387 Section 8. Section 507.065, Florida Statutes, is created to



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388 read:

389 507.065 Payment.—

390 (1) Except as provided in s. 507.05(3), the maximum amount  
391 that a mover may charge before relinquishing household goods to  
392 a shipper is the exact amount of the binding estimate, unless  
393 waived by the shipper, plus charges for any additional services  
394 requested or agreed to in writing by the shipper after the  
395 contract for service was issued and for impracticable  
396 operations, if applicable.

397 (2) A mover must bill a shipper for any charges assessed  
398 under this chapter which are not collected upon delivery of  
399 household goods at their destination within 15 days after such  
400 delivery. A mover may assess a late fee for any uncollected  
401 charges if the shipper fails to make payment within 30 days  
402 after receipt of the bill.

403 Section 9. Subsections (1), (4), and (5) and paragraphs (a)  
404 and (b) of subsection (6), of section 507.07, Florida Statutes,  
405 are amended, to read:

406 507.07 Violations.—It is a violation of this chapter:

407 (1) To operate conduct business as a mover or moving  
408 broker, or advertise to engage in violation the business of  
409 moving or fail to comply with ss. 507.03-507.10, or any other  
410 requirement under this chapter offering to move, without being  
411 registered with the department.

412 (4) To increase the contracted cost fail to honor and  
413 comply with all provisions of the contract for moving services  
414 in any way other than provided for in this chapter or bill of  
415 lading regarding the purchaser's rights, benefits, and  
416 privileges thereunder.



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417 (5) To withhold delivery of household goods or in any way  
418 hold household goods in storage against the expressed wishes of  
419 the shipper if payment has been made as delineated in the  
420 estimate or contract for services, or pursuant to this chapter.

421 ~~(6) (a) To include in any contract any provision purporting~~  
422 ~~to waive or limit any right or benefit provided to shippers~~  
423 ~~under this chapter.~~

424 ~~(a) (b) Unless expressly authorized by this chapter,~~ to seek  
425 or solicit a waiver or acceptance of limitation from a shipper  
426 concerning rights or benefits provided under this chapter.

427 Section 10. Section 507.09, Florida Statutes, is amended to  
428 read:

429 507.09 Administrative remedies; penalties.-

430 (1) The department may enter an order doing one or more of  
431 the following if the department finds that a mover or moving  
432 broker, or a person employed or contracted by a mover or broker,  
433 has violated or is operating in violation of this chapter or the  
434 rules or orders issued pursuant to this chapter:

435 (a) Issuing a notice of noncompliance under s. 120.695.

436 (b) Imposing an administrative fine in the Class II  
437 category pursuant to s. 570.971 for each act or omission.

438 (c) Directing that the person cease and desist specified  
439 activities.

440 (d) Refusing to register or revoking or suspending a  
441 registration.

442 (e) Placing the registrant on probation, subject to the  
443 conditions specified by the department.

444 (2) The department shall, upon notification and subsequent  
445 written verification by a law enforcement agency, a court, a





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446 state attorney, or the Department of Law Enforcement,  
447 immediately suspend a registration or the processing of an  
448 application for a registration if the registrant, applicant, or  
449 an officer or director of the registrant or applicant is  
450 formally charged with a crime involving fraud, theft, larceny,  
451 embezzlement, or fraudulent conversion or misappropriation of  
452 property or a crime arising from conduct during a movement of  
453 household goods until final disposition of the case or removal  
454 or resignation of that officer or director.

455       (3) The administrative proceedings that ~~which~~ could result  
456 in the entry of an order imposing any of the penalties specified  
457 in subsection (1) or subsection (2) are governed by chapter 120.

458       ~~(3) The department may adopt rules under ss. 120.536(1) and~~  
459 ~~120.54 to administer this chapter.~~

460       Section 11. Subsection (4) of section 507.10, Florida  
461 Statutes, is amended to read:

462       507.10 Civil penalties; remedies.-

463       (4) Except as expressly authorized by this chapter, any  
464 provision in a contract for services or bill of lading from a  
465 mover or moving broker that purports to waive, limit, restrict,  
466 or avoid any of the duties, obligations, or prescriptions of the  
467 mover or broker, as provided in this chapter, is void.

468       Section 12. Section 507.11, Florida Statutes, is amended to  
469 read:

470       507.11 Criminal penalties.-

471       (1) The refusal of a mover or a mover's employee, agent, or  
472 contractor to comply with an order from a law enforcement  
473 officer to relinquish a shipper's household goods after the  
474 officer determines that the shipper has tendered payment in



475 accordance with s. 507.065 ~~of the amount of a~~

476

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

478 And the title is amended as follows:

479 Delete lines 15 - 75

480 and insert:

481 cost of repair or replacement goods unless waived or  
482 amended by the shipper; authorizing the shipper to  
483 waive or amend the valuation coverage; requiring that  
484 the waiver be made in a signed acknowledgment in the  
485 contract; revising the time at which the mover must  
486 disclose the terms of the coverage to the shipper in  
487 writing, including any deductibles; revising the  
488 information that the disclosure must provide to the  
489 shipper; amending s. 507.05, F.S.; requiring a mover  
490 to conduct a physical survey and provide a binding  
491 estimate in certain circumstances unless waived by the  
492 shipper; requiring specified content for the binding  
493 estimate; authorizing a shipper to waive the binding  
494 estimate in certain circumstances; authorizing the  
495 mover to provide a maximum one-time fee for providing  
496 a binding estimate; requiring the mover and shipper to  
497 sign the estimate; requiring the mover to provide the  
498 shipper with a copy of the estimate at the time of  
499 signature; providing that a binding estimate may only  
500 be amended under certain circumstances; authorizing a  
501 mover to charge more than the binding estimate in  
502 certain circumstances; requiring a mover to allow a  
503 shipper to consider whether additional services are



504 needed; requiring a mover to retain a copy of the  
505 binding estimate for a specified period; requiring a  
506 mover to provide a contract for service to the shipper  
507 before providing moving or accessorial services;  
508 requiring a driver to have possession of the contract  
509 before leaving the point of origin; requiring a mover  
510 to retain a contract of service for a specified  
511 period; creating s. 507.054, F.S.; requiring the  
512 department to prepare a publication that summarizes  
513 the rights and responsibilities of, and remedies  
514 available to, movers and shippers; requiring the  
515 publication to meet certain specifications; creating  
516 s. 507.055, F.S.; requiring a mover to provide certain  
517 disclosures to a prospective shipper; amending s.  
518 507.06, F.S.; requiring a mover to tender household  
519 goods for delivery on the agreed upon delivery date or  
520 within a specified period unless waived by the  
521 shipper; requiring a mover to notify and provide  
522 certain information to a shipper if the mover is  
523 unable to perform delivery on the agreed upon date or  
524 during the specified period; creating s. 507.065,  
525 F.S.; providing a maximum amount that a mover may  
526 charge a shipper unless waived by the shipper;  
527 requiring a mover to bill a shipper for specified  
528 charges in certain circumstances; authorizing a mover  
529 to assess a late fee for any uncollected charges in  
530 certain circumstances; amending s. 507.07, F.S.;  
531 providing that it is a violation of ch. 507, F.S., to  
532 fail to comply with specified provisions; providing



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533 that it is a violation of ch. 507, F.S., to increase  
534 the contracted cost for moving services in certain  
535 circumstances; conforming provisions to changes made  
536 by this act; amending s. 507.09, F.S.; requiring the  
537 department, upon verification by certain entities, to  
538 immediately suspend a registration or the processing  
539 of an application for a registration in certain  
540 circumstances; amending s. 507.10, F.S.; conforming a  
541 provision to a change made by this act; amending s.  
542 507.11, F.S.; providing

By the Committee on Commerce and Tourism; and Senator Lee

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1 A bill to be entitled  
 2 An act relating to household moving services; amending  
 3 s. 507.01, F.S.; defining terms; amending s. 507.02,  
 4 F.S.; clarifying intent; amending s. 507.04, F.S.;  
 5 removing a prohibition that a mover may not limit its  
 6 liability for the loss or damage of household goods to  
 7 a specified valuation rate; removing a requirement  
 8 that a mover disclose a liability limitation when the  
 9 mover limits its liability for a shipper's goods;  
 10 requiring a mover to offer valuation coverage to  
 11 compensate a shipper for the loss or damage of the  
 12 shipper's household goods that are lost or damaged  
 13 during a household move; requiring the valuation  
 14 coverage to indemnify the shipper for at least the  
 15 cost of replacement goods less depreciated value;  
 16 revising the time at which the mover must disclose the  
 17 terms of the coverage to the shipper in writing;  
 18 revising the information that the disclosure must  
 19 provide to the shipper; amending s. 507.05, F.S.;  
 20 requiring a mover to conduct a physical survey and  
 21 provide a binding estimate in certain circumstances  
 22 unless waived by the shipper; requiring specified  
 23 content for the binding estimate; authorizing the  
 24 mover to provide a maximum one-time fee for providing  
 25 a binding estimate; requiring the mover and shipper to  
 26 sign the estimate; requiring the mover to provide the  
 27 shipper with a copy of the estimate at the time of  
 28 signature; providing that a binding estimate may only  
 29 be amended under certain circumstances; authorizing a

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30 mover to charge more than the binding estimate in  
 31 certain circumstances; requiring a mover to allow a  
 32 shipper to consider whether additional services are  
 33 needed; requiring a mover to retain a copy of the  
 34 binding estimate for a specified period; requiring a  
 35 mover to provide a contract for service to the shipper  
 36 before providing moving or accessorial services;  
 37 requiring a driver to have possession of the contract  
 38 before leaving the point of origin; requiring a mover  
 39 to retain a contract of service for a specified  
 40 period; creating s. 507.054, F.S.; requiring the  
 41 department to prepare a publication that summarizes  
 42 the rights and responsibilities of, and remedies  
 43 available to, movers and shippers; requiring the  
 44 publication to meet certain specifications; creating  
 45 s. 507.055, F.S.; requiring a mover to provide certain  
 46 disclosures to a prospective shipper; amending s.  
 47 507.06, F.S.; requiring a mover to tender household  
 48 goods for delivery on the agreed upon delivery date or  
 49 within a specified period unless waived by the  
 50 shipper; requiring a mover to notify and provide  
 51 certain information to a shipper if the mover is  
 52 unable to perform delivery on the agreed upon date or  
 53 during the specified period; creating s. 507.065,  
 54 F.S.; providing a maximum amount that a mover may  
 55 charge a shipper; requiring a mover to bill a shipper  
 56 for certain amounts within a specified period;  
 57 creating s. 507.066, F.S.; specifying the amount of  
 58 payment that the mover may collect upon delivery of

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59 partially lost or destroyed household goods; requiring  
 60 a mover to determine the proportion of lost or  
 61 destroyed household goods; prohibiting a mover from  
 62 collecting or requiring a shipper to pay any charges  
 63 other than specific valuation rate charges if a  
 64 household goods shipment is totally lost or destroyed  
 65 in transit; amending s. 507.07, F.S.; providing that  
 66 it is a violation of ch. 507, F.S., to fail to comply  
 67 with specified provisions; providing that it is a  
 68 violation of ch. 507, F.S., to increase the contracted  
 69 cost for moving services in certain circumstances;  
 70 conforming a provision to a change made by this act;  
 71 amending s. 507.09, F.S.; requiring the department,  
 72 upon verification by certain entities, to immediately  
 73 suspend a registration or the processing of an  
 74 application for a registration in certain  
 75 circumstances; amending s. 507.11, F.S.; providing  
 76 criminal penalties; creating s. 507.14, F.S.;

77 requiring the department to adopt rules; providing an  
 78 effective date.

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

81  
 82 Section 1. Present subsections (6) through (9) of section  
 83 507.01, Florida Statutes, are amended, and new subsection (8) is  
 84 added to that section, to read:

85 507.01 Definitions.—As used in this chapter, the term:

86 ~~(6) "Estimate" means a written document that sets forth the~~  
 87 ~~total costs and describes the basis of those costs, relating to~~

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88 ~~a shipper's household move, including, but not limited to, the~~  
 89 ~~loading, transportation or shipment, and unloading of household~~  
 90 ~~goods and accessorial services.~~  
 91 (6)-(7) "Household goods" or "goods" means personal effects  
 92 or other personal property commonly found in a home, personal  
 93 residence, or other dwelling, including, but not limited to,  
 94 household furniture. The term does not include freight or  
 95 personal property moving to or from a factory, store, or other  
 96 place of business.  
 97 (7)-(8) "Household move" or "move" means the loading of  
 98 household goods into a vehicle, moving container, or other mode  
 99 of transportation or shipment; the transportation or shipment of  
 100 those household goods; and the unloading of those household  
 101 goods, when the transportation or shipment originates and  
 102 terminates at one of the following ultimate locations,  
 103 regardless of whether the mover temporarily stores the goods  
 104 while en route between the originating and terminating  
 105 locations:  
 106 (a) From one dwelling to another dwelling;  
 107 (b) From a dwelling to a storehouse or warehouse that is  
 108 owned or rented by the shipper or the shipper's agent; or  
 109 (c) From a storehouse or warehouse that is owned or rented  
 110 by the shipper or the shipper's agent to a dwelling.  
 111 (8) "Impracticable operations" means conditions that arise  
 112 after execution of a contract for household moving services  
 113 which make it impractical for a mover to perform pickup or  
 114 delivery services for a household move.  
 115 (9) "Additional Services" means any additional  
 116 transportation of household goods that is performed by a mover,

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117 is not specifically included in a binding estimate, and which  
 118 results in a charge to the shipper.

119 (10){9} "Mover" means a person who, for compensation,  
 120 contracts for or engages in the loading, transportation or  
 121 shipment, or unloading of household goods as part of a household  
 122 move. The term does not include a postal, courier, envelope, or  
 123 package service that does not advertise itself as a mover or  
 124 moving service.

125 Section 2. Subsection (3) of section 507.02, Florida  
 126 Statutes, is amended to read:

127 507.02 Construction; intent; application.—

128 (3) This chapter is intended to provide consistency and  
 129 transparency in moving practices and to secure the satisfaction  
 130 and confidence of shippers and members of the public when using  
 131 a mover.

132 Section 3. Subsections (1), (3), (4), and (5) of section  
 133 507.04, Florida Statutes, are amended to read:

134 507.04 Required insurance coverages; liability limitations;  
 135 valuation coverage.—

136 (1) CARGO LIABILITY INSURANCE.—

137 (a)1. Except as provided in paragraph (b), each mover  
 138 operating in this state must maintain current and valid cargo  
 139 liability insurance coverage of at least \$10,000 per shipment  
 140 for the loss or damage of household goods resulting from the  
 141 negligence of the mover or its employees or agents.

142 2. The mover must provide the department with evidence of  
 143 liability insurance coverage before the mover is registered with  
 144 the department under s. 507.03. All insurance coverage  
 145 maintained by a mover must remain in effect throughout the

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146 mover's registration period. A mover's failure to maintain  
 147 insurance coverage in accordance with this paragraph constitutes  
 148 an immediate threat to the public health, safety, and welfare.  
 149 ~~If a mover fails to maintain insurance coverage, the department~~  
 150 ~~may immediately suspend the mover's registration or eligibility~~  
 151 ~~for registration, and the mover must immediately cease operating~~  
 152 ~~as a mover in this state. In addition, and notwithstanding the~~  
 153 ~~availability of any administrative relief pursuant to chapter~~  
 154 ~~120, the department may seek from the appropriate circuit court~~  
 155 ~~an immediate injunction prohibiting the mover from operating in~~  
 156 ~~this state until the mover complies with this paragraph, a civil~~  
 157 ~~penalty not to exceed \$5,000, and court costs.~~

158 (b) A mover that operates two or fewer vehicles, in lieu of  
 159 maintaining the cargo liability insurance coverage required  
 160 under paragraph (a), may, and each moving broker must, maintain  
 161 one of the following alternative coverages:

162 1. A performance bond in the amount of \$25,000, for which  
 163 the surety of the bond must be a surety company authorized to  
 164 conduct business in this state; or

165 2. A certificate of deposit in a Florida banking  
 166 institution in the amount of \$25,000.

167  
 168 The original bond or certificate of deposit must be filed with  
 169 the department and must designate the department as the sole  
 170 beneficiary. The department must use the bond or certificate of  
 171 deposit exclusively for the payment of claims to consumers who  
 172 are injured by the fraud, misrepresentation, breach of contract,  
 173 misfeasance, malfeasance, or financial failure of the mover or  
 174 moving broker or by a violation of this chapter by the mover or

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175 broker. Liability for these injuries may be determined in an  
 176 administrative proceeding of the department or through a civil  
 177 action in a court of competent jurisdiction. However, claims  
 178 against the bond or certificate of deposit must only be paid, in  
 179 amounts not to exceed the determined liability for these  
 180 injuries, by order of the department in an administrative  
 181 proceeding. The bond or certificate of deposit is subject to  
 182 successive claims, but the aggregate amount of these claims may  
 183 not exceed the amount of the bond or certificate of deposit.

184 (3) INSURANCE COVERAGES.—The insurance coverages required  
 185 under paragraph (1) (a) and subsection (2) must be issued by an  
 186 insurance company or carrier licensed to transact business in  
 187 this state under the Florida Insurance Code as designated in s.  
 188 624.01. The department shall require a mover to present a  
 189 certificate of insurance of the required coverages before  
 190 issuance or renewal of a registration certificate under s.  
 191 507.03. The department shall be named as a certificateholder in  
 192 the certificate and must be notified at least 10 days before  
 193 cancellation of insurance coverage. A mover's failure to  
 194 maintain insurance coverage constitutes an immediate threat to  
 195 the public health, safety, and welfare. If a mover fails to  
 196 maintain insurance coverage, the department may immediately  
 197 suspend the mover's registration or eligibility for  
 198 registration, and the mover must immediately cease operating as  
 199 a mover in this state. In addition, and notwithstanding the  
 200 availability of any administrative relief pursuant to chapter  
 201 120, the department may seek from the appropriate circuit court  
 202 an immediate injunction prohibiting the mover from operating in  
 203 this state until the mover complies with this paragraph, a civil

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204 penalty not to exceed \$5,000, and court costs.

205 (4) ~~LIABILITY LIMITATIONS; VALUATION RATES.~~ ~~A mover may not~~  
 206 ~~limit its liability for the loss or damage of household goods to~~  
 207 ~~a valuation rate that is less than 60 cents per pound per~~  
 208 ~~article. A provision of a contract for moving services is void~~  
 209 ~~if the provision limits a mover's liability to a valuation rate~~  
 210 ~~that is less than the minimum rate under this subsection. If a~~  
 211 ~~mover limits its liability for a shipper's goods, the mover must~~  
 212 ~~disclose the limitation, including the valuation rate, to the~~  
 213 ~~shipper in writing at the time that the estimate and contract~~  
 214 ~~for services are executed and before any moving or accessorial~~  
 215 ~~services are provided. The disclosure must also inform the~~  
 216 ~~shipper of the opportunity to purchase valuation coverage if the~~  
 217 ~~mover offers that coverage under subsection (5).~~

218 ~~(5) VALUATION COVERAGE.~~ ~~A mover shall~~ may offer valuation  
 219 coverage to compensate a shipper for the loss or damage of the  
 220 shipper's household goods that are lost or damaged during a  
 221 household move. ~~If a mover offers valuation coverage,~~ The  
 222 coverage must indemnify the shipper for at least the cost of  
 223 replacement of the goods less depreciated value ~~minimum~~  
 224 valuation rate required under subsection (4). The mover must  
 225 disclose the terms of the coverage to the shipper in writing  
 226 within ~~at the time that~~ the binding estimate and again when the  
 227 contract for services ~~is~~ are executed and before any moving or  
 228 accessorial services are provided. The disclosure must inform  
 229 the shipper of the cost of the valuation coverage, if any the  
 230 valuation rate of the coverage, ~~and the opportunity to reject~~  
 231 the coverage. ~~If valuation coverage compensates a shipper for at~~  
 232 least the minimum valuation rate required under subsection (4),

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233 ~~the coverage satisfies the mover's liability for the minimum~~  
 234 ~~valuation rate.~~

235 Section 4. Section 507.05, Florida Statutes, is amended to  
 236 read:

237 507.05 Physical surveys, binding estimates, and contracts  
 238 for service. ~~Before providing any moving or accessorial~~  
 239 ~~services, a contract and estimate must be provided to a~~  
 240 ~~prospective shipper in writing, must be signed and dated by the~~  
 241 ~~shipper and the mover, and must include:~~

242 (1) PHYSICAL SURVEY.—A mover must conduct a physical survey  
 243 of the household goods to be moved and provide the prospective  
 244 shipper with a binding estimate of the cost of the move.

245 (2) WAIVER OF SURVEY.—A shipper may elect to waive the  
 246 physical survey, and such waiver must be in writing and signed  
 247 by the shipper before the household goods are loaded. The mover  
 248 shall retain a copy of the waiver as an addendum to the contract  
 249 for service.

250 (3) BINDING ESTIMATE.—Before executing a contract for  
 251 service for a household move, and at least 48 hours before the  
 252 scheduled time and date of a shipment of household goods, a  
 253 mover must provide a binding estimate of the total charges,  
 254 including, but not limited to, the loading, transportation or  
 255 shipment, and unloading of household goods and accessorial  
 256 services. The binding estimate shall be based on a physical  
 257 survey conducted pursuant to subsection (1), unless waived  
 258 pursuant to subsection (2).

259 (a) The shipper may waive the 48 hour waiting period and  
 260 such waiver must be made by signed acknowledgement in the  
 261 contract.

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262 (b) At a minimum, the binding estimate must include all of  
 263 the following:

264 1. The table of measures used by the mover or the mover's  
 265 agent in preparing the estimate.

266 2. The date the estimate was prepared and the proposed date  
 267 of the move, if any.

268 3. An itemized breakdown and description of services, and  
 269 the total cost to the shipper of loading, transporting or  
 270 shipping, unloading, and accessorial services.

271 4. A statement that the estimate is binding on the mover  
 272 and the shipper and that the charges shown apply only to those  
 273 services specifically identified in the estimate.

274 5. Identification of acceptable forms of payment.

275 (c) A mover may charge a one-time fee, not to exceed \$100,  
 276 for providing a binding estimate.

277 (d) The binding estimate must be signed by the mover and  
 278 the shipper, and a copy must be provided to the shipper by the  
 279 mover at the time that the estimate is signed.

280 (e) A binding estimate may only be amended by the mover  
 281 before the scheduled loading of household goods for shipment  
 282 when the shipper has requested additional services of the mover  
 283 not previously disclosed in the original binding estimate, or  
 284 upon mutual agreement of the mover and the shipper. Once a mover  
 285 begins to load the household goods for a move, failure to  
 286 execute a new binding estimate signifies the mover has  
 287 reaffirmed the original binding estimate.

288 (f) A mover may not collect more than the amount of the  
 289 binding estimate unless:

290 1. The shipper tenders additional household goods, requests

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291 additional services, or requires services that are not  
 292 specifically included in the binding estimate, in which case the  
 293 mover is not required to honor the estimate. If, despite the  
 294 addition of household goods or the need for additional services,  
 295 the mover chooses to perform the move, it must, before loading  
 296 the household goods, inform the shipper of the associated  
 297 charges in writing. The mover may require full payment at the  
 298 destination for the costs associated with the additional  
 299 requested services and the full amount of the original binding  
 300 estimate.

301 2. Upon issuance of the contract for services, the mover  
 302 advises the shipper, in advance of performing additional  
 303 services, including accessorial services, that such services are  
 304 essential to properly performing the move. The mover must allow  
 305 the shipper at least 1 hour to determine whether to authorize  
 306 the additional services.

307 a. If the shipper agrees to pay for the additional  
 308 services, the mover must execute a written addendum to the  
 309 contract for services, which must be signed by the shipper. The  
 310 addendum may be sent to the shipper by facsimile, e-mail,  
 311 overnight courier, or certified mail, with return receipt  
 312 requested. The mover must bill the shipper for the agreed upon  
 313 additional services within 15 days after the delivery of those  
 314 additional services pursuant to s. 507.06.

315 b. If the shipper does not agree to pay for the additional  
 316 services, the mover may perform and, pursuant to s. 507.06, bill  
 317 the shipper for those additional services necessary to complete  
 318 the delivery.

319 (g) A mover shall retain a copy of the binding estimate for

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320 each move performed for at least 1 year after its preparation  
 321 date as an attachment to the contract for service.

322 (4) CONTRACT FOR SERVICE.—Before providing any moving or  
 323 accessorial services, a mover must provide a contract for  
 324 service to the shipper, which the shipper must sign and date.

325 (a) At a minimum, the contract for service must include:

326 1.(4) The name, telephone number, and physical address  
 327 where the mover's employees are available during normal business  
 328 hours.

329 2.(2) The date the contract was ~~or~~ estimate is prepared and  
 330 the ~~any~~ proposed date of the move, if any.

331 3.(3) The name and address of the shipper, the addresses  
 332 where the articles are to be picked up and delivered, and a  
 333 telephone number where the shipper may be reached.

334 4.(4) The name, telephone number, and physical address of  
 335 any location where the household goods will be held pending  
 336 further transportation, including situations in which ~~where~~ the  
 337 mover retains possession of household goods pending resolution  
 338 of a fee dispute with the shipper.

339 5.(5) A binding estimate provided in accordance with s.  
 340 507.05—~~An itemized breakdown and description and total of all~~  
 341 ~~costs and services for loading, transportation or shipment,~~  
 342 ~~unloading, and accessorial services to be provided during a~~  
 343 ~~household move or storage of household goods.~~

344 6. The total charges owed by the shipper based on the  
 345 binding estimate and the terms and conditions for their payment,  
 346 including any required minimum payment.

347 7. If the household goods are transported under an  
 348 agreement to collect payment upon delivery, the maximum payment

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349 that the mover may demand at the time of delivery.  
 350 8.(6) Acceptable forms of payment, which must be clearly  
 351 and conspicuously disclosed to the shipper on the binding  
 352 estimate and the contract for services. A mover ~~must shall~~  
 353 accept ~~at least a minimum of~~ two of the three following forms of  
 354 payment:  
 355 a.~~(a)~~ Cash, cashier's check, money order, or traveler's  
 356 check;  
 357 b.~~(b)~~ Valid personal check, showing upon its face the name  
 358 and address of the shipper or authorized representative; or  
 359 c.~~(c)~~ Valid credit card, which shall include, but not be  
 360 limited to, Visa or MasterCard. ~~A mover must clearly and~~  
 361 ~~conspicuously disclose to the shipper in the estimate and~~  
 362 ~~contract for services the forms of payments the mover will~~  
 363 ~~accept, including the forms of payment described in paragraphs~~  
 364 ~~(a)-(c).~~  
 365 (b) Each addendum to the contract for service is an  
 366 integral part of the contract.  
 367 (c) A copy of the contract for service must accompany the  
 368 household goods whenever they are in the mover's or the mover's  
 369 agent's possession. Before a vehicle that is being used for the  
 370 move leaves the point of origin, the driver responsible for the  
 371 move must have the contract for service in his or her  
 372 possession.  
 373 (d) A mover shall retain a contract for service for each  
 374 move it performs for at least 1 year after the date the contract  
 375 for service was signed.  
 376 Section 5. Section 507.054, Florida Statutes, is created to  
 377 read:

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378 507.054 Publication.-  
 379 (1) The department shall prepare a publication that  
 380 includes a summary of the rights and responsibilities of, and  
 381 remedies available to movers and shippers under this chapter.  
 382 The publication must include a statement that a mover's failure  
 383 to relinquish household goods as required by this chapter  
 384 constitutes a felony of the third degree, punishable as provided  
 385 in s. 775.082, s. 775.083, or s. 775.084, that any other  
 386 violation of this chapter constitutes a misdemeanor of the first  
 387 degree, punishable as provided in s. 775.082 or s. 775.083, and  
 388 that any violation of this chapter constitutes a violation of  
 389 the Florida Deceptive and Unfair Trade Practices Act. The  
 390 publication must also include a notice to the shipper about the  
 391 potential risks of shipping sentimental or family heirloom  
 392 items.  
 393 (2) A mover may provide exact copies of the department's  
 394 publication to shippers or may customize the color, design, and  
 395 dimension of the front and back covers of the standard  
 396 department publication. If the mover customizes the publication,  
 397 the customized publication must include the content specified in  
 398 subsection (1) and meet the following requirements:  
 399 (a) The font size used must be at least 10 points, with the  
 400 exception that the following must appear prominently on the  
 401 front cover in at least 12-point boldface type: "Your Rights and  
 402 Responsibilities When You Move. Furnished by Your Mover, as  
 403 Required by Florida Law."  
 404 (b) The size of the booklet must be at least 36 square  
 405 inches.  
 406 (3) The shipper must acknowledge receipt of the publication

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407 by signed acknowledgement in the contract.

408 Section 6. Section 507.055, Florida Statutes, is created to  
409 read:

410 507.055 Required disclosure and acknowledgment of rights  
411 and remedies.—Before executing a contract for service for a  
412 move, a mover must provide to a prospective shipper all of the  
413 following:

414 (1) The publication required under s. 507.054.

415 (2) A concise, easy-to-read, and accurate binding estimate  
416 required under s. 507.05(3).

417 Section 7. Subsections (1) and (3) of section 507.06,  
418 Florida Statutes, are amended, and subsection (4) is added to  
419 that section, to read:

420 507.06 Delivery and storage of household goods.—

421 (1) On the agreed upon delivery date or within the  
422 timeframe specified in the contract for service, a mover must  
423 relinquish household goods to a shipper and must place the  
424 household goods inside a shipper's dwelling or, if directed by  
425 the shipper, inside a storehouse or warehouse that is owned or  
426 rented by the shipper or the shipper's agent, unless the shipper  
427 has not tendered payment pursuant to ss. 507.065 or 507.066 ~~in~~  
428 the amount specified in a written contract or estimate signed  
429 and dated by the shipper. This requirement may be waived by the  
430 shipper. A mover may not, under any circumstances, refuse to  
431 relinquish prescription medicines and household goods for use by  
432 children, including children's furniture, clothing, or toys,  
433 under any circumstances.

434 (3) A mover that lawfully fails to relinquish a shipper's  
435 household goods may place the goods in storage until payment in

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436 accordance with ss. 507.065 or 507.066 is tendered; however, the  
437 mover must notify the shipper of the location where the goods  
438 are stored and the amount due within 5 days after receipt of a  
439 written request for that information from the shipper, which  
440 request must include the address where the shipper may receive  
441 the notice. A mover may not require a prospective shipper to  
442 waive any rights or requirements under this section.

443 (4) If a mover becomes aware that it will be unable to  
444 perform either the pickup or the delivery of household goods on  
445 the date agreed upon or during the timeframe specified in the  
446 contract for service due to circumstances not anticipated by the  
447 contract, the mover shall notify the shipper of the delay and  
448 advise the shipper of the amended date or timeframe within which  
449 the mover expects to pick up or deliver the household goods in a  
450 timely manner.

451 Section 8. Section 507.065, Florida Statutes, is created to  
452 read:

453 507.065 Payment.—

454 (1) Except as provided in s. 507.05(3), the maximum amount  
455 that a mover may charge before relinquishing household goods to  
456 a shipper is the exact amount of the binding estimate, plus  
457 charges for any additional services requested or agreed to in  
458 writing by the shipper after the contract for service was issued  
459 and for impracticable operations, if applicable.

460 (2) A mover must bill a shipper for any charges assessed  
461 under this chapter which are not collected upon delivery of  
462 household goods at their destination within 15 days after such  
463 delivery. A mover may assess a late fee for any uncollected  
464 charges if the shipper fails to make payment within 30 days

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465 after receipt of the bill.

466 Section 9. Section 507.066, Florida Statutes, is created to  
467 read:

468 507.066 Collection for losses.—

469 (1) PARTIAL LOSSES.—A mover may collect an adjusted payment  
470 from a shipper if part of a shipment of household goods is lost  
471 or destroyed.

472 (a) A mover may collect the following at delivery:

473 1. A prorated percentage of the binding estimate. The  
474 prorated percentage must equal the percentage of the weight of  
475 the portion of the household goods delivered relative to the  
476 total weight of the household goods that were ordered to be  
477 moved.

478 2. Charges for any additional services requested by the  
479 shipper after the contract for service was issued.

480 3. Charges for impracticable operations, if applicable;  
481 however, such charges may not exceed 15 percent of all other  
482 charges due at delivery.

483 4. Any specific valuation rate charges due, as provided in  
484 s. 507.04(4), if applicable.

485 (b) The mover may bill and collect from the shipper any  
486 remaining charges not collected at the time of delivery in  
487 accordance with s. 507.065. This paragraph does not apply if the  
488 loss or destruction of household goods occurred as a result of  
489 an act or omission of the shipper.

490 (c) A mover must determine, at its own expense, the  
491 proportion of the household goods, based on actual or  
492 constructive weight, which were lost or destroyed in transit.

493 (2) TOTAL LOSSES.—A mover may not collect, or require a

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494 shipper to pay, freight charges, including a charge for  
495 accessorial services, when a household goods shipment is lost or  
496 destroyed in transit; however, the mover may collect a specific  
497 valuation rate charge due, as provided in s. 507.04(4). This  
498 subsection does not apply if the loss or destruction was due to  
499 an act or omission of the shipper.

500 (3) SHIPPER'S RIGHTS.—A shipper's rights under this section  
501 are in addition to any other rights the shipper may have with  
502 respect to household goods that were lost or destroyed while in  
503 the custody of the mover or the mover's agent. These rights also  
504 apply regardless of whether the shipper exercises his or her  
505 right to obtain a refund of the portion of a mover's published  
506 freight charges corresponding to the portion of the lost or  
507 destroyed household goods, including any charges for accessorial  
508 services, at the time the mover disposes of claims for loss,  
509 damage, or injury to the household goods.

510 Section 10. Subsections (1), (4), and (5) of section  
511 507.07, Florida Statutes, are amended, to read:

512 507.07 Violations.—It is a violation of this chapter:

513 (1) To ~~operate~~ ~~conduct business as a mover or moving~~  
514 ~~broker, or advertise to engage in violation the business of~~  
515 ~~moving or fail to comply with ss. 507.03-507.10, or any other~~  
516 ~~requirement under this chapter offering to move, without being~~  
517 ~~registered with the department.~~

518 (4) To ~~increase the contracted cost fail to honor and~~  
519 ~~comply with all provisions of the contract for moving services~~  
520 ~~in any way other than provided for in this chapter or bill of~~  
521 ~~lading regarding the purchaser's rights, benefits, and~~  
522 ~~privileges thereunder.~~

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523 (5) To withhold delivery of household goods or in any way  
 524 hold household goods in storage against the expressed wishes of  
 525 the shipper if payment has been made as delineated in the  
 526 estimate or contract for services, or pursuant to this chapter.

527 Section 11. Section 507.09, Florida Statutes, is amended to  
 528 read:

529 507.09 Administrative remedies; penalties.—

530 (1) The department may enter an order doing one or more of  
 531 the following if the department finds that a mover or moving  
 532 broker, or a person employed or contracted by a mover or broker,  
 533 has violated or is operating in violation of this chapter or the  
 534 rules or orders issued pursuant to this chapter:

535 (a) Issuing a notice of noncompliance under s. 120.695.

536 (b) Imposing an administrative fine in the Class II  
 537 category pursuant to s. 570.971 for each act or omission.

538 (c) Directing that the person cease and desist specified  
 539 activities.

540 (d) Refusing to register or revoking or suspending a  
 541 registration.

542 (e) Placing the registrant on probation, subject to the  
 543 conditions specified by the department.

544 (2) The department shall, upon notification and subsequent  
 545 written verification by a law enforcement agency, a court, a  
 546 state attorney, or the Department of Law Enforcement,  
 547 immediately suspend a registration or the processing of an  
 548 application for a registration if the registrant, applicant, or  
 549 an officer or director of the registrant or applicant is  
 550 formally charged with a crime involving fraud, theft, larceny,  
 551 embezzlement, or fraudulent conversion or misappropriation of

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552 property or a crime arising from conduct during a movement of  
 553 household goods until final disposition of the case or removal  
 554 or resignation of that officer or director.

555 (3) The administrative proceedings ~~that~~ which could result  
 556 in the entry of an order imposing any of the penalties specified  
 557 in subsection (1) or subsection (2) are governed by chapter 120.

558 ~~(3) The department may adopt rules under ss. 120.536(1) and~~  
 559 ~~120.54 to administer this chapter.~~

560 Section 12. Section 507.11, Florida Statutes, is amended to  
 561 read:

562 507.11 Criminal penalties.—

563 (1) The refusal of a mover or a mover's employee, agent, or  
 564 contractor to comply with an order from a law enforcement  
 565 officer to relinquish a shipper's household goods after the  
 566 officer determines that the shipper has tendered payment in  
 567 accordance with ss. 507.065 and 507.066 ~~of the amount of a~~  
 568 ~~written estimate or contract~~, or after the officer determines  
 569 that the mover did not produce a signed estimate or contract for  
 570 service upon which demand is being made for payment, is a felony  
 571 of the third degree, punishable as provided in s. 775.082, s.  
 572 775.083, or s. 775.084. A mover's compliance with an order from  
 573 a law enforcement officer to relinquish household goods to a  
 574 shipper is not a waiver or finding of fact regarding any right  
 575 to seek further payment from the shipper.

576 (2) Except as provided in subsection (1), any person or  
 577 business that violates this chapter commits a misdemeanor of the  
 578 first degree, punishable as provided in s. 775.082 or s.  
 579 775.083.

580 Section 13. Section 507.14, Florida Statutes, is created

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581 to read:

582 507.14 Rulemaking.~~The department shall adopt rules to~~  
583 administer this chapter.

584 Section 14. This act shall take effect July 1, 2015.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/2013

Meeting Date

5798

Bill Number (if applicable)

419526 SA

Amendment Barcode (if applicable)

Topic Household Moving

Name Chad Faison

Job Title Director of Communications

Address 1390 Timberlane Rd

Phone 850/222-6000

Street

Tallahassee

City

FL

State

32312

Zip

Email chad@FMWA.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Movers & Warehousemen's Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/15  
Meeting Date

SB 798  
Bill Number (if applicable)

Topic Household Moving Services

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 617-2700

Tallahassee FL 32399  
City State Zip

Email Jonathan.Rees@freshfromflorida.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: PCS/CS/SB 1006 (313118)

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Flores

SUBJECT: Depopulation of Citizens Property Insurance Corporation

DATE: April 10, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1006 makes the following changes related to Citizens Property Insurance Corporation (Citizens):

- Allows the consumer representative to the Citizens Board of Governors to be afforded the same conflict of interest exemption as other board members.
- Requires agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company. Such data may not be used for direct solicitations and must be kept confidential.
- Requires Citizens to make changes, by January 1, 2016, to their plan of operation as it relates to take-out agreements made with private insurers.
- Requires that all Citizens take-out agreements are subject to the Office of Insurance Regulations (OIR) approval.
- Requires that private companies must include in their take-out offers to Citizens policyholders, a comparison of coverages and rate between the insurer's policy and Citizens policy.
- Allows a Citizens policyholder who declines a take-out offer the option to be excluded from future take-out agreements for up to six months.

- Allows a Citizens policyholder, who accepts a take-out offer, the ability to reapply to Citizens and be treated as a renewal through the clearinghouse if within 36 months of leaving Citizens their premium is increased above the rate allowed under Citizens glide path.

There is no fiscal impact to state funds.

The bill is effective July 1, 2015.

## II. Present Situation:

### **Citizens Property Insurance Corporation (Citizens)**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>1</sup> Citizens is not a private insurance company.<sup>2</sup> Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors<sup>3</sup> (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>4</sup> Assets may not be commingled or used to fund losses in another account.<sup>5</sup>

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided by homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies

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<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

<sup>3</sup> The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives.

<sup>4</sup> The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>5</sup> s. 627.351(6)(b)2b., F.S.

covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.<sup>6</sup>

### **Citizens Clearinghouse**

The Citizens Property Insurance Corporation policyholder eligibility clearinghouse program was established by the Legislature in 2013<sup>7</sup>. Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens rate is ineligible for coverage with Citizens.

### **Citizens Board of Governors**

Citizens operates under the direction of a nine-member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members to the board, with one member appointed chair by the Chief Financial Officer. Board members serve three-year staggered terms. There is also a consumer representative on the board that is appointed by the Governor.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.<sup>8</sup> Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board.

### **Citizens Underwriting and Claims Files**

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality.<sup>9</sup> The corporation may also make

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<sup>6</sup> In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

<sup>7</sup> s. 10 ch. 2013-60 L.O.F.

<sup>8</sup> Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.

<sup>9</sup> s. 627.351(6)(x)2., F.S.

specified information from the underwriting and claims files available to general lines insurance agents. Such information is limited to the name, address, and telephone number of the property owner or insured; the location of the risk; rating information; loss history; and policy type. The law requires the agent to retain the confidentiality of the information.<sup>10</sup>

### **Takeout Bonus Agreements**

Section 627.3511, F.S., was created by the Legislature in 1995<sup>11</sup> and at that time applied to the depopulation of the Residential Property and Casualty Joint Underwriting Association. After the Legislature merged the two underwriting associations to create Citizens in 2002, this section was amended to apply to the depopulation of Citizens Property Insurance Corporation.

Take out agreements that were approved under this section allowed for a per policy bonus to be paid to each participating insurer provided that they removed a given number of policies for a set number of years. Today, takeouts from Citizens are no longer approved through takeout bonus agreements. The last Citizens takeout bonus agreement under this section took place in November 2007.

### **Takeout Non-Bonus Agreements**

In January of 2008, Citizens Board of Governors adopted a takeout non-bonus plan that was approved by the Office of Insurance Regulation (OIR) in March of that year. Since that time, most takeout agreements between Citizens and private carriers have occurred under this plan. In addition to the requirements of the approved plan, the OIR has on occasion required additional requirements to be included in such takeout agreements. According to the OIR, until 2009 the OIR required private carriers that removed policies from Citizens through a takeout agreement to write the risk at a rate below the rate of Citizens at that time.<sup>12</sup> Additionally, in November of 2013 the OIR began requiring takeout companies to provide information to the policyholder detailing a rate comparison between the Citizens rate and the private insurer's rate.<sup>13</sup>

### **Depopulation**

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.<sup>14</sup> Policyholders whose policies are selected for takeout are sent a letter notifying them of the pending takeout and provided instructions on how they can elect (opt-out) to remain with Citizens, if eligible and should they wish to do so. Policyholders who do not opt-out within the opt-out timeframe will receive a Notice of Assumption, a non-renewal from Citizens and a Certificate of Assumption. The policyholder still has an additional timeframe from the receipt of these notices to elect to remain with Citizens. Citizens encourage policyholders who receive private-market offers to consider them carefully and discuss the advantages of such coverage with their agents. Accepting an offer from a private insurer can decrease a Citizens policyholder's potential of assessment.

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<sup>10</sup> *Id.*

<sup>11</sup> s. 10, ch.95-276, L.O.F.

<sup>12</sup> Information received from the OIR on March 19, 2015. (On file with the Banking and Insurance Committee)

<sup>13</sup> *Id.*

<sup>14</sup> s. 627.351(6), F.S.

In November 2011, Citizens reported a policy count of 1,472,391 policies insured. As of March 13, 2015, Citizens reports their policy count was at 598,408 policies insured.<sup>15</sup> Much of the success of Citizens reduction in size is the result of depopulation through takeout agreements. In 2012, 2013, and 2014, a total of 1,059,323 policies were removed from Citizens and placed into the private market through the use of the current takeout agreement process.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill allows for the consumer representative on Citizens' board to be afforded the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees as is provided in current law to other members appointed to the Citizens board.

The bill requires agents placing policies with Citizens to hold an appointment by an insurer authorized to write and is writing or renewing personal lines or commercial residential property coverage or commercial nonresidential property coverage within the state.

The bill expands the list of who may receive information from the confidential underwriting and claims files to include an entity which has obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company. The information made available to these entities is the same information available to a licensed general lines agent. The information may be used for the sole purpose of analyzing risks for underwriting in the private insurance market and must be kept confidential. In addition, the bill expressly prohibits the use of the data by any of the authorized users for direct solicitation of policyholders.

The bill requires Citizens Property Insurance Corporation to, by January 1, 2016, amend its plan of operations related to take-out agreements made with private insurers. The amended plan must include:

- That the Office of Insurance Regulation (OIR) has to approve all take-out agreements before policies can be removed from Citizens. This is currently done by the OIR, and this provision will codify such practice in statute.
- That private companies must provide in their take-out offers to Citizens policyholders, a comparison of coverages, and rate between their policy and the Citizens policy. The OIR has required this of all take-out agreements reached after November 2013. This provision again will codify this requirement in statute.
- That a Citizens policyholder who declines a take-out offer may elect to not receive additional take-out offers for up to six months.
- That Citizens policyholders who accepts a take-out offer have the ability to reapply with Citizens and be treated as a renewal through the Citizens clearinghouse if, within 36 months of leaving Citizens, the private insurer increases the policy rate more than what is allowed under the Citizens glide path. This mirrors a similar provision that is applied to policyholders who accept offers of coverage from private insurers through the clearinghouse.

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<sup>15</sup> Citizens Policy Inforce Weekly Summary Report March 16, 2015.

<sup>16</sup> Citizens President's Report to the Board of Governors March 18, 2015.

The bill is effective July 1, 2015.

**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:

Under PCS/CS/SB 1006, Citizens policyholders who accept take-out offers from private insurers and whose rates then increase above the Citizens glide path, within 36 months of leaving Citizens, will have the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 627.351 of the Florida Statutes.

**IX. Additional Information:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The committee substitute makes the following changes to the bill:

- Allows the consumer representative to the Citizens Board the same conflict of interest exemption provided to other board members.
- Requires agents who write business for Citizens must also hold an appointment with an admitted carrier that is currently writing or renewing policies in the state.
- Allows Citizens to share underwriting and claims files data with entities that have obtained a permit to become an authorized insurer, a reinsurer, reinsurance broker, or modeling company.
- Provides that Citizens must, by January 1, 2016, amend its plan of operations related to take-out agreements with private insurers.

**CS by Banking and Insurance on March 23, 2015:**

CS/SB 1006 made the following changes to the bill:

- Requires that all Citizens take-out agreements be approved by the OIR.
- Requires private companies to provide a comparison of coverages and rate between their policy and the Citizens policy.
- Allows Citizens policyholders a 6 month opt out from being included in any takeout agreements.
- Allows Citizens policyholders who accept take-out offers from private insurers and whose rates are then increased above the Citizens glide path, within 36 months of leaving Citizens, the ability to reapply with Citizens and be rated as a renewal through the clearinghouse.

- B. **Amendments:**

None.





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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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	.	

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Appropriations Subcommittee on General Government (Hays)  
recommended the following:

**Senate Amendment (with directory and title amendments)**

Delete lines 177 - 569

and insert:

representative by the Governor is deemed to be within the scope  
of the exemption provided in s. 112.313(7) (b) and is in addition  
to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President  
of the Senate, and the Speaker of the House of Representatives  
shall each appoint two members of the board. At least one of the



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11 two members appointed by each appointing officer must have  
12 demonstrated expertise in insurance and be deemed to be within  
13 the scope of the exemption provided in s. 112.313(7)(b). The  
14 Chief Financial Officer shall designate one of the appointees as  
15 chair. All board members serve at the pleasure of the appointing  
16 officer. All members of the board are subject to removal at will  
17 by the officers who appointed them. All board members, including  
18 the chair, must be appointed to serve for 3-year terms beginning  
19 annually on a date designated by the plan. However, for the  
20 first term beginning on or after July 1, 2009, each appointing  
21 officer shall appoint one member of the board for a 2-year term  
22 and one member for a 3-year term. A board vacancy shall be  
23 filled for the unexpired term by the appointing officer. The  
24 Chief Financial Officer shall appoint a technical advisory group  
25 to provide information and advice to the board in connection  
26 with the board's duties under this subsection. The executive  
27 director and senior managers of the corporation shall be engaged  
28 by the board and serve at the pleasure of the board. Any  
29 executive director appointed on or after July 1, 2006, is  
30 subject to confirmation by the Senate. The executive director is  
31 responsible for employing other staff as the corporation may  
32 require, subject to review and concurrence by the board.

33       b. The board shall create a Market Accountability Advisory  
34 Committee to assist the corporation in developing awareness of  
35 its rates and its customer and agent service levels in  
36 relationship to the voluntary market insurers writing similar  
37 coverage.

38       (I) The members of the advisory committee consist of the  
39 following 11 persons, one of whom must be elected chair by the



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40 members of the committee: four representatives, one appointed by  
41 the Florida Association of Insurance Agents, one by the Florida  
42 Association of Insurance and Financial Advisors, one by the  
43 Professional Insurance Agents of Florida, and one by the Latin  
44 American Association of Insurance Agencies; three  
45 representatives appointed by the insurers with the three highest  
46 voluntary market share of residential property insurance  
47 business in the state; one representative from the Office of  
48 Insurance Regulation; one consumer appointed by the board who is  
49 insured by the corporation at the time of appointment to the  
50 committee; one representative appointed by the Florida  
51 Association of Realtors; and one representative appointed by the  
52 Florida Bankers Association. All members shall be appointed to  
53 3-year terms and may serve for consecutive terms.

54 (II) The committee shall report to the corporation at each  
55 board meeting on insurance market issues which may include rates  
56 and rate competition with the voluntary market; service,  
57 including policy issuance, claims processing, and general  
58 responsiveness to policyholders, applicants, and agents; and  
59 matters relating to depopulation.

60 5. Must provide a procedure for determining the eligibility  
61 of a risk for coverage, as follows:

62 a. Subject to s. 627.3517, with respect to personal lines  
63 residential risks, if the risk is offered coverage from an  
64 authorized insurer at the insurer's approved rate under a  
65 standard policy including wind coverage or, if consistent with  
66 the insurer's underwriting rules as filed with the office, a  
67 basic policy including wind coverage, for a new application to  
68 the corporation for coverage, the risk is not eligible for any



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69 policy issued by the corporation unless the premium for coverage  
70 from the authorized insurer is more than 15 percent greater than  
71 the premium for comparable coverage from the corporation.  
72 Whenever an offer of coverage for a personal lines residential  
73 risk is received for a policyholder of the corporation at  
74 renewal from an authorized insurer, if the offer is equal to or  
75 less than the corporation's renewal premium for comparable  
76 coverage, the risk is not eligible for coverage with the  
77 corporation. If the risk is not able to obtain such offer, the  
78 risk is eligible for a standard policy including wind coverage  
79 or a basic policy including wind coverage issued by the  
80 corporation; however, if the risk could not be insured under a  
81 standard policy including wind coverage regardless of market  
82 conditions, the risk is eligible for a basic policy including  
83 wind coverage unless rejected under subparagraph 8. However, a  
84 policyholder removed from the corporation through an assumption  
85 agreement remains eligible for coverage from the corporation  
86 until the end of the assumption period. The corporation shall  
87 determine the type of policy to be provided on the basis of  
88 objective standards specified in the underwriting manual and  
89 based on generally accepted underwriting practices.

90 (I) If the risk accepts an offer of coverage through the  
91 market assistance plan or through a mechanism established by the  
92 corporation other than a plan established by s. 627.3518, before  
93 a policy is issued to the risk by the corporation or during the  
94 first 30 days of coverage by the corporation, and the producing  
95 agent who submitted the application to the plan or to the  
96 corporation is not currently appointed by the insurer, the  
97 insurer shall:



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98           (A) Pay to the producing agent of record of the policy for  
99 the first year, an amount that is the greater of the insurer's  
100 usual and customary commission for the type of policy written or  
101 a fee equal to the usual and customary commission of the  
102 corporation; or

103           (B) Offer to allow the producing agent of record of the  
104 policy to continue servicing the policy for at least 1 year and  
105 offer to pay the agent the greater of the insurer's or the  
106 corporation's usual and customary commission for the type of  
107 policy written.

108  
109 If the producing agent is unwilling or unable to accept  
110 appointment, the new insurer shall pay the agent in accordance  
111 with sub-sub-sub-subparagraph (A).

112           (II) If the corporation enters into a contractual agreement  
113 for a take-out plan, the producing agent of record of the  
114 corporation policy is entitled to retain any unearned commission  
115 on the policy, and the insurer shall:

116           (A) Pay to the producing agent of record, for the first  
117 year, an amount that is the greater of the insurer's usual and  
118 customary commission for the type of policy written or a fee  
119 equal to the usual and customary commission of the corporation;  
120 or

121           (B) Offer to allow the producing agent of record to  
122 continue servicing the policy for at least 1 year and offer to  
123 pay the agent the greater of the insurer's or the corporation's  
124 usual and customary commission for the type of policy written.

125  
126 If the producing agent is unwilling or unable to accept



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127 appointment, the new insurer shall pay the agent in accordance  
128 with sub-sub-sub-subparagraph (A).

129       b. With respect to commercial lines residential risks, for  
130 a new application to the corporation for coverage, if the risk  
131 is offered coverage under a policy including wind coverage from  
132 an authorized insurer at its approved rate, the risk is not  
133 eligible for a policy issued by the corporation unless the  
134 premium for coverage from the authorized insurer is more than 15  
135 percent greater than the premium for comparable coverage from  
136 the corporation. Whenever an offer of coverage for a commercial  
137 lines residential risk is received for a policyholder of the  
138 corporation at renewal from an authorized insurer, if the offer  
139 is equal to or less than the corporation's renewal premium for  
140 comparable coverage, the risk is not eligible for coverage with  
141 the corporation. If the risk is not able to obtain any such  
142 offer, the risk is eligible for a policy including wind coverage  
143 issued by the corporation. However, a policyholder removed from  
144 the corporation through an assumption agreement remains eligible  
145 for coverage from the corporation until the end of the  
146 assumption period.

147       (I) If the risk accepts an offer of coverage through the  
148 market assistance plan or through a mechanism established by the  
149 corporation other than a plan established by s. 627.3518, before  
150 a policy is issued to the risk by the corporation or during the  
151 first 30 days of coverage by the corporation, and the producing  
152 agent who submitted the application to the plan or the  
153 corporation is not currently appointed by the insurer, the  
154 insurer shall:

155       (A) Pay to the producing agent of record of the policy, for



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156 the first year, an amount that is the greater of the insurer's  
157 usual and customary commission for the type of policy written or  
158 a fee equal to the usual and customary commission of the  
159 corporation; or

160 (B) Offer to allow the producing agent of record of the  
161 policy to continue servicing the policy for at least 1 year and  
162 offer to pay the agent the greater of the insurer's or the  
163 corporation's usual and customary commission for the type of  
164 policy written.

165

166 If the producing agent is unwilling or unable to accept  
167 appointment, the new insurer shall pay the agent in accordance  
168 with sub-sub-sub-subparagraph (A).

169 (II) If the corporation enters into a contractual agreement  
170 for a take-out plan, the producing agent of record of the  
171 corporation policy is entitled to retain any unearned commission  
172 on the policy, and the insurer shall:

173 (A) Pay to the producing agent of record, for the first  
174 year, an amount that is the greater of the insurer's usual and  
175 customary commission for the type of policy written or a fee  
176 equal to the usual and customary commission of the corporation;  
177 or

178 (B) Offer to allow the producing agent of record to  
179 continue servicing the policy for at least 1 year and offer to  
180 pay the agent the greater of the insurer's or the corporation's  
181 usual and customary commission for the type of policy written.

182

183 If the producing agent is unwilling or unable to accept  
184 appointment, the new insurer shall pay the agent in accordance



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185 with sub-sub-sub-subparagraph (A).

186 c. For purposes of determining comparable coverage under  
187 sub-subparagraphs a. and b., the comparison must be based on  
188 those forms and coverages that are reasonably comparable. The  
189 corporation may rely on a determination of comparable coverage  
190 and premium made by the producing agent who submits the  
191 application to the corporation, made in the agent's capacity as  
192 the corporation's agent. A comparison may be made solely of the  
193 premium with respect to the main building or structure only on  
194 the following basis: the same coverage A or other building  
195 limits; the same percentage hurricane deductible that applies on  
196 an annual basis or that applies to each hurricane for commercial  
197 residential property; the same percentage of ordinance and law  
198 coverage, if the same limit is offered by both the corporation  
199 and the authorized insurer; the same mitigation credits, to the  
200 extent the same types of credits are offered both by the  
201 corporation and the authorized insurer; the same method for loss  
202 payment, such as replacement cost or actual cash value, if the  
203 same method is offered both by the corporation and the  
204 authorized insurer in accordance with underwriting rules; and  
205 any other form or coverage that is reasonably comparable as  
206 determined by the board. If an application is submitted to the  
207 corporation for wind-only coverage in the coastal account, the  
208 premium for the corporation's wind-only policy plus the premium  
209 for the ex-wind policy that is offered by an authorized insurer  
210 to the applicant must be compared to the premium for multiperil  
211 coverage offered by an authorized insurer, subject to the  
212 standards for comparison specified in this subparagraph. If the  
213 corporation or the applicant requests from the authorized





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214 insurer a breakdown of the premium of the offer by types of  
215 coverage so that a comparison may be made by the corporation or  
216 its agent and the authorized insurer refuses or is unable to  
217 provide such information, the corporation may treat the offer as  
218 not being an offer of coverage from an authorized insurer at the  
219 insurer's approved rate.

220         6. Must include rules for classifications of risks and  
221 rates.

222         7. Must provide that if premium and investment income for  
223 an account attributable to a particular calendar year are in  
224 excess of projected losses and expenses for the account  
225 attributable to that year, such excess shall be held in surplus  
226 in the account. Such surplus must be available to defray  
227 deficits in that account as to future years and used for that  
228 purpose before assessing assessable insurers and assessable  
229 insureds as to any calendar year.

230         8. Must provide objective criteria and procedures to be  
231 uniformly applied to all applicants in determining whether an  
232 individual risk is so hazardous as to be uninsurable. In making  
233 this determination and in establishing the criteria and  
234 procedures, the following must be considered:

235             a. Whether the likelihood of a loss for the individual risk  
236 is substantially higher than for other risks of the same class;  
237 and

238             b. Whether the uncertainty associated with the individual  
239 risk is such that an appropriate premium cannot be determined.

240

241 The acceptance or rejection of a risk by the corporation shall  
242 be construed as the private placement of insurance, and the



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243 provisions of chapter 120 do not apply.

244         9. Must provide that the corporation make its best efforts  
245 to procure catastrophe reinsurance at reasonable rates, to cover  
246 its projected 100-year probable maximum loss as determined by  
247 the board of governors.

248         10. The policies issued by the corporation must provide  
249 that if the corporation or the market assistance plan obtains an  
250 offer from an authorized insurer to cover the risk at its  
251 approved rates, the risk is no longer eligible for renewal  
252 through the corporation, except as otherwise provided in this  
253 subsection.

254         11. Corporation policies and applications must include a  
255 notice that the corporation policy could, under this section, be  
256 replaced with a policy issued by an authorized insurer which  
257 does not provide coverage identical to the coverage provided by  
258 the corporation. The notice must also specify that acceptance of  
259 corporation coverage creates a conclusive presumption that the  
260 applicant or policyholder is aware of this potential.

261         12. May establish, subject to approval by the office,  
262 different eligibility requirements and operational procedures  
263 for any line or type of coverage for any specified county or  
264 area if the board determines that such changes are justified due  
265 to the voluntary market being sufficiently stable and  
266 competitive in such area or for such line or type of coverage  
267 and that consumers who, in good faith, are unable to obtain  
268 insurance through the voluntary market through ordinary methods  
269 continue to have access to coverage from the corporation. If  
270 coverage is sought in connection with a real property transfer,  
271 the requirements and procedures may not provide an effective



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272 date of coverage later than the date of the closing of the  
273 transfer as established by the transferor, the transferee, and,  
274 if applicable, the lender.

275 13. Must provide that, with respect to the coastal account,  
276 any assessable insurer with a surplus as to policyholders of \$25  
277 million or less writing 25 percent or more of its total  
278 countrywide property insurance premiums in this state may  
279 petition the office, within the first 90 days of each calendar  
280 year, to qualify as a limited apportionment company. A regular  
281 assessment levied by the corporation on a limited apportionment  
282 company for a deficit incurred by the corporation for the  
283 coastal account may be paid to the corporation on a monthly  
284 basis as the assessments are collected by the limited  
285 apportionment company from its insureds, but a limited  
286 apportionment company must begin collecting the regular  
287 assessments not later than 90 days after the regular assessments  
288 are levied by the corporation, and the regular assessments must  
289 be paid in full within 15 months after being levied by the  
290 corporation. A limited apportionment company shall collect from  
291 its policyholders any emergency assessment imposed under sub-  
292 subparagraph (b)3.d. The plan must provide that, if the office  
293 determines that any regular assessment will result in an  
294 impairment of the surplus of a limited apportionment company,  
295 the office may direct that all or part of such assessment be  
296 deferred as provided in subparagraph (q)4. However, an emergency  
297 assessment to be collected from policyholders under sub-  
298 subparagraph (b)3.d. may not be limited or deferred.

299 14. Must provide that the corporation appoint as its  
300 licensed agents only those agents who also hold an appointment



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301 as defined in s. 626.015(3) with an insurer who at the time of  
302 the agent's initial appointment by the corporation is authorized  
303 to write and is actually writing personal lines residential  
304 property coverage, commercial residential property coverage, or  
305 commercial nonresidential property coverage within the state.

306 15. Must provide a premium payment plan option to its  
307 policyholders which, at a minimum, allows for quarterly and  
308 semiannual payment of premiums. A monthly payment plan may, but  
309 is not required to, be offered.

310 16. Must limit coverage on mobile homes or manufactured  
311 homes built before 1994 to actual cash value of the dwelling  
312 rather than replacement costs of the dwelling.

313 17. Must provide coverage for manufactured or mobile home  
314 dwellings. Such coverage must also include the following  
315 attached structures:

316 a. Screened enclosures that are aluminum framed or screened  
317 enclosures that are not covered by the same or substantially the  
318 same materials as those of the primary dwelling;

319 b. Carports that are aluminum or carports that are not  
320 covered by the same or substantially the same materials as those  
321 of the primary dwelling; and

322 c. Patios that have a roof covering that is constructed of  
323 materials that are not the same or substantially the same  
324 materials as those of the primary dwelling.

325

326 The corporation shall make available a policy for mobile homes  
327 or manufactured homes for a minimum insured value of at least  
328 \$3,000.

329 18. May provide such limits of coverage as the board



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330 determines, consistent with the requirements of this subsection.

331 19. May require commercial property to meet specified  
332 hurricane mitigation construction features as a condition of  
333 eligibility for coverage.

334 20. Must provide that new or renewal policies issued by the  
335 corporation on or after January 1, 2012, which cover sinkhole  
336 loss do not include coverage for any loss to appurtenant  
337 structures, driveways, sidewalks, decks, or patios that are  
338 directly or indirectly caused by sinkhole activity. The  
339 corporation shall exclude such coverage using a notice of  
340 coverage change, which may be included with the policy renewal,  
341 and not by issuance of a notice of nonrenewal of the excluded  
342 coverage upon renewal of the current policy.

343 21. As of January 1, 2012, must require that the agent  
344 obtain from an applicant for coverage from the corporation an  
345 acknowledgment signed by the applicant, which includes, at a  
346 minimum, the following statement:

347 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE  
348 AND ASSESSMENT LIABILITY:

349 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE  
350 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A  
351 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,  
352 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND  
353 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE  
354 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT  
355 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA  
356 LEGISLATURE.

357 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER  
358 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,



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359 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO  
360 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN  
361 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE  
362 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES  
363 ARE REGULATED AND APPROVED BY THE STATE.

364 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY  
365 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER  
366 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE  
367 FLORIDA LEGISLATURE.

368 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE  
369 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE  
370 STATE OF FLORIDA.

371 a. The corporation shall maintain, in electronic format or  
372 otherwise, a copy of the applicant's signed acknowledgment and  
373 provide a copy of the statement to the policyholder as part of  
374 the first renewal after the effective date of this subparagraph.

375 b. The signed acknowledgment form creates a conclusive  
376 presumption that the policyholder understood and accepted his or  
377 her potential surcharge and assessment liability as a  
378 policyholder of the corporation.

379 (x)1. The following records of the corporation are  
380 confidential and exempt from the provisions of s. 119.07(1) and  
381 s. 24(a), Art. I of the State Constitution:

382 a. Underwriting files, except that a policyholder or an  
383 applicant shall have access to his or her own underwriting  
384 files. Confidential and exempt underwriting file records may  
385 also be released to other governmental agencies upon written  
386 request and demonstration of need; such records held by the  
387 receiving agency remain confidential and exempt as provided



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388 herein.

389       b. Claims files, until termination of all litigation and  
390 settlement of all claims arising out of the same incident,  
391 although portions of the claims files may remain exempt, as  
392 otherwise provided by law. Confidential and exempt claims file  
393 records may be released to other governmental agencies upon  
394 written request and demonstration of need; such records held by  
395 the receiving agency remain confidential and exempt as provided  
396 herein.

397       c. Records obtained or generated by an internal auditor  
398 pursuant to a routine audit, until the audit is completed, or if  
399 the audit is conducted as part of an investigation, until the  
400 investigation is closed or ceases to be active. An investigation  
401 is considered "active" while the investigation is being  
402 conducted with a reasonable, good faith belief that it could  
403 lead to the filing of administrative, civil, or criminal  
404 proceedings.

405       d. Matters reasonably encompassed in privileged attorney-  
406 client communications.

407       e. Proprietary information licensed to the corporation  
408 under contract and the contract provides for the confidentiality  
409 of such proprietary information.

410       f. All information relating to the medical condition or  
411 medical status of a corporation employee which is not relevant  
412 to the employee's capacity to perform his or her duties, except  
413 as otherwise provided in this paragraph. Information that is  
414 exempt shall include, but is not limited to, information  
415 relating to workers' compensation, insurance benefits, and  
416 retirement or disability benefits.



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417 g. Upon an employee's entrance into the employee assistance  
418 program, a program to assist any employee who has a behavioral  
419 or medical disorder, substance abuse problem, or emotional  
420 difficulty which affects the employee's job performance, all  
421 records relative to that participation shall be confidential and  
422 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
423 of the State Constitution, except as otherwise provided in s.  
424 112.0455(11).

425 h. Information relating to negotiations for financing,  
426 reinsurance, depopulation, or contractual services, until the  
427 conclusion of the negotiations.

428 i. Minutes of closed meetings regarding underwriting files,  
429 and minutes of closed meetings regarding an open claims file  
430 until termination of all litigation and settlement of all claims  
431 with regard to that claim, except that information otherwise  
432 confidential or exempt by law shall be redacted.

433 2. If an authorized insurer is considering underwriting a  
434 risk insured by the corporation, relevant underwriting files and  
435 confidential claims files may be released to the insurer  
436 provided the insurer agrees in writing, notarized and under  
437 oath, to maintain the confidentiality of such files. If a file  
438 is transferred to an insurer, that file is no longer a public  
439 record because it is not held by an agency subject to the  
440 provisions of the public records law. Underwriting files and  
441 confidential claims files may also be released to staff and the  
442 board of governors of the market assistance plan established  
443 pursuant to s. 627.3515, who must retain the confidentiality of  
444 such files, except such files may be released to authorized  
445 insurers that are considering assuming the risks to which the





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446 files apply, provided the insurer agrees in writing, notarized  
447 and under oath, to maintain the confidentiality of such files.  
448 Finally, the corporation or the board or staff of the market  
449 assistance plan may make the following information obtained from  
450 underwriting files and confidential claims files available to  
451 licensed general lines insurance agents: name, address, and  
452 telephone number of the residential property owner or insured;  
453 location of the risk; rating information; loss history; and  
454 policy type. The receiving licensed general lines insurance  
455 agent must retain the confidentiality of the information  
456 received and may use the information only for the purposes of  
457 developing a take-out plan to be submitted to the office for  
458 approval or otherwise analyzing the underwriting of a risk or  
459 risks insured by the corporation on behalf of the private  
460 insurance market. The licensed general lines agent and an  
461 insurer receiving information under this subparagraph may not  
462 use the information for the direct solicitation of  
463 policyholders. An entity that has obtained a permit to become an  
464 authorized insurer, a reinsurer, a reinsurance broker, or a  
465 modeling company may receive the information available to a  
466 licensed general lines agent for the sole purpose of analyzing  
467 risks for underwriting in the private insurance market and must  
468 retain the confidentiality of the information received. Such  
469 entities may not use the information for the direct solicitation  
470 of policyholders.

471 3. A policyholder who has filed suit against the  
472 corporation has the right to discover the contents of his or her  
473 own claims file to the same extent that discovery of such  
474 contents would be available from a private insurer in litigation



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475 as provided by the Florida Rules of Civil Procedure, the Florida  
476 Evidence Code, and other applicable law. Pursuant to subpoena, a  
477 third party has the right to discover the contents of an  
478 insured's or applicant's underwriting or claims file to the same  
479 extent that discovery of such contents would be available from a  
480 private insurer by subpoena as provided by the Florida Rules of  
481 Civil Procedure, the Florida Evidence Code, and other applicable  
482 law, and subject to any confidentiality protections requested by  
483 the corporation and agreed to by the seeking party or ordered by  
484 the court. The corporation may release confidential underwriting  
485 and claims file contents and information as it deems necessary  
486 and appropriate to underwrite or service insurance policies and  
487 claims, subject to any confidentiality protections deemed  
488 necessary and appropriate by the corporation.

489 4. Portions of meetings of the corporation are exempt from  
490 the provisions of s. 286.011 and s. 24(b), Art. I of the State  
491 Constitution wherein confidential underwriting files or  
492 confidential open claims files are discussed. All portions of  
493 corporation meetings which are closed to the public shall be  
494 recorded by a court reporter. The court reporter shall record  
495 the times of commencement and termination of the meeting, all  
496 discussion and proceedings, the names of all persons present at  
497 any time, and the names of all persons speaking. No portion of  
498 any closed meeting shall be off the record. Subject to the  
499 provisions hereof and s. 119.07(1)(d)-(f), the court reporter's  
500 notes of any closed meeting shall be retained by the corporation  
501 for a minimum of 5 years. A copy of the transcript, less any  
502 exempt matters, of any closed meeting wherein claims are  
503 discussed shall become public as to individual claims after



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504 settlement of the claim.

505 (ii) The corporation shall revise the programs adopted  
506 pursuant to sub-subparagraph (6)(q)3.a. to maximize policyholder  
507 options and encourage increased participation by insurers and  
508 agents.

509 1. After January 1, 2016, such revisions must include a  
510 process by which policyholders are informed if one or more  
511 insurers demonstrate an interest in taking out that policy from  
512 the corporation. This demonstration of interest must include the  
513 amount of the estimated premium, a description of the coverage,  
514 including an explanation of differences, and a comparison of the  
515 estimated premium and coverage offered by the insurer to the  
516 estimated premium and coverage provided by the corporation. The  
517 corporation shall develop a uniform format for the estimated  
518 premium and coverage information required by this subparagraph.  
519 After January 1, 2016, a policy may not be taken out from the  
520 corporation unless the provisions of this subparagraph are met.

521 2. A policyholder may elect not to be solicited for take-  
522 out offers more than once in a 6-month period.

523 3. A policyholder whose policy was taken out by an insurer  
524 in the previous 36 months is considered a renewal policyholder  
525 under s. 627.3518 if the corporation determines that the insurer  
526 continues to insure the policyholder and that the initial  
527 premium of the insurer exceeded its estimated premium by more  
528 than 10 percent or the insurer increased the rate on the policy  
529 in excess of the increase allowed for the corporation under  
530 subparagraph (6)(n)6.

531  
532 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====



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533 And the directory clause is amended as follows:

534 Delete lines 16 - 17

535 and insert:

536 Section 1. Paragraphs (c) and (x) of subsection (6) of  
537 section 627.351, Florida Statutes, are amended, and paragraph  
538 (ii) is added to that subsection, to read:

539

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

541 And the title is amended as follows:

542 Delete lines 2 - 11

543 and insert:

544 An act relating to operations of the Citizens Property  
545 Insurance Corporation; amending s. 627.351, F.S.;  
546 specifying that a consumer representative appointed by  
547 the Governor to the Citizens Property Insurance  
548 Corporation's board of governors is not prohibited  
549 from practicing in a certain profession if required or  
550 permitted by law or ordinance; authorizing the use of  
551 specified information by certain entities in analyzing  
552 risks and prohibiting the use of such information for  
553 the direct solicitation of policyholders; requiring  
554 the take-out program to be revised for specified  
555 purposes; requiring policyholders after a specified  
556 date to receive certain information relating to a  
557 demonstration of interest to insure by private  
558 insurers; requiring the corporation to develop uniform  
559 formats for certain information; allowing a  
560 policyholder to elect to limit the frequency of  
561 solicitations for take-out offers; providing



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562           circumstances under which a policyholder whose policy  
563           was taken out to be considered a renewal policyholder  
564           for certain rate increase purposes; providing an



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

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Appropriations Subcommittee on General Government (Hays)  
recommended the following:

1           **Senate Amendment to Amendment (527578) (with title**  
2 **amendment)**

3  
4           Delete lines 300 - 303

5 and insert:

6 licensed agents only those agents who throughout such  
7 appointments also hold an appointment as defined in s.

8 626.015(3) by ~~with~~ an insurer who ~~at the time of the agent's~~

9 ~~initial appointment by the corporation~~ is authorized to write

10 and is actually writing or renewing personal lines residential



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11  
12  
13  
14  
15  
16  
17  
18

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

And the title is amended as follows:

Delete line 550

and insert:

permitted by law or ordinance; revising the  
requirements for licensed agents of the corporation;  
authorizing the use of

By the Committee on Banking and Insurance; and Senator Flores

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A bill to be entitled

An act relating to the depopulation of the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; requiring takeout agreements to be approved by the Office of Insurance Regulation; requiring an insurer to provide certain information to a policyholder regarding a takeout agreement; excluding corporation policyholders from future takeout offers for 6 months under certain circumstances; allowing specified applicants for corporation coverage to be considered renewal policyholders; providing an effective date.

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

Section 1. Paragraph (c) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

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b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota

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59 share primary insurance agreements for hurricane coverage, as  
60 defined in s. 627.4025(2)(a), for eligible risks, and adopt  
61 property insurance forms for eligible risks which cover the  
62 peril of wind only.

63 a. As used in this subsection, the term:

64 (I) "Quota share primary insurance" means an arrangement in  
65 which the primary hurricane coverage of an eligible risk is  
66 provided in specified percentages by the corporation and an  
67 authorized insurer. The corporation and authorized insurer are  
68 each solely responsible for a specified percentage of hurricane  
69 coverage of an eligible risk as set forth in a quota share  
70 primary insurance agreement between the corporation and an  
71 authorized insurer and the insurance contract. The  
72 responsibility of the corporation or authorized insurer to pay  
73 its specified percentage of hurricane losses of an eligible  
74 risk, as set forth in the agreement, may not be altered by the  
75 inability of the other party to pay its specified percentage of  
76 losses. Eligible risks that are provided hurricane coverage  
77 through a quota share primary insurance arrangement must be  
78 provided policy forms that set forth the obligations of the  
79 corporation and authorized insurer under the arrangement,  
80 clearly specify the percentages of quota share primary insurance  
81 provided by the corporation and authorized insurer, and  
82 conspicuously and clearly state that the authorized insurer and  
83 the corporation may not be held responsible beyond their  
84 specified percentage of coverage of hurricane losses.

85 (II) "Eligible risks" means personal lines residential and  
86 commercial lines residential risks that meet the underwriting  
87 criteria of the corporation and are located in areas that were

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88 eligible for coverage by the Florida Windstorm Underwriting  
89 Association on January 1, 2002.

90 b. The corporation may enter into quota share primary  
91 insurance agreements with authorized insurers at corporation  
92 coverage levels of 90 percent and 50 percent.

93 c. If the corporation determines that additional coverage  
94 levels are necessary to maximize participation in quota share  
95 primary insurance agreements by authorized insurers, the  
96 corporation may establish additional coverage levels. However,  
97 the corporation's quota share primary insurance coverage level  
98 may not exceed 90 percent.

99 d. Any quota share primary insurance agreement entered into  
100 between an authorized insurer and the corporation must provide  
101 for a uniform specified percentage of coverage of hurricane  
102 losses, by county or territory as set forth by the corporation  
103 board, for all eligible risks of the authorized insurer covered  
104 under the agreement.

105 e. Any quota share primary insurance agreement entered into  
106 between an authorized insurer and the corporation is subject to  
107 review and approval by the office. However, such agreement shall  
108 be authorized only as to insurance contracts entered into  
109 between an authorized insurer and an insured who is already  
110 insured by the corporation for wind coverage.

111 f. For all eligible risks covered under quota share primary  
112 insurance agreements, the exposure and coverage levels for both  
113 the corporation and authorized insurers shall be reported by the  
114 corporation to the Florida Hurricane Catastrophe Fund. For all  
115 policies of eligible risks covered under such agreements, the  
116 corporation and the authorized insurer must maintain complete

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117 and accurate records for the purpose of exposure and loss  
 118 reimbursement audits as required by fund rules. The corporation  
 119 and the authorized insurer shall each maintain duplicate copies  
 120 of policy declaration pages and supporting claims documents.

121 g. The corporation board shall establish in its plan of  
 122 operation standards for quota share agreements which ensure that  
 123 there is no discriminatory application among insurers as to the  
 124 terms of the agreements, pricing of the agreements, incentive  
 125 provisions if any, and consideration paid for servicing policies  
 126 or adjusting claims.

127 h. The quota share primary insurance agreement between the  
 128 corporation and an authorized insurer must set forth the  
 129 specific terms under which coverage is provided, including, but  
 130 not limited to, the sale and servicing of policies issued under  
 131 the agreement by the insurance agent of the authorized insurer  
 132 producing the business, the reporting of information concerning  
 133 eligible risks, the payment of premium to the corporation, and  
 134 arrangements for the adjustment and payment of hurricane claims  
 135 incurred on eligible risks by the claims adjuster and personnel  
 136 of the authorized insurer. Entering into a quota sharing  
 137 insurance agreement between the corporation and an authorized  
 138 insurer is voluntary and at the discretion of the authorized  
 139 insurer.

140 3. May provide that the corporation may employ or otherwise  
 141 contract with individuals or other entities to provide  
 142 administrative or professional services that may be appropriate  
 143 to effectuate the plan. The corporation may borrow funds by  
 144 issuing bonds or by incurring other indebtedness, and shall have  
 145 other powers reasonably necessary to effectuate the requirements

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146 of this subsection, including, without limitation, the power to  
 147 issue bonds and incur other indebtedness in order to refinance  
 148 outstanding bonds or other indebtedness. The corporation may  
 149 seek judicial validation of its bonds or other indebtedness  
 150 under chapter 75. The corporation may issue bonds or incur other  
 151 indebtedness, or have bonds issued on its behalf by a unit of  
 152 local government pursuant to subparagraph (q)2. in the absence  
 153 of a hurricane or other weather-related event, upon a  
 154 determination by the corporation, subject to approval by the  
 155 office, that such action would enable it to efficiently meet the  
 156 financial obligations of the corporation and that such  
 157 financings are reasonably necessary to effectuate the  
 158 requirements of this subsection. The corporation may take all  
 159 actions needed to facilitate tax-free status for such bonds or  
 160 indebtedness, including formation of trusts or other affiliated  
 161 entities. The corporation may pledge assessments, projected  
 162 recoveries from the Florida Hurricane Catastrophe Fund, other  
 163 reinsurance recoverables, policyholder surcharges and other  
 164 surcharges, and other funds available to the corporation as  
 165 security for bonds or other indebtedness. In recognition of s.  
 166 10, Art. I of the State Constitution, prohibiting the impairment  
 167 of obligations of contracts, it is the intent of the Legislature  
 168 that no action be taken whose purpose is to impair any bond  
 169 indenture or financing agreement or any revenue source committed  
 170 by contract to such bond or other indebtedness.

171 4. Must require that the corporation operate subject to the  
 172 supervision and approval of a board of governors consisting of  
 173 nine individuals who are residents of this state and who are  
 174 from different geographical areas of the state, one of whom is

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175 appointed by the Governor and serves solely to advocate on  
 176 behalf of the consumer. The appointment of a consumer  
 177 representative by the Governor is in addition to the  
 178 appointments authorized under sub-subparagraph a.

179 a. The Governor, the Chief Financial Officer, the President  
 180 of the Senate, and the Speaker of the House of Representatives  
 181 shall each appoint two members of the board. At least one of the  
 182 two members appointed by each appointing officer must have  
 183 demonstrated expertise in insurance and be deemed to be within  
 184 the scope of the exemption provided in s. 112.313(7)(b). The  
 185 Chief Financial Officer shall designate one of the appointees as  
 186 chair. All board members serve at the pleasure of the appointing  
 187 officer. All members of the board are subject to removal at will  
 188 by the officers who appointed them. All board members, including  
 189 the chair, must be appointed to serve for 3-year terms beginning  
 190 annually on a date designated by the plan. However, for the  
 191 first term beginning on or after July 1, 2009, each appointing  
 192 officer shall appoint one member of the board for a 2-year term  
 193 and one member for a 3-year term. A board vacancy shall be  
 194 filled for the unexpired term by the appointing officer. The  
 195 Chief Financial Officer shall appoint a technical advisory group  
 196 to provide information and advice to the board in connection  
 197 with the board's duties under this subsection. The executive  
 198 director and senior managers of the corporation shall be engaged  
 199 by the board and serve at the pleasure of the board. Any  
 200 executive director appointed on or after July 1, 2006, is  
 201 subject to confirmation by the Senate. The executive director is  
 202 responsible for employing other staff as the corporation may  
 203 require, subject to review and concurrence by the board.

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204 b. The board shall create a Market Accountability Advisory  
 205 Committee to assist the corporation in developing awareness of  
 206 its rates and its customer and agent service levels in  
 207 relationship to the voluntary market insurers writing similar  
 208 coverage.

209 (I) The members of the advisory committee consist of the  
 210 following 11 persons, one of whom must be elected chair by the  
 211 members of the committee: four representatives, one appointed by  
 212 the Florida Association of Insurance Agents, one by the Florida  
 213 Association of Insurance and Financial Advisors, one by the  
 214 Professional Insurance Agents of Florida, and one by the Latin  
 215 American Association of Insurance Agencies; three  
 216 representatives appointed by the insurers with the three highest  
 217 voluntary market share of residential property insurance  
 218 business in the state; one representative from the Office of  
 219 Insurance Regulation; one consumer appointed by the board who is  
 220 insured by the corporation at the time of appointment to the  
 221 committee; one representative appointed by the Florida  
 222 Association of Realtors; and one representative appointed by the  
 223 Florida Bankers Association. All members shall be appointed to  
 224 3-year terms and may serve for consecutive terms.

225 (II) The committee shall report to the corporation at each  
 226 board meeting on insurance market issues which may include rates  
 227 and rate competition with the voluntary market; service,  
 228 including policy issuance, claims processing, and general  
 229 responsiveness to policyholders, applicants, and agents; and  
 230 matters relating to depopulation.

231 5. Must provide a procedure for determining the eligibility  
 232 of a risk for coverage, as follows:

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233 a. Subject to s. 627.3517, with respect to personal lines  
 234 residential risks, if the risk is offered coverage from an  
 235 authorized insurer at the insurer's approved rate under a  
 236 standard policy including wind coverage or, if consistent with  
 237 the insurer's underwriting rules as filed with the office, a  
 238 basic policy including wind coverage, for a new application to  
 239 the corporation for coverage, the risk is not eligible for any  
 240 policy issued by the corporation unless the premium for coverage  
 241 from the authorized insurer is more than 15 percent greater than  
 242 the premium for comparable coverage from the corporation.  
 243 Whenever an offer of coverage for a personal lines residential  
 244 risk is received for a policyholder of the corporation at  
 245 renewal from an authorized insurer, if the offer is equal to or  
 246 less than the corporation's renewal premium for comparable  
 247 coverage, the risk is not eligible for coverage with the  
 248 corporation. If the risk is not able to obtain such offer, the  
 249 risk is eligible for a standard policy including wind coverage  
 250 or a basic policy including wind coverage issued by the  
 251 corporation; however, if the risk could not be insured under a  
 252 standard policy including wind coverage regardless of market  
 253 conditions, the risk is eligible for a basic policy including  
 254 wind coverage unless rejected under subparagraph 8. However, a  
 255 policyholder removed from the corporation through an assumption  
 256 agreement remains eligible for coverage from the corporation  
 257 until the end of the assumption period. The corporation shall  
 258 determine the type of policy to be provided on the basis of  
 259 objective standards specified in the underwriting manual and  
 260 based on generally accepted underwriting practices.  
 261 (I) If the risk accepts an offer of coverage through the

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262 market assistance plan or through a mechanism established by the  
 263 corporation other than a plan established by s. 627.3518, before  
 264 a policy is issued to the risk by the corporation or during the  
 265 first 30 days of coverage by the corporation, and the producing  
 266 agent who submitted the application to the plan or to the  
 267 corporation is not currently appointed by the insurer, the  
 268 insurer shall:  
 269 (A) Pay to the producing agent of record of the policy for  
 270 the first year, an amount that is the greater of the insurer's  
 271 usual and customary commission for the type of policy written or  
 272 a fee equal to the usual and customary commission of the  
 273 corporation; or  
 274 (B) Offer to allow the producing agent of record of the  
 275 policy to continue servicing the policy for at least 1 year and  
 276 offer to pay the agent the greater of the insurer's or the  
 277 corporation's usual and customary commission for the type of  
 278 policy written.  
 279  
 280 If the producing agent is unwilling or unable to accept  
 281 appointment, the new insurer shall pay the agent in accordance  
 282 with sub-sub-sub-subparagraph (A).  
 283 (II) If the corporation enters into a contractual agreement  
 284 for a take-out plan, the producing agent of record of the  
 285 corporation policy is entitled to retain any unearned commission  
 286 on the policy, and the insurer shall:  
 287 (A) Pay to the producing agent of record, for the first  
 288 year, an amount that is the greater of the insurer's usual and  
 289 customary commission for the type of policy written or a fee  
 290 equal to the usual and customary commission of the corporation;

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291 or

292 (B) Offer to allow the producing agent of record to  
 293 continue servicing the policy for at least 1 year and offer to  
 294 pay the agent the greater of the insurer's or the corporation's  
 295 usual and customary commission for the type of policy written.  
 296

297 If the producing agent is unwilling or unable to accept  
 298 appointment, the new insurer shall pay the agent in accordance  
 299 with sub-sub-sub-subparagraph (A).

300 b. With respect to commercial lines residential risks, for  
 301 a new application to the corporation for coverage, if the risk  
 302 is offered coverage under a policy including wind coverage from  
 303 an authorized insurer at its approved rate, the risk is not  
 304 eligible for a policy issued by the corporation unless the  
 305 premium for coverage from the authorized insurer is more than 15  
 306 percent greater than the premium for comparable coverage from  
 307 the corporation. Whenever an offer of coverage for a commercial  
 308 lines residential risk is received for a policyholder of the  
 309 corporation at renewal from an authorized insurer, if the offer  
 310 is equal to or less than the corporation's renewal premium for  
 311 comparable coverage, the risk is not eligible for coverage with  
 312 the corporation. If the risk is not able to obtain any such  
 313 offer, the risk is eligible for a policy including wind coverage  
 314 issued by the corporation. However, a policyholder removed from  
 315 the corporation through an assumption agreement remains eligible  
 316 for coverage from the corporation until the end of the  
 317 assumption period.

318 (I) If the risk accepts an offer of coverage through the  
 319 market assistance plan or through a mechanism established by the

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320 corporation other than a plan established by s. 627.3518, before  
 321 a policy is issued to the risk by the corporation or during the  
 322 first 30 days of coverage by the corporation, and the producing  
 323 agent who submitted the application to the plan or the  
 324 corporation is not currently appointed by the insurer, the  
 325 insurer shall:

326 (A) Pay to the producing agent of record of the policy, for  
 327 the first year, an amount that is the greater of the insurer's  
 328 usual and customary commission for the type of policy written or  
 329 a fee equal to the usual and customary commission of the  
 330 corporation; or

331 (B) Offer to allow the producing agent of record of the  
 332 policy to continue servicing the policy for at least 1 year and  
 333 offer to pay the agent the greater of the insurer's or the  
 334 corporation's usual and customary commission for the type of  
 335 policy written.

336 If the producing agent is unwilling or unable to accept  
 337 appointment, the new insurer shall pay the agent in accordance  
 338 with sub-sub-sub-subparagraph (A).

340 (II) If the corporation enters into a contractual agreement  
 341 for a take-out plan, the producing agent of record of the  
 342 corporation policy is entitled to retain any unearned commission  
 343 on the policy, and the insurer shall:

344 (A) Pay to the producing agent of record, for the first  
 345 year, an amount that is the greater of the insurer's usual and  
 346 customary commission for the type of policy written or a fee  
 347 equal to the usual and customary commission of the corporation;  
 348 or

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349 (B) Offer to allow the producing agent of record to  
 350 continue servicing the policy for at least 1 year and offer to  
 351 pay the agent the greater of the insurer's or the corporation's  
 352 usual and customary commission for the type of policy written.

353  
 354 If the producing agent is unwilling or unable to accept  
 355 appointment, the new insurer shall pay the agent in accordance  
 356 with sub-sub-sub-subparagraph (A).

357 c. For purposes of determining comparable coverage under  
 358 sub-subparagraphs a. and b., the comparison must be based on  
 359 those forms and coverages that are reasonably comparable. The  
 360 corporation may rely on a determination of comparable coverage  
 361 and premium made by the producing agent who submits the  
 362 application to the corporation, made in the agent's capacity as  
 363 the corporation's agent. A comparison may be made solely of the  
 364 premium with respect to the main building or structure only on  
 365 the following basis: the same coverage A or other building  
 366 limits; the same percentage hurricane deductible that applies on  
 367 an annual basis or that applies to each hurricane for commercial  
 368 residential property; the same percentage of ordinance and law  
 369 coverage, if the same limit is offered by both the corporation  
 370 and the authorized insurer; the same mitigation credits, to the  
 371 extent the same types of credits are offered both by the  
 372 corporation and the authorized insurer; the same method for loss  
 373 payment, such as replacement cost or actual cash value, if the  
 374 same method is offered both by the corporation and the  
 375 authorized insurer in accordance with underwriting rules; and  
 376 any other form or coverage that is reasonably comparable as  
 377 determined by the board. If an application is submitted to the

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378 corporation for wind-only coverage in the coastal account, the  
 379 premium for the corporation's wind-only policy plus the premium  
 380 for the ex-wind policy that is offered by an authorized insurer  
 381 to the applicant must be compared to the premium for multiperil  
 382 coverage offered by an authorized insurer, subject to the  
 383 standards for comparison specified in this subparagraph. If the  
 384 corporation or the applicant requests from the authorized  
 385 insurer a breakdown of the premium of the offer by types of  
 386 coverage so that a comparison may be made by the corporation or  
 387 its agent and the authorized insurer refuses or is unable to  
 388 provide such information, the corporation may treat the offer as  
 389 not being an offer of coverage from an authorized insurer at the  
 390 insurer's approved rate.

391 6. Must include rules for classifications of risks and  
 392 rates.

393 7. Must provide that if premium and investment income for  
 394 an account attributable to a particular calendar year are in  
 395 excess of projected losses and expenses for the account  
 396 attributable to that year, such excess shall be held in surplus  
 397 in the account. Such surplus must be available to defray  
 398 deficits in that account as to future years and used for that  
 399 purpose before assessing assessable insurers and assessable  
 400 insureds as to any calendar year.

401 8. Must provide objective criteria and procedures to be  
 402 uniformly applied to all applicants in determining whether an  
 403 individual risk is so hazardous as to be uninsurable. In making  
 404 this determination and in establishing the criteria and  
 405 procedures, the following must be considered:

406 a. Whether the likelihood of a loss for the individual risk

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407 is substantially higher than for other risks of the same class;  
408 and

409 b. Whether the uncertainty associated with the individual  
410 risk is such that an appropriate premium cannot be determined.

411

412 The acceptance or rejection of a risk by the corporation shall  
413 be construed as the private placement of insurance, and the  
414 provisions of chapter 120 do not apply.

415 9. Must provide that the corporation make its best efforts  
416 to procure catastrophe reinsurance at reasonable rates, to cover  
417 its projected 100-year probable maximum loss as determined by  
418 the board of governors.

419 10. The policies issued by the corporation must provide  
420 that if the corporation or the market assistance plan obtains an  
421 offer from an authorized insurer to cover the risk at its  
422 approved rates, the risk is no longer eligible for renewal  
423 through the corporation, except as otherwise provided in this  
424 subsection.

425 11. Corporation policies and applications must include a  
426 notice that the corporation policy could, under this section, be  
427 replaced with a policy issued by an authorized insurer which  
428 does not provide coverage identical to the coverage provided by  
429 the corporation. The notice must also specify that acceptance of  
430 corporation coverage creates a conclusive presumption that the  
431 applicant or policyholder is aware of this potential.

432 12. May establish, subject to approval by the office,  
433 different eligibility requirements and operational procedures  
434 for any line or type of coverage for any specified county or  
435 area if the board determines that such changes are justified due

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436 to the voluntary market being sufficiently stable and  
437 competitive in such area or for such line or type of coverage  
438 and that consumers who, in good faith, are unable to obtain  
439 insurance through the voluntary market through ordinary methods  
440 continue to have access to coverage from the corporation. If  
441 coverage is sought in connection with a real property transfer,  
442 the requirements and procedures may not provide an effective  
443 date of coverage later than the date of the closing of the  
444 transfer as established by the transferor, the transferee, and,  
445 if applicable, the lender.

446 13. Must provide that, with respect to the coastal account,  
447 any assessable insurer with a surplus as to policyholders of \$25  
448 million or less writing 25 percent or more of its total  
449 countrywide property insurance premiums in this state may  
450 petition the office, within the first 90 days of each calendar  
451 year, to qualify as a limited apportionment company. A regular  
452 assessment levied by the corporation on a limited apportionment  
453 company for a deficit incurred by the corporation for the  
454 coastal account may be paid to the corporation on a monthly  
455 basis as the assessments are collected by the limited  
456 apportionment company from its insureds, but a limited  
457 apportionment company must begin collecting the regular  
458 assessments not later than 90 days after the regular assessments  
459 are levied by the corporation, and the regular assessments must  
460 be paid in full within 15 months after being levied by the  
461 corporation. A limited apportionment company shall collect from  
462 its policyholders any emergency assessment imposed under sub-  
463 subparagraph (b)3.d. The plan must provide that, if the office  
464 determines that any regular assessment will result in an

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465 impairment of the surplus of a limited apportionment company,  
 466 the office may direct that all or part of such assessment be  
 467 deferred as provided in subparagraph (q)4. However, an emergency  
 468 assessment to be collected from policyholders under sub-  
 469 subparagraph (b)3.d. may not be limited or deferred.

470 14. Must provide that the corporation appoint as its  
 471 licensed agents only those agents who also hold an appointment  
 472 as defined in s. 626.015(3) with an insurer who at the time of  
 473 the agent's initial appointment by the corporation is authorized  
 474 to write and is actually writing personal lines residential  
 475 property coverage, commercial residential property coverage, or  
 476 commercial nonresidential property coverage within the state.

477 15. Must provide a premium payment plan option to its  
 478 policyholders which, at a minimum, allows for quarterly and  
 479 semiannual payment of premiums. A monthly payment plan may, but  
 480 is not required to, be offered.

481 16. Must limit coverage on mobile homes or manufactured  
 482 homes built before 1994 to actual cash value of the dwelling  
 483 rather than replacement costs of the dwelling.

484 17. Must provide coverage for manufactured or mobile home  
 485 dwellings. Such coverage must also include the following  
 486 attached structures:

487 a. Screened enclosures that are aluminum framed or screened  
 488 enclosures that are not covered by the same or substantially the  
 489 same materials as those of the primary dwelling;

490 b. Carports that are aluminum or carports that are not  
 491 covered by the same or substantially the same materials as those  
 492 of the primary dwelling; and

493 c. Patios that have a roof covering that is constructed of

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494 materials that are not the same or substantially the same  
 495 materials as those of the primary dwelling.

496  
 497 The corporation shall make available a policy for mobile homes  
 498 or manufactured homes for a minimum insured value of at least  
 499 \$3,000.

500 18. May provide such limits of coverage as the board  
 501 determines, consistent with the requirements of this subsection.

502 19. May require commercial property to meet specified  
 503 hurricane mitigation construction features as a condition of  
 504 eligibility for coverage.

505 20. Must provide that new or renewal policies issued by the  
 506 corporation on or after January 1, 2012, which cover sinkhole  
 507 loss do not include coverage for any loss to appurtenant  
 508 structures, driveways, sidewalks, decks, or patios that are  
 509 directly or indirectly caused by sinkhole activity. The  
 510 corporation shall exclude such coverage using a notice of  
 511 coverage change, which may be included with the policy renewal,  
 512 and not by issuance of a notice of nonrenewal of the excluded  
 513 coverage upon renewal of the current policy.

514 21. As of January 1, 2012, must require that the agent  
 515 obtain from an applicant for coverage from the corporation an  
 516 acknowledgment signed by the applicant, which includes, at a  
 517 minimum, the following statement:

518  
 519 ACKNOWLEDGMENT OF POTENTIAL SURCHARGE  
 520 AND ASSESSMENT LIABILITY:

521  
 522 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE



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523 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A  
 524 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,  
 525 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND  
 526 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE  
 527 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT  
 528 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA  
 529 LEGISLATURE.

530 2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER  
 531 SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,  
 532 BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO  
 533 BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN  
 534 PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE  
 535 WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES  
 536 ARE REGULATED AND APPROVED BY THE STATE.

537 3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY  
 538 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER  
 539 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE  
 540 FLORIDA LEGISLATURE.

541 4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE  
 542 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE  
 543 STATE OF FLORIDA.

544 a. The corporation shall maintain, in electronic format or  
 545 otherwise, a copy of the applicant's signed acknowledgment and  
 546 provide a copy of the statement to the policyholder as part of  
 547 the first renewal after the effective date of this subparagraph.

548 b. The signed acknowledgment form creates a conclusive  
 549 presumption that the policyholder understood and accepted his or  
 550 her potential surcharge and assessment liability as a  
 551 policyholder of the corporation.

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552 22. Must provide that before an insurer may remove a policy  
 553 from the corporation under a takeout agreement, such agreement  
 554 must:

555 a. Be approved by the office.

556 b. Require that the insurer provide information to the  
 557 policyholder explaining the differences in coverage and rate  
 558 between the corporation policy and the policy offered.

559 23. Must exclude a policyholder for 6 months from future  
 560 takeout agreements by the corporation if the policyholder  
 561 declined a takeout agreement offer from an authorized insurer  
 562 and declined to receive additional takeout offers.

563 24. Must allow a policyholder who was removed from the  
 564 corporation in the previous 36 months by a takeout agreement  
 565 with an authorized insurer to reapply with the corporation and  
 566 be considered a renewal under s. 627.3518(5) if the corporation  
 567 determines that the authorized insurer increased the rate for  
 568 the policy in excess of the increase allowed for the corporation  
 569 under s. 627.351(6)(n)6.

570 Section 2. This act shall take effect July 1, 2015.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/8/15  
Meeting Date

1006  
Bill Number (if applicable)

977198AA  
Amendment Barcode (if applicable)

Topic Citizens Property Ins - Depop

Name Christine Ashburn

Job Title VP - legislative & ext. affairs

Address 1312 Killean Center Blvd - A  
Street

Phone 850-513-3746

Tallahassee FL 32304  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Citizens Property Ins.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/8/15

Meeting Date

1006

Bill Number (if applicable)

Topic Citizens Property Ins.

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title VP - Legislative Affairs

Address 2312 Kitearan Center Blvd

Phone 513-3746

Street

Tallahassee

FL

32309

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Citizens Property Ins.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/15  
Meeting Date

SB 1006  
Bill Number (if applicable)

Topic Depopulation of Citizens Property Insurance Amendment Barcode (if applicable)

Name Laura Pearce

Job Title General Counsel

Address \_\_\_\_\_  
Street

Phone 858-566-8615

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email Lpearce@faia.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Association of Insurance Agents

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/2015

Meeting Date

SR 1006

Bill Number (if applicable)

Topic CITIZENS DEPOPULATION

Amendment Barcode (if applicable)

Name CHRISTIAN CAMARA

Job Title STATE DIRECTOR

Address PO Box 10577

Phone 305-608-4300

Street

YALL. FL 32302

Email CCAMARA@RSTREETOR

City

State

Zip

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing R-STREET INSTITUTE

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/15

Meeting Date

1006

Bill Number (if applicable)

Topic DEPOS OF CITIZENS

Amendment Barcode (if applicable)

Name CORAY MATHEWS

Job Title CEO

Address 1390 TIMBERLAKE ROAD

Phone 850/222-6000

Street

TALLAHASSEE

City

FL

State

32317

Zip

Email CORAY@PBAFL.ORG

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing PROFESSIONAL INSURANCE AGENTS OF FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



The Florida Senate

## Committee Agenda Request

**To:** Senator Alan Hays, Chair  
Appropriations Subcommittee on General Government

**Subject:** Committee Agenda Request

**Date:** March 24, 2015

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I respectfully request that **Senate Bill #1006**, relating to Depopulation of Citizens Property Insurance, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

*Anitere Flores*

Senator Anitere Flores  
Florida Senate, District 37

SENATE APPROPRIATIONS  
RECEIVED  
15 MAR 24 AM 11:10  
STAFF DIR. STAFF

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: CS/SB 1032

INTRODUCER: Regulated Industries Committee and Senator Richter and others

SUBJECT: Point-of-sale Terminals

DATE: April 7, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>FP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1032 allows limited use of point-of-sale terminals for the sale of lottery tickets or games. A point-of-sale terminal is a charge card reader, like those consumers use at a retail counter, self-service fuel pump, or self-service checkout lane. The bill authorizes the Department of the Lottery (department), approved vendors, and approved retailers to use point-of-sale terminals to facilitate sales of lottery tickets or games, provided that the purchaser is verified to be 18 years of age or older. A point-of-sale terminal does not reveal winning numbers or dispense lottery winnings and may not be used to redeem a winning ticket. Lottery ticket sales revenue generated from point-of-sale terminals must be used to enhance instructional technology resources for students and teachers in Florida.

Allowing the convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase ticket sales. An impact conference would be needed to estimate the lottery ticket sales revenue that could be generated from point-of-sale terminals.

The bill is effective upon becoming law.



## II. Present Situation:

### The Florida Lottery

Section 15 of Article X of the State Constitution (1968) allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations must be undertaken as an entrepreneurial business enterprise; and
- The department must be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the state lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens,”<sup>1</sup> for the benefit of public education.<sup>2</sup> The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.<sup>3</sup> Retailers receive commissions of five percent of the ticket price, one percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.<sup>4</sup> Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.<sup>5</sup>

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.<sup>6</sup> Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. There is a general prohibition against contracting with a retailer with a felony criminal history,<sup>7</sup> and the authority to act as a retailer for lottery sales may not be transferred.<sup>8</sup> Retailer contracts may be suspended or terminated for: (1) violating lottery laws and regulations; (2) committing any act that undermines public confidence in the lottery; (3) improper accounting for lottery tickets, revenues, or prizes; or (4) insufficient ticket sales. Every retailer contract must provide for a payment of liquidated damages for any contract breach by the retailer.<sup>9</sup>

Retailers may not extend credit or lend money to a person to purchase a lottery ticket, however, the prohibition does not include the use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods), provided that the lottery ticket purchase is in addition to the purchase of other goods and services with a cost of not less than \$20.<sup>10</sup>

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<sup>1</sup> See s. 24.104, F.S.

<sup>2</sup> See s. 24.121(2), F.S.

<sup>3</sup> See s. 24.105(17), F.S.

<sup>4</sup> See *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, (January 2014), (hereinafter referred to as *OPPAGA Report 14-06*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> at page 2 (last accessed March 25, 2015).

<sup>5</sup> OPPAGA Report 2015-03, at page 1 (footnote 3).

<sup>6</sup> See Section 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

<sup>7</sup> Section 24.112(3)(c), F.S.

<sup>8</sup> Section 24.112(4), F.S.

<sup>9</sup> Section 24.112(10), F.S.

<sup>10</sup> Section 24.118(1), F.S.

Section 24.115, F.S., authorizes the department to establish by rule a system to verify and pay winning lottery tickets:<sup>11</sup>

- Any lottery retailer, as well as any lottery department office, may redeem a winning ticket valued at less than \$600.<sup>12</sup> Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a lottery department office may redeem a winning ticket valued at \$600 or more.<sup>13</sup> Winning tickets are paid at the claimant's option in a combination of cash, check or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.<sup>14</sup> Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the drawing or the end of the lottery game in which the prize was won.

If a valid claim is not timely made, 80 percent of the unclaimed prize amount is deposited in the Educational Enhancement Trust Fund,<sup>15</sup> and the remainder may be used for future prizes or special prize promotions.<sup>16</sup>

Section 24.105(9)(a), F.S., authorizes the department to adopt rules governing the types of lottery games to be conducted, including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”<sup>17</sup>

The department introduced full service vending machines (FSVMs) in retail stores across the state in November 2013, and estimated that it earned more than \$29 million from the use of player-activated FSVMs in Fiscal Year 2012-2013.<sup>18</sup> In its most recent Financial Audit,<sup>19</sup> the

---

<sup>11</sup> See Rule 53ER13-31, F.A.C.

<sup>12</sup> The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the 9 lottery district offices, or to lottery headquarters in Tallahassee.

<sup>13</sup> Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

<sup>14</sup> See s. 24.115(1)(f), F.S.

<sup>15</sup> Section 24.115(2)(a), F.S., provides that such funds may be used, subject to legislative appropriation, to match private contributions received under specified post-secondary matching grant programs.

<sup>16</sup> See s. 24.115(2)(b), F.S.

<sup>17</sup> Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, L.O.F., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

<sup>18</sup> *OPPAGA Report 14-06* at page 2.

<sup>19</sup> See *Financial Audit of the Department of the Lottery, for the Fiscal Years Ended June 30, 2014, and 2013*, Report No. 2015-092, State of Florida Auditor General (January 2015), at page 4 (2015 Financial Audit) at [http://www.myflorida.com/audgen/pages/pdf\\_files/2015-092.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf) (last accessed Mar. 25, 2015).

department stated when 500 FSVMs were installed at its top scratch-off ticket sales locations, allowing both terminal and scratch-off tickets to be sold, total FSVMs sales were over \$248 million.

### The Seminole Gaming Compact

On April 7, 2010, the Governor and the Seminole Tribe of Florida (Tribe) executed a compact governing gambling (Gaming Compact) at the Tribe's seven tribal facilities in Florida.<sup>20</sup> The Gaming Compact authorizes the Tribe to conduct Class III gaming.<sup>21</sup> It was ratified by the Legislature, with an effective date of July 6, 2010.<sup>22</sup> The Gaming Compact has a 20-year term.

The Gaming Compact provides that in exchange for the its exclusive right to offer slot machine gaming outside of Miami-Dade and Broward counties and banked card games at five of its seven<sup>23</sup> casinos, the Tribe will make revenue sharing payments to the state. The state's share increases incrementally from 12 percent for the first \$2 billion in annual net win, to 25 percent for annual net win greater than \$4.5 billion. In Fiscal Year 2013-2014, the Tribe paid \$237 million.<sup>24</sup>

The Gaming Compact specifically acknowledges operation by the Florida Lottery of the types of lottery games authorized under chapter 24, F.S., on February 1, 2010, and it specifically excludes from such authorized games any "player-activated or operated machine or device other than a Lottery Vending Machine."<sup>25</sup> The Gaming Compact also includes language about not using a

<sup>20</sup> The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The *Gaming Compact between the Seminole Tribe of Florida and the State of Florida* (Gaming Compact) was approved by the U.S. Department of the Interior effective July 6, 2010, 75 Fed. Reg. 38833. See [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed March 25, 2015). Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*

<sup>21</sup> The Indian Gaming Regulatory Act of 1988 divides gaming into three classes: **Class I** means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations. **Class II** includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law. **Class III** includes all forms of gaming that are not Class I or Class II, such as house-banked card games, casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.

<sup>22</sup> See Chapter 2010-29, L.O.F.

<sup>23</sup> See the executed Gaming Compact at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed Mar. 25, 2015). Banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the Gaming Compact, at page 4.

<sup>24</sup> See the Executive Summary and Conference results from the Revenue Estimating Conference (Feb. 20, 2015) at <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf> and <http://edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf> (last accessed Mar. 25, 2015).

<sup>25</sup> In particular, the Gaming Compact acknowledges: "operation by the Florida Department of Lottery of those types of lottery games authorized under chapter 24, Florida Statutes, on February 1, 2010, but not including (i) any player-activated or operated machine or device other than a lottery vending machine or (ii) any banked or banking card or table game." The Gaming Compact further excludes: (iii) more than ten lottery vending machines at any or location or (iv) any lottery vending machine that dispenses electronic instant tickets at any licensed pari-mutuel location. See subparagraph 8 of paragraph B of Part XII of Gaming Compact at page 42. The Gaming Compact describes three types of lottery vending machines, none of which may allow a player to redeem a ticket: (1) a machine to dispense pre-printed paper instant lottery tickets (e.g., scratch-

lottery vending machine to redeem winning tickets, which is consistent with similar language in s. 24.112(15)(c), F.S.<sup>26</sup>

The Gaming Compact provides that any expanded gaming (beyond what is specifically acknowledged) relieves the Tribe of its obligations to make substantial revenue sharing payments.<sup>27</sup>

### **Office of Program Policy Analysis and Government Accountability (OPPAGA) Recommendations to Enhance Lottery Earnings**

Section 24.123, F.S., requires the Legislature's OPPAGA to conduct an annual financial audit of the Department of the Lottery and provide recommendations to enhance the state lottery's earning capability and operational efficiency.<sup>28</sup> In the last two years, the OPPAGA has issued Report No. 14-06, concerning options available to the department to enhance revenues,<sup>29</sup> and Report No. 15-03, concerning increases in lottery revenues, further enhancement options, and options to increase efficiency.<sup>30</sup>

No monies from the General Revenue Fund are appropriated to the department, which is supported solely by game ticket sales. For Fiscal Year 2014-2015, the Legislature appropriated \$163.5 million for operations from lottery revenue, with 420 positions authorized.<sup>31</sup> In Fiscal Year 2014-2015, the department allocated approximately 75 percent, or \$122.5 million, of its \$163.5 million appropriation to produce and advertise online and scratch-off games.<sup>32</sup>

In addition to funding the operational appropriation, lottery revenue is used to pay prizes and retailer commissions.<sup>33</sup> In Fiscal Year 2013-2014, prizes totaled \$3.43 billion and retailer commissions totaled \$297.3 million.<sup>34</sup>

### **Lottery Ticket Sales at Gas Pumps and Automated Teller Machines (ATMs)**

Noting that expanding product distribution could increase revenues, OPPAGA reported that in October 2012 the Minnesota Lottery implemented new technology and processes for sales at gas

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off tickets); (2) a machine to dispense pre-determined electronic instant lottery tickets and reveal the outcome; or (3) a machine to dispense paper lottery tickets with numbers selected by the player or randomly by the machine, with the winning number selected in a drawing by the department. See paragraph R of Part III of Gaming Compact at page 10.

<sup>26</sup> Section 24.112(15)(c), F.S., provides that a vending machine that dispenses a lottery ticket "may dispense change to a purchaser but may not be used to redeem any type of winning lottery ticket."

<sup>27</sup> See last sentence in paragraph B of Part XII of Gaming Compact at page 43.

<sup>28</sup> See <http://www.oppaga.state.fl.us/ReportsByAgency.aspx?agency=Lottery,%20Department%20of%20the> (last visited March 25, 2015) for a list of OPPAGA reports related to the Department of the Lottery.

<sup>29</sup> See *OPPAGA Report 14-06*, at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> (last accessed March 25, 2015).

<sup>30</sup> See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Increase Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, (January 2015), (hereinafter referred to as *OPPAGA Report 15-03*) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> (last accessed Mar. 25, 2015).

<sup>31</sup> *Id.* at page 10.

<sup>32</sup> *Id.* at page 2.

<sup>33</sup> See s. 24.121(2) and (3), F.S.

<sup>34</sup> *Id.* at page 1.

stations and ATMs.<sup>35</sup> Players use a debit card and select the option to purchase at least three lottery tickets as part of a transaction to purchase gas or use an ATM. The player's age is verified by a scan of a driver's license, and the lottery purchase shows on the receipt. Tickets may be printed, or a player may opt to receive lottery numbers in a text or email message. Players may track ticket purchases on the lottery's website.<sup>36</sup> For prizes less than \$600, the lottery credits the bank account associated with the debit card; no visit to a retailer is required for redemption of a winning ticket.

The Missouri Lottery implemented similar technology in late 2013 with retailers already selling lottery tickets. The lottery website displays rules and restrictions for this type of purchase.<sup>37</sup> Purchases are limited to quick-pick (random) plays<sup>38</sup> for a single game drawing. Lottery tickets are payable by debit card, but credit cards may not be used. Each cardholder can purchase up to \$100 in lottery tickets per week, per debit card. Each transaction incurs a transaction fee. Prizes of \$600 or less are automatically credited to the debit card account of the purchaser, but larger prizes must be claimed at lottery headquarters by the cardholder who must in possession of the debit card and photo identification.

The OPPAGA report considered whether the convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals might cause in-store sales to decline. The OPPAGA found that during the short period this option has been available in Minnesota, there has been no negative effect on in-store sales.<sup>39</sup> The report noted that "offering this option at ATMs may help expand the retailer network to non-traditional locations."<sup>40</sup>

In its most recent report on Florida Lottery revenues and operations,<sup>41</sup> the OPPAGA notes:

As of December 2014, Play at the Pump is offered [in Minnesota] at 53 gas locations, with 452 pump screens and 131 ATM locations. Minnesota's total sales through these distribution points were \$20,000 in Fiscal Year 2013-14. . . . The Missouri Lottery began offering Play at the Pump and ATM sales in fall 2013 in select locations, followed by the California Lottery in fall 2014. California's Play at the Pump sales are limited to participating gas stations in Sacramento and Los Angeles counties.

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 24.103, F.S., to add the term "point-of sale terminal." A point-of-sale terminal is another type of lottery vending machine to be used to purchase lottery tickets at

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<sup>35</sup> See *OPPAGA Report 14-06* at page 11.

<sup>36</sup> See <https://mnlottery-etickets.com/> (last visited Mar. 25, 2015).

<sup>37</sup> See [http://www.molottery.com/numbers/alternative\\_distribution.shtm](http://www.molottery.com/numbers/alternative_distribution.shtm) (last visited March 25, 2015).

<sup>38</sup> Teleconference with S. Goedde at Missouri Lottery (Mar. 17, 2014). Purchasers may select packages for Powerball® of 3, 5 or 10 plays only and for MegaMillions® of 5, 10 or 20 plays only.

<sup>39</sup> See *OPPAGA REPORT 14-06* at page 14.

<sup>40</sup> *Id.*

<sup>41</sup> See *OPPAGA Report 15-03*, note 30 *supra*.

retail locations under certain conditions. Payments for lottery tickets at a point-of-sale terminal may be paid by credit card, debit card, or retailer-issued charge cards.

**Section 2** of the bill amends s. 24.105, F.S., and authorizes the department to create a program and adopt rules for the purchase of lottery tickets at point-of-sale terminals by persons over 18 years of age. A point-of-sale terminal has multiple uses (e.g., purchase of lottery tickets incidental to the purchase of other retail goods or services), while current lottery vending machines dispense lottery tickets only.

**Section 3** of the bill amends s. 24.112, F.S., to provide that point-of-sale terminals may be used by the department, approved vendors, and approved retailers to facilitate the sale of lottery tickets or games. The bill tracks the following requirements stated in the Gaming Compact for lottery vending machines, providing that a point-of-sale terminal:

- Must dispense a paper lottery ticket with numbers selected by the player or randomly by the machine;
- Does not reveal the winning numbers (which are selected at a later time and a different location, through a drawing held by the Florida Lottery);
- May not make use of mechanical reels or video depictions of slot machine or casino game themes or titles; and
- May not be used to redeem winning tickets.

Lottery ticket sales revenue generated from point-of-sale terminals must be used to enhance instructional technology resources for students and teachers in Florida.

The bill takes effect upon becoming a law.

#### **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:**

CS/SB 1032 will allow retailers and vendors approved by the Department of the Lottery to use point-of-sale terminals for sales of lottery products. The convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase retailer commissions (five percent of lottery ticket sales) by an indeterminate amount. The bill may also reduce in-store sales by an indeterminate amount.<sup>42</sup>

**C. Government Sector Impact:**

The bill authorizes the Department of the Lottery to establish, at its option, procedures for using point-of-sale terminals to sell lottery tickets. The convenience of purchasing lottery tickets at the pump or at similar point-of-sale terminals may increase lottery ticket sales by an indeterminate amount. An impact conference would be needed to estimate the lottery ticket sales revenue that could be generated from point-of-sale terminals. The bill directs this revenue for the enhancement of instructional technology resources for students and teachers in Florida.

It is estimated that the vendor will absorb the majority of the costs to establish the program with minimal costs to the department.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides the requirements for a point-of-sale terminal to facilitate the sales of a lottery ticket or game. The terminal must dispense a paper lottery ticket, utilize a platform that is certified or approved by the department, must not reveal the winning numbers, and the winning numbers are selected at a subsequent time and different location through a drawing by the Florida Lottery. The point-of-sale terminal may not be used to redeem a winning ticket. The point-of-sale terminal or any device linked to the terminal may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles on the lottery ticket, signs, or advertising.

Under the Gaming Compact between the State of Florida and the Seminole Tribe of Florida, the Florida Lottery may conduct lottery games through player-activated or operated machines that meet the definition of "Lottery Vending Machine" in the Gaming Compact,<sup>43</sup> without violating the exclusivity provisions of the Gaming Compact.<sup>44</sup> There are three types of lottery vending machines. The third type of machine is defined as:

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<sup>42</sup> See *OPPAGA Report*, No. 14-06 at page 14.

<sup>43</sup> See the executed Gaming Compact at [http://www.myfloridalicense.com/dbpr/pmw/documents/2010\\_Compact-Signed1.pdf](http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf) (last accessed Mar. 25, 2015), at pages 10-11 (paragraphs 1-3 of Part III, Section R).

<sup>44</sup> *Id.* at page 42 (paragraph 8 of Part XII, Section B).

3. A machine to dispense a paper lottery ticket with numbers selected by the player or randomly by the machine. The machine does not reveal the winning numbers and the winning numbers are selected at a subsequent time and different location through a drawing by the Florida Lottery. The machine, or any machine or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The machine may not be used to redeem a winning ticket. This does not preclude the use of casino game themes or titles for signage or advertising displays on the machine.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 24.103, 24.105, and 24.112.

#### **IX. Additional Information:**

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

**CS by Regulated Industries Committee on March 24, 2015:**

The committee substitute requires lottery ticket sales revenue generated from point-of-sale terminals to be used to enhance instructional technology resources for students and teachers in Florida.

- B. **Amendments:**

None.



By the Committee on Regulated Industries; and Senators Richter,  
Diaz de la Portilla, and Braynon

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A bill to be entitled

An act relating to point-of-sale terminals; amending s. 24.103, F.S.; defining the term "point-of-sale terminal"; amending s. 24.105, F.S.; authorizing the Department of the Lottery to create a program that authorizes certain persons to purchase a ticket or game at a point-of-sale terminal; authorizing the department to adopt rules; amending s. 24.112, F.S.; authorizing the department, a retailer operating from one or more locations, or a vendor approved by the department to use a point-of-sale terminal to sell a lottery ticket or game; requiring a point-of-sale terminal to perform certain functions; specifying that the point-of-sale terminal may not reveal winning numbers; prohibiting a point-of-sale terminal from including video depictions of slot machine or casino game themes or titles for game play; prohibiting a point-of-sale terminal from being used to redeem a winning ticket; providing that revenue generated by a point-of-sale-terminal shall be used to enhance instructional technology resources for students and teachers in this state; providing an effective date.

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

Section 1. Section 24.103, Florida Statutes, is reordered and amended to read:

24.103 Definitions.—As used in this act, the term:

(1) "Department" means the Department of the Lottery.

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~~(6)~~(2) "Secretary" means the secretary of the department.

(3) "Person" means any individual, firm, association, joint adventure, partnership, estate, trust, syndicate, fiduciary, corporation, or other group or combination and includes an ~~shall include any~~ agency or political subdivision of the state.

(4) "Point-of-sale terminal" means an electronic device used to process credit card, debit card, or other similar charge card payments at retail locations which is supported by networks that enable verification, payment, transfer of funds, and logging of transactions.

~~(2)~~(4) "Major procurement" means a procurement for a contract for the printing of tickets for use in any lottery game, consultation services for the startup of the lottery, any goods or services involving the official recording for lottery game play purposes of a player's selections in any lottery game involving player selections, any goods or services involving the receiving of a player's selection directly from a player in any lottery game involving player selections, any goods or services involving the drawing, determination, or generation of winners in any lottery game, the security report services provided for in this act, or any goods and services relating to marketing and promotion which exceed a value of \$25,000.

(5) "Retailer" means a person who sells lottery tickets on behalf of the department pursuant to a contract.

~~(7)~~(6) "Vendor" means a person who provides or proposes to provide goods or services to the department, but does not include an employee of the department, a retailer, or a state agency.

Section 2. Present subsections (19) and (20) of section

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59 24.105, Florida Statutes, are redesignated as subsections (20)  
60 and (21), respectively, and a new subsection (19) is added to  
61 that section, to read:

62 24.105 Powers and duties of department.—The department  
63 shall:

64 (19) Have the authority to create a program that allows a  
65 person who is 18 years of age or older to purchase a lottery  
66 ticket or game at a point-of-sale terminal. The department may  
67 adopt rules to administer the program.

68 Section 3. Section 24.112, Florida Statutes, is amended to  
69 read:

70 24.112 Retailers of lottery tickets; authorization of  
71 vending machines; point-of-sale terminals to dispense lottery  
72 tickets.—

73 (1) The department shall promulgate rules specifying the  
74 terms and conditions for contracting with retailers who will  
75 best serve the public interest and promote the sale of lottery  
76 tickets.

77 (2) In the selection of retailers, the department shall  
78 consider factors such as financial responsibility, integrity,  
79 reputation, accessibility of the place of business or activity  
80 to the public, security of the premises, the sufficiency of  
81 existing retailers to serve the public convenience, and the  
82 projected volume of the sales for the lottery game involved. In  
83 the consideration of these factors, the department may require  
84 the information it deems necessary of any person applying for  
85 authority to act as a retailer. However, the department may not  
86 establish a limitation upon the number of retailers and shall  
87 make every effort to allow small business participation as

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88 retailers. It is the intent of the Legislature that retailer  
89 selections be based on business considerations and the public  
90 convenience and that retailers be selected without regard to  
91 political affiliation.

92 (3) The department may ~~shall~~ not contract with any person  
93 as a retailer who:

94 (a) Is less than 18 years of age.

95 (b) Is engaged exclusively in the business of selling  
96 lottery tickets; however, this paragraph may ~~shall~~ not preclude  
97 the department from selling lottery tickets.

98 (c) Has been convicted of, or entered a plea of guilty or  
99 nolo contendere to, a felony committed in the preceding 10  
100 years, regardless of adjudication, unless the department  
101 determines that:

102 1. The person has been pardoned or the person's civil  
103 rights have been restored;

104 2. Subsequent to such conviction or entry of plea the  
105 person has engaged in the kind of law-abiding commerce and good  
106 citizenship that would reflect well upon the integrity of the  
107 lottery; or

108 3. If the person is a firm, association, partnership,  
109 trust, corporation, or other entity, the person has terminated  
110 its relationship with the individual whose actions directly  
111 contributed to the person's conviction or entry of plea.

112 (4) The department shall issue a certificate of authority  
113 to each person with whom it contracts as a retailer for purposes  
114 of display pursuant to subsection (6). The issuance of the  
115 certificate may ~~shall~~ not confer upon the retailer any right  
116 apart from that specifically granted in the contract. The

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117 authority to act as a retailer ~~may shall~~ not be assignable or  
118 transferable.

119 (5) A ~~Any~~ contract executed by the department pursuant to  
120 this section shall specify the reasons for any suspension or  
121 termination of the contract by the department, including, but  
122 not limited to:

123 (a) Commission of a violation of this act or rule adopted  
124 pursuant thereto.

125 (b) Failure to accurately account for lottery tickets,  
126 revenues, or prizes as required by the department.

127 (c) Commission of any fraud, deceit, or misrepresentation.

128 (d) Insufficient sale of tickets.

129 (e) Conduct prejudicial to public confidence in the  
130 lottery.

131 (f) Any material change in any matter considered by the  
132 department in executing the contract with the retailer.

133 (6) Each ~~Every~~ retailer shall post and keep conspicuously  
134 displayed in a location on the premises accessible to the public  
135 its certificate of authority and, with respect to each game, a  
136 statement supplied by the department of the estimated odds of  
137 winning a ~~some~~ prize for the game.

138 (7) A ~~No~~ contract with a retailer ~~may not shall~~ authorize  
139 the sale of lottery tickets at more than one location, and a  
140 retailer may sell lottery tickets only at the location stated on  
141 the certificate of authority.

142 (8) With respect to any retailer whose rental payments for  
143 premises are contractually computed, in whole or in part, on the  
144 basis of a percentage of retail sales, and where such  
145 computation of retail sales is not explicitly defined to include

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146 sales of tickets in a state-operated lottery, the compensation  
147 received by the retailer from the department shall be deemed to  
148 be the amount of the retail sale for the purposes of such  
149 contractual compensation.

150 (9) (a) The department may require each ~~every~~ retailer to  
151 post an appropriate bond as determined by the department, using  
152 an insurance company acceptable to the department, in an amount  
153 not to exceed twice the average lottery ticket sales of the  
154 retailer for the period within which the retailer is required to  
155 remit lottery funds to the department. For the first 90 days of  
156 sales of a new retailer, the amount of the bond may not exceed  
157 twice the average estimated lottery ticket sales for the period  
158 within which the retailer is required to remit lottery funds to  
159 the department. This paragraph does ~~shall~~ not apply to lottery  
160 tickets that ~~which~~ are prepaid by the retailer.

161 (b) In lieu of such bond, the department may purchase  
162 blanket bonds covering all or selected retailers or may allow a  
163 retailer to deposit and maintain with the Chief Financial  
164 Officer securities that are interest bearing or accruing and  
165 that, with the exception of those specified in subparagraphs 1.  
166 and 2., are rated in one of the four highest classifications by  
167 an established nationally recognized investment rating service.  
168 Securities eligible under this paragraph shall be limited to:

169 1. Certificates of deposit issued by solvent banks or  
170 savings associations organized and existing under the laws of  
171 this state or under the laws of the United States and having  
172 their principal place of business in this state.

173 2. United States bonds, notes, and bills for which the full  
174 faith and credit of the government of the United States is

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175 pledged for the payment of principal and interest.

176 3. General obligation bonds and notes of any political  
177 subdivision of the state.

178 4. Corporate bonds of any corporation that is not an  
179 affiliate or subsidiary of the depositor.

180

181 Such securities shall be held in trust and shall have at all  
182 times a market value at least equal to an amount required by the  
183 department.

184 (10) Each ~~Every~~ contract entered into by the department  
185 pursuant to this section shall contain a provision for payment  
186 of liquidated damages to the department for any breach of  
187 contract by the retailer.

188 (11) The department shall establish procedures by which  
189 each retailer shall account for all tickets sold by the retailer  
190 and account for all funds received by the retailer from such  
191 sales. The contract with each retailer shall include provisions  
192 relating to the sale of tickets, payment of moneys to the  
193 department, reports, service charges, and interest and  
194 penalties, if necessary, as the department shall deem  
195 appropriate.

196 (12) ~~No~~ Payment by a retailer to the department for tickets  
197 ~~may not shall~~ be in cash. All such payments shall be in the form  
198 of a check, bank draft, electronic fund transfer, or other  
199 financial instrument authorized by the secretary.

200 (13) Each retailer shall provide accessibility for disabled  
201 persons on habitable grade levels. This subsection does not  
202 apply to a retail location that ~~which~~ has an entrance door  
203 threshold more than 12 inches above ground level. As used in

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204 ~~herein and for purposes of~~ this subsection only, the term  
205 "accessibility for disabled persons on habitable grade levels"  
206 means that retailers shall provide ramps, platforms, aisles and  
207 pathway widths, turnaround areas, and parking spaces to the  
208 extent these are required for the retailer's premises by the  
209 particular jurisdiction where the retailer is located.  
210 Accessibility shall be required to only one point of sale of  
211 lottery tickets for each lottery retailer location. The  
212 requirements of this subsection shall be deemed to have been met  
213 if, in lieu of the foregoing, disabled persons can purchase  
214 tickets from the retail location by means of a drive-up window,  
215 provided the hours of access at the drive-up window are not less  
216 than those provided at any other entrance at that lottery  
217 retailer location. Inspections for compliance with this  
218 subsection shall be performed by those enforcement authorities  
219 responsible for enforcement pursuant to s. 553.80 in accordance  
220 with procedures established by those authorities. Those  
221 enforcement authorities shall provide to the Department of the  
222 Lottery a certification of noncompliance for any lottery  
223 retailer not meeting such requirements.

224 (14) The secretary may, after filing with the Department of  
225 State his or her manual signature certified by the secretary  
226 under oath, execute or cause to be executed contracts between  
227 the department and retailers by means of engraving, imprinting,  
228 stamping, or other facsimile signature.

229 (15) A vending machine may be used to dispense online  
230 lottery tickets, instant lottery tickets, or both online and  
231 instant lottery tickets.

232 (a) The vending machine must:

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233 1. Dispense a lottery ticket after a purchaser inserts a  
 234 coin or currency in the machine.

235 2. Be capable of being electronically deactivated for a  
 236 period of 5 minutes or more.

237 3. Be designed to prevent its use for any purpose other  
 238 than dispensing a lottery ticket.

239 (b) In order to be authorized to use a vending machine to  
 240 dispense lottery tickets, a retailer must:

241 1. Locate the vending machine in the retailer's direct line  
 242 of sight to ensure that purchases are only made by persons at  
 243 least 18 years of age.

244 2. Ensure that at least one employee is on duty when the  
 245 vending machine is available for use. However, if the retailer  
 246 has previously violated s. 24.1055, at least two employees must  
 247 be on duty when the vending machine is available for use.

248 (c) A vending machine that dispenses a lottery ticket may  
 249 dispense change to a purchaser but may not be used to redeem any  
 250 type of winning lottery ticket.

251 (d) The vending machine, or any machine or device linked to  
 252 the vending machine, may not include or make use of video reels  
 253 or mechanical reels or other video depictions of slot machine or  
 254 casino game themes or titles for game play. This does not  
 255 preclude the use of casino game themes or titles on such tickets  
 256 or signage or advertising displays on the machines.

257 (16) The department, a retailer operating from one or more  
 258 locations, or a vendor approved by the department may use a  
 259 point-of-sale terminal to facilitate the sale of a lottery  
 260 ticket or game.

261 (a) A point-of-sale terminal must:

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262 1. Dispense a paper lottery ticket with numbers selected by  
 263 the purchaser or selected randomly by the machine after the  
 264 purchaser uses a credit card, debit card, charge card, or other  
 265 similar card issued by a bank, savings association, credit  
 266 union, or charge card company or issued by a retailer pursuant  
 267 to part II of chapter 520 for payment;

268 2. Recognize a valid driver license or use another age  
 269 verification process approved by the department to ensure that  
 270 only persons at least 18 years of age may purchase a lottery  
 271 ticket or game;

272 3. Process a lottery transaction through a platform that is  
 273 certified or otherwise approved by the department; and

274 4. Be in compliance with all applicable department  
 275 requirements related to the lottery ticket or game offered for  
 276 sale.

277 (b) A point-of-sale terminal does not reveal winning  
 278 numbers, which are selected at a subsequent time and different  
 279 location through a drawing by the Florida Lottery.

280 (c) A point-of-sale terminal, or any machine or device  
 281 linked to the point-of-sale terminal, may not include or make  
 282 use of video reels or mechanical reels or other video depictions  
 283 of slot machine or casino game themes or titles for game play.  
 284 This does not preclude the use of casino game themes or titles  
 285 on a lottery ticket or game or on the signage or advertising  
 286 displays on the terminal.

287 (d) A point-of-sale terminal may not be used to redeem a  
 288 winning ticket.

289 (17) Revenue generated from a point-of-sale terminal under  
 290 this section shall be used to enhance instructional technology

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291 resources for students and teachers in this state.

292 Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8  
3/7/15

Meeting Date

SB 1032

Bill Number (if applicable)

Topic Point-of-sale Terminals

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

City

State

Zip

Email BBEVIS@AIF.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: PCS/CS/SB 1126 (242306)

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Altman

SUBJECT: Continuing Care Communities

DATE: April 10, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

PCS/CS/SB 1126 requires continuing care facilities to provide refunds of entrance fees within 90 days after the continuing care contract is terminated and the unit is vacated, instead of within 120 days of the notice to cancel as under current law. The provision applies to contracts entered into on or after January 1, 2016, and contract addendums that are approved by the Office of Insurance Regulation (OIR). The bill requires continuing care contracts to specify one of three sources of payment for refunds paid from the proceeds of subsequent entrance fees and prohibits refunds conditioned on receipt of the entrance fee for the same unit as of October 1, 2016. The bill also, in specified circumstances, requires the contract to include a statutorily required time frame for the refund of an entrance fee (if the entrance fee refund will be paid from the proceeds of the next entrance fee for a like or similar unit).

The bill requires continuing care retirement communities (CCRCs) to establish residents' councils, whose activities must be independent of the CCRC. Currently, the formation of residents' councils are optional. The bill requires each residents' council to designate a resident to represent them before the governing body of the provider.

The bill specifies that continuing care and continuing care at-home contracts are preferred claims in a receivership or liquidation and are subordinate only to secured claims.



The bill revises disclosure requirements for third-party audits of the CCRC and notice requirements related to examination reports and any related corrective action plan.

There is no fiscal impact to the state.

The bill is effective on October 1, 2015.

## II. Present Situation:

### Continuing Care Retirement Communities (CCRC)

A continuing care facility provides shelter and nursing care or personal services to residents upon the payment of an entrance fee.<sup>1</sup> According to representatives of CCRCs, continuing care facilities generally feature apartment style independent living units, assisted living units, and nursing care, typically all on a single campus.<sup>2</sup> Many also offer assisted living, memory support care, and other specialty care arrangements.<sup>3</sup> These facilities also provide residents with dining options, housekeeping, security, transportation, social and recreational activities, and wellness and fitness programs.<sup>4</sup> Continuing care facilities may also offer at-home programs that provide residents CCRC services while continuing to live in their own homes until they are ready to move to the CCRC.<sup>5</sup> In addition to the entrance fee, a CCRC also generally charge residents monthly fees to cover costs related to health care and other aspects of community living.<sup>6</sup>

There are currently 71 licensed continuing care retirement communities in Florida.<sup>7</sup> Continuing care retirement communities are spread throughout the state, with Palm Beach, Sarasota, and Pinellas counties having the greatest numbers of these communities. Almost 25,000 residents lived in a CCRC during 2013.

Oversight responsibility of these entities is shared primarily between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR). The AHCA regulates aspects of CCRCs related to the provision of health care such as assisted living, skilled nursing care, quality of care, and concerns with medical facilities. Because residents pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, there is a need to ensure that CCRCs are in the proper financial and managerial position to provide services to present and future residents. Accordingly, the OIR is given primary responsibility to authorize and monitor the operation of facilities and to determine facilities' financial status and the management capabilities of their managers and owners.<sup>8</sup> If a continuing care provider is accredited through a process substantially equivalent to the requirements of chapter 651, F.S., the OIR may waive requirements of that chapter.<sup>9</sup> The Department of Financial Services (DFS) may become

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<sup>1</sup> Section 651.011, F.S.

<sup>2</sup> Jane E. Zarem, *Today's Continuing Care Retirement Community*, pg. 2 (July 2010).

<sup>3</sup> Zarem, *supra* note 2, at 2.

<sup>4</sup> Zarem, *supra* note 2, at 2.

<sup>5</sup> Section 651.057, F.S.

<sup>6</sup> About Continuing Care Retirement Communities, AARP.org, [http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho\\_continuing\\_care\\_retirement\\_communities.html](http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html) (last visited March 7, 2015).

<sup>7</sup> Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (September 29, 2014).

<sup>8</sup> See ss. 651.021 and 651.023, F.S.

<sup>9</sup> Section 651.028, F.S.

involved after a contractual agreement has been signed by both parties or during a mediation process. These matters are usually initially addressed through DFS's Consumer Helpline.

In order to operate a CCRC in Florida, a provider must obtain from the OIR a certificate of authority predicated upon first receiving a provisional certificate.<sup>10</sup> The application process involves submitting a market feasibility study and various financial information, including projected revenues and expenses, current assets and liabilities of the applicant, and expectations of the financial condition of the project.<sup>11</sup> A certificate of authority will only be issued once a provider submits proof that a minimum of 50 percent of the units available have been reserved.<sup>12</sup>

### **Continuing Care Retirement Community Contracts**

Continuing care services are governed by a contract between the facility and the resident of a CCRC. In Florida, continuing care contracts are considered an insurance product and are reviewed and approved for the market by the OIR.<sup>13</sup> Each contract for continuing care services must:

- Provide for continuing care of one resident, or two residents living in a double occupancy room, under regulations set out by the provider;
- List all property transferred to the facility by the resident upon moving to the CCRC, including amounts paid or payable by the resident;
- Specify all services to be provided by the provider to each resident, including, but not limited to, food, shelter, personal services, nursing care, drugs, burial and incidentals;
- Describe the terms and conditions for cancellation of the contract given a variety of circumstances; and
- Describe all other relevant terms and conditions included in statute.<sup>14</sup>

The entrance fee is an initial or deterred payment made as full or partial payment for continuing care.<sup>15</sup> According to CCRC providers, entrance fees typically are strongly correlated to local housing prices, though they range widely.<sup>16</sup> Generally, entrance fees range from \$100,000 to \$1 million.<sup>17</sup> Under Florida law, a continuing care contract must specify the terms governing the refund of any portion of the entrance fee.<sup>18</sup> A CCRC facility may only retain up to two percent of the entrance fee per month of resident occupancy along with a processing fee of up to five percent.<sup>19</sup> If the continuing care contract provides that the facility will only retain up to one percent of the entrance fee per month, the contract may also provide that the refund will be paid from the proceeds of the next entrance fees received by the provider,<sup>20</sup> or, if the provider is no

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<sup>10</sup> Section 651.022, F.S.

<sup>11</sup> See ss. 651.021-651.023, F.S.

<sup>12</sup> Section 651.023(4)(a), F.S.

<sup>13</sup> Section 651.055(1), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> See s. 651.011(5), F.S.

<sup>16</sup> Zarem, *supra* note 2, at 9.

<sup>17</sup> About Continuing Care Retirement Communities, AARP.org, [http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho\\_continuing\\_care\\_retirement\\_communities.html](http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html) (last visited March 7, 2015).

<sup>18</sup> Section 651.055(1)(g)1., F.S.

<sup>19</sup> Section 651.055(1)(g)2., F.S.

<sup>20</sup> For units for which there are not prior resident claims.

longer marketing CCRC contracts, within 200 days after the date of notice.<sup>21</sup> If the contract is cancelled before the unit is occupied, the entire entrance fee must be refunded other than a processing fee of up to five percent of the entire entrance fee.<sup>22</sup> Florida law requires the contract to specify the terms under which a contract is cancelled due to the resident's death, which may include a provision allowing the CCRC provider to retain the entire entrance fee.<sup>23</sup>

### **Rights of Residents in a Continuing Care Retirement Community**

The OIR is also authorized to discipline a facility for violations of residents' rights.<sup>24</sup> These rights include: a right to live in a safe and decent living environment, free from abuse and neglect; freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community; and present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.<sup>25</sup>

Current law requires CCRCs to hold quarterly meetings at which residents' organizations may be represented.<sup>26</sup> The meetings are for the purpose of holding a free discussion of subjects such as the facility's income, expenditures, financial trends, and problems, as well as proposed changes in policies, programs, and services. If the CCRC proposes the imposition or increase of a monthly maintenance fee, additional duties are placed on the CCRC provider to provide notice and give reasons for the proposed action.

Residents of a CCRC may form a residents' council for the purpose of representing residents in quarterly meetings with the CCRC provider.<sup>27</sup> Florida law provides a process by which a residents' council is formed. The residents' council must be created by a vote in which at least 40 percent of the total resident population participates and a majority of the participants vote in favor of creating the council.<sup>28</sup> A residents' council may designate a resident to represent them before the governing body of the provider.<sup>29</sup> The residents' council representative must be invited to participate in the portion of any meeting of the full governing body of the CCRC during which proposed changes in resident fees or services will be discussed.<sup>30</sup>

If the OIR institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider.<sup>31</sup> Such claims are subordinate, however, to any secured claim and the priority claims detailed in s. 631.271, F.S. Florida law does not specify the claim status of continuing care contracts in a bankruptcy proceeding.

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<sup>21</sup> Section 651.055(1)(g)3., F.S.

<sup>22</sup> Section 651.055(1)(g)4., F.S.

<sup>23</sup> Section 651.055(1)(h), F.S.

<sup>24</sup> Section 651.083, F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 651.085, F.S.

<sup>27</sup> Section 651.081, F.S.

<sup>28</sup> Section 651.081(2), F.S.

<sup>29</sup> Section 651.085(2), F.S.

<sup>30</sup> Section 651.085(3), F.S.

<sup>31</sup> Section 651.071, F.S.

### III. Effect of Proposed Changes:

#### Refunds of Entrance Fees at Cancellation of Continuing Care Contracts

**Section 1** amends s. 651.055, F.S., to revise the statutory requirements for refunding portions of entrance fees to residents who do not have a transferrable membership or ownership right in the continuing care facility.

The bill requires continuing care facilities to provide refunds of entrance fees within 90 days after the continuing care contract is terminated and the unit is vacated, instead of within 120 days of the notice to cancel under current law. The provision applies to all contracts entered into on or after January 1, 2016. For contracts entered into before that date, the continuing care resident may execute a contract addendum approved by the OIR providing for a refund within 90 days. The bill does not change the requirement that CCRC providers may only retain up to two percent of the entrance fee per month of occupancy by the resident.

If the continuing care contract provides for the CCRC to retain no more than one percent per month of resident occupancy, current law allows continuing care contracts to specify that an entrance fee refund will be paid from the proceeds of the next entrance fee received by the CCRC for which there are no prior claims. The bill requires continuing care contracts to specify one of three sources of payment for the refund:

- The entrance fee refund will be paid from the proceeds of the next entrance fee;
- The entrance fee refund will be paid from the proceeds of the next entrance fee for a like or similar unit<sup>32</sup> for which there are no prior claims; or
- The entrance fee refund will be paid from the proceeds of the next entrance fee for the unit being vacated. This option may only be used until October 1, 2016. The option is allowed until October 1, 2016, because there are CCRCs that currently have this option in their contracts. Such CCRCs must submit to the OIR for approval by August 2, 2016, a new or amended contract that uses one of the other refund options.

The bill also requires the contract to specify the following time frames for the refund of an entrance fee if the continuing care contract specifies that the entrance fee refund will be paid from the proceeds of the next entrance fee for a like or similar unit:

- If the refund is due upon the resident's death or relocation to another level of care that results in termination of the CCRC contract, the refund must be made the earlier of 30 days after the CCRC receives the next entrance fee for a like or similar unit or within a specified maximum number of months or years, as specified by the contract.
- If the refund is due because the resident vacates the unit and voluntarily terminates<sup>33</sup> the contract after the seven day rescission period, the refund must be paid within 30 days after the CCRC receives the next entrance fee for a like or similar unit for which there are no prior claims.

<sup>32</sup> The bill defines "like or similar unit" as a category that has similar characteristics including comparable square footage, number of bedrooms, or location. Each such category must contain at least 5 percent of the total number of residential units or, if the units are not single family homes, at least 10 units.

<sup>33</sup> Under the bill, a continuing care contract is voluntarily terminated when a resident provides written notice of intent to leave and moves out of the CCRC after the 7-day rescission period.

If the CCRC is not marketing continuing care contracts, refunds must be paid within 200 days after the contract terminates and the unit is vacated.

### **Waiver of Continuing Care Facility Requirements**

**Section 2** amends s. 651.028, F.S., to limit the OIR's authority to waive requirements placed on accredited CCRCs by ch. 651, F.S. The bill specifies that a waiver may only be given to a CCRC that is accredited without stipulations or conditions. The bill maintains current law allowing only those waivers that are consistent with the security protections of the chapter. The only requirement typically waived by the OIR is the requirement to submit quarterly financial reports.<sup>34</sup>

### **Priority of Claims in Receivership or Liquidation**

**Section 3** amends s. 651.071, F.S., to specify that in a receivership or liquidation proceeding, CCRC contract claims are subordinate to the priority claims listed in s. 631.271, F.S., related to the estate of an insurer. Current law makes such contracts preferred claims in a liquidation or receivership, but subordinates them to secured claims and the priority claims listed in s. 631.271, F.S.

### **Residents' Councils and Quarterly Meetings**

**Section 5** amends s. 651.081, F.S., to require each CCRC to establish a residents' council, which must be established through an election by the residents. Under current law, it is optional both to establish a residents' council and to do so through the election process outlined in statute.

The bill provides mandatory attributes of a residents' council. Residents' council activities must be independent of the CCRC provider. Additionally, the CCRC provider is not responsible for the costs of the residents' council or ensuring the council's compliance with statute. The residents' council must adopt its own bylaws and governance documents. The governing documents may include term limits for council members.

The council must also provide for open meetings when appropriate. The residents' council must provide a forum for residents to submit issues or make inquiries, particularly on matters that impact the general residential quality of life and cultural environment of the CCRC. The council governing documents must define the process by which residents may submit such inquiries and issues and the timeframe for the council to respond. The council must also serve as a liaison to provide input on such matters to the appropriate representative of the CCRC.

If a licensed CCRC files for federal chapter 11 bankruptcy, the CCRC must include in its required filing with the United States Trustee the 20 largest unsecured creditors, the name and contact information of a designated resident of the residents' council, and, if appropriate, a statement explaining why the designated resident was chosen by the residents' council to serve as a representative of the residents' interest on the creditors' committee.

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<sup>34</sup> See Office of Insurance Regulation, *Senate Bill 1126 Agency Analysis* (March 3, 2015) (on file with the Senate Committee on Banking and Insurance).

**Section 6** amends s. 651.085, F.S., to require the OIR to request verification from each CCRC that required quarterly meetings between the CCRC governing body or designated representative and the residents are held and open to all residents. Currently, the OIR is only required to request verification upon receiving a complaint from the residents' council.

The bill also requires the residents' council to designate a resident to represent them before the governing body of the provider. A licensed CCRC provider may allow a resident of a facility to be a voting member of the board of directors or governing body of the CCRC, and may establish criteria for the selection of that resident. If the board or governing body of a licensed CCRC provider operates more than one facility, it may select a resident from among its facilities to serve on the board or governing body on a rotating basis.

#### **Notice of Examination Report and Corrective Action Plan; Disclosure of Audit**

**Section 4** amends s. 651.105, F.S., to require the OIR to provide notice to the CCRC executive officer of all compliance deficiencies identified by the OIR in an examination. The bill also directs the OIR to determine during each routine examination whether all required disclosures have been made to the CCRC executive officer. A representative of the provider must give a copy of the OIR final examination report and any corrective action plan to the executive officer of the CCRC governing body within 60 days after report issuance.

**Section 7** amends s. 651.091, F.S., to require each CCRC to distribute a copy of the most recent third-party financial audit filed with the annual report to the president or chair of the residents' council within 30 days after filing the annual report with the OIR. The CCRC must also designate a staff person to provide an explanation of the audit.

#### **Effective Date**

**Section 8** provides an effective date of October 1, 2015.

#### **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:**

Under PCS/CS/SB 1126, residents of CCRC communities that enter receivership or liquidation may benefit from continuing care contracts that are made priority claims subordinate only to secured claims.

**C. Government Sector Impact:**

The Office of Insurance Regulation and the Department of Children and Families each indicated there is no fiscal impact to their respective agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 651.055, 651.028, 651.071, 651.105, 651.081, 651.085, and 651.091.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The proposed committee substitute removes a reference adding “bankruptcy” in s. 651.071, F.S., to the types of proceedings in which continuing care and continuing care at home contracts executed by a provider will be deemed preferred claims. Also, the proposed committee substitute makes a clarifying change stating that a residents’ council governance documents shall be approved by the residents.

**CS by Banking and Insurance on March 10, 2015:**

The CS makes technical and clarifying changes to the bill.

B. Amendments:

None.

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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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557990

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Altman)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete line 177

and insert:

(1) In the event of receivership or

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

And the title is amended as follows:

Delete lines 7 - 11

and insert:



557990

11 facilities; amending s. 651.071, F.S.; revising the  
12 subordination of continuing care and continuing care  
13 at-home contracts that are deemed preferred claims in  
14 receivership or liquidation proceedings; amending s.  
15 651.105, F.S.; revising notice



764090

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
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Appropriations Subcommittee on General Government (Altman)  
recommended the following:

**Senate Amendment**

Delete line 257  
and insert:  
governance documents subject to the vote and approval of the  
residents. The residents' council shall provide for

By the Committee on Banking and Insurance; and Senator Altman

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1 A bill to be entitled  
 2 An act relating to continuing care communities;  
 3 amending s. 651.055, F.S.; revising requirements for  
 4 continuing care contracts; amending s. 651.028, F.S.;  
 5 revising authority of the Office of Insurance  
 6 Regulation to waive requirements for accredited  
 7 facilities; amending s. 651.071, F.S.; providing that  
 8 continuing care and continuing care at-home contracts  
 9 are preferred claims in the event of bankruptcy  
 10 proceedings against a provider; revising subordination  
 11 of claims; amending s. 651.105, F.S.; revising notice  
 12 requirements; revising duties of the office; requiring  
 13 an agent of a provider to provide a copy of an  
 14 examination report and corrective action plan under  
 15 certain conditions; amending s. 651.081, F.S.;  
 16 requiring a residents' council to provide a forum for  
 17 certain purposes; requiring a residents' council to  
 18 adopt its own bylaws and governance documents;  
 19 amending s. 651.085, F.S.; revising provisions  
 20 relating to quarterly meetings between residents and  
 21 the governing body of the provider; revising powers of  
 22 the residents' council; amending s. 651.091, F.S.;  
 23 revising continuing care facility reporting  
 24 requirements; providing an effective date.

25  
 26 Be It Enacted by the Legislature of the State of Florida:

27  
 28 Section 1. Paragraphs (g) through (k) of subsection (1) of  
 29 section 651.055, Florida Statutes, are amended to read:

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

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30 651.055 Continuing care contracts; right to rescind.—  
 31 (1) Each continuing care contract and each addendum to such  
 32 contract shall be submitted to and approved by the office before  
 33 its use in this state. Thereafter, no other form of contract  
 34 shall be used by the provider until it has been submitted to and  
 35 approved by the office. Each contract must:  
 36 (g) Provide that the contract may be canceled by giving at  
 37 least 30 days' written notice of cancellation by the provider,  
 38 the resident, or the person who provided the transfer of  
 39 property or funds for the care of such resident. However, if a  
 40 contract is canceled because there has been a good faith  
 41 determination that a resident is a danger to himself or herself  
 42 or others, only such notice as is reasonable under the  
 43 circumstances is required.  
 44 (h)1- Describe The contract must also provide in clear and  
 45 understandable language, in print no smaller than the largest  
 46 type used in the body of the contract, the terms governing the  
 47 refund of any portion of the entrance fee.  
 48 1.2- For a resident whose contract with the facility  
 49 provides that the resident does not receive a transferable  
 50 membership or ownership right in the facility, and who has  
 51 occupied his or her unit, the refund shall be calculated on a  
 52 pro rata basis with the facility retaining up to 2 percent per  
 53 month of occupancy by the resident and up to a 5 percent  
 54 processing fee. Such refund must be paid within 120 days after  
 55 giving the notice of intention to cancel. For contracts entered  
 56 into on or after January 1, 2016, refunds must be made within 90  
 57 days after the contract is terminated and the unit is vacated. A  
 58 resident who enters into a contract before January 1, 2016, may

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59 voluntarily sign a contract addendum approved by the office that  
60 provides for a revised refund requirement.

61 ~~2.3.~~ In addition to a processing fee not to exceed 5  
62 percent, if the contract provides for the facility to retain no  
63 more than ~~up to~~ 1 percent per month of occupancy by the resident  
64 and the resident does not receive a transferable membership or  
65 ownership right in the facility, the contract shall, ~~it may~~  
66 provide that such refund will be paid from one of the following  
67 sources of proceeds:

68 a. The proceeds of the next entrance fees received by the  
69 provider for units for which there are no prior claims by any  
70 resident until paid in full;

71 b. The proceeds of the next entrance fee received by the  
72 provider for a like or similar unit as specified in the  
73 residency or reservation contract signed by the resident for  
74 which there are no prior claims by any resident until paid in  
75 full; or

76 c. The proceeds of the next entrance fee received by the  
77 provider for the unit that is vacated if the contract is  
78 approved by the office before October 1, 2015. A provider may  
79 not use this refund option after October 1, 2016, and must  
80 submit a new or amended contract with an alternative refund  
81 provision to the office for approval by August 2, 2016, if the  
82 provider has discontinued marketing continuing care contracts,  
83 within 200 days after the date of notice.

84 3. For contracts entered into on or after January 1, 2016,  
85 that provide for a refund in accordance with sub-subparagraph  
86 2.b., the following provisions apply:

87 a. Any refund that is due upon the resident's death or

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88 relocation of the resident to another level of care that results  
89 in the termination of the contract must be paid by the earlier  
90 of:

91 (I) Thirty days after receipt by the provider of the next  
92 entrance fee received for a like or similar unit for which there  
93 is no prior claim by any resident until paid in full; or

94 (II) Within a specified maximum number of months or years,  
95 determined by the provider and specified in the contract, after  
96 the contract is terminated and the unit is vacated.

97 b. Any refund that is due to a resident who vacates the  
98 unit and voluntarily terminates a contract after the 7-day  
99 rescission period required in subsection (2) must be paid within  
100 30 days after receipt by the provider of the next entrance fee  
101 for a like or similar unit for which there are no prior claims  
102 by any resident until paid in full and is not subject to the  
103 provisions in sub-subparagraph a. A contract is voluntarily  
104 terminated when a resident provides written notice of intent to  
105 leave and moves out of the continuing care facility after the 7-  
106 day rescission period.

107 4. For purposes of this paragraph, the term "like or  
108 similar unit" means a residential dwelling categorized into a  
109 group of units which have similar characteristics, such as  
110 comparable square footage, number of bedrooms, location, age of  
111 construction, or a combination of one or more of these features  
112 as specified in the residency or reservation contract. Each  
113 category must consist of at least 5 percent of the total number  
114 of residential units designated for independent living or 10  
115 residential units designated for independent living, whichever  
116 is less. However, a group of units consisting of single family

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117 homes may contain fewer than 10 units.

118 5. If the provider has discontinued marketing continuing  
 119 care contracts, any refund due a resident must be paid within  
 120 200 days after the contract is terminated and the unit is  
 121 vacated.

122 ~~6.4-~~ Unless subsection (5) applies, for any prospective  
 123 resident, regardless of whether or not such a resident receives  
 124 a transferable membership or ownership right in the facility,  
 125 who cancels the contract before occupancy of the unit, the  
 126 entire amount paid toward the entrance fee shall be refunded,  
 127 less a processing fee of up to 5 percent of the entire entrance  
 128 fee; however, the processing fee may not exceed the amount paid  
 129 by the prospective resident. Such refund must be paid within 60  
 130 days after the resident gives ~~giving~~ notice of intention to  
 131 cancel. For a resident who has occupied his or her unit and who  
 132 has received a transferable membership or ownership right in the  
 133 facility, the foregoing refund provisions do not apply but are  
 134 deemed satisfied by the acquisition or receipt of a transferable  
 135 membership or an ownership right in the facility. The provider  
 136 may not charge any fee for the transfer of membership or sale of  
 137 an ownership right.

138 ~~(i)-(h)~~ State the terms under which a contract is canceled  
 139 by the death of the resident. These terms may contain a  
 140 provision that, upon the death of a resident, the entrance fee  
 141 of such resident is considered earned and becomes the property  
 142 of the provider. If the unit is shared, the conditions with  
 143 respect to the effect of the death or removal of one of the  
 144 residents must be included in the contract.

145 ~~(j)-(i)~~ Describe the policies that may lead to changes in

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146 monthly recurring and nonrecurring charges or fees for goods and  
 147 services received. The contract must provide for advance notice  
 148 to the resident, of at least 60 days, before any change in fees  
 149 or charges or the scope of care or services is effective, except  
 150 for changes required by state or federal assistance programs.

151 ~~(k)-(j)~~ Provide that charges for care paid in one lump sum  
 152 may not be increased or changed during the duration of the  
 153 agreed upon care, except for changes required by state or  
 154 federal assistance programs.

155 ~~(l)-(k)~~ Specify whether the facility is, or is affiliated  
 156 with, a religious, nonprofit, or proprietary organization or  
 157 management entity; the extent to which the affiliate  
 158 organization will be responsible for the financial and  
 159 contractual obligations of the provider; and the provisions of  
 160 the federal Internal Revenue Code, if any, under which the  
 161 provider or affiliate is exempt from the payment of federal  
 162 income tax.

163 Section 2. Section 651.028, Florida Statutes, is amended to  
 164 read:

165 651.028 Accredited facilities.—If a provider is accredited  
 166 without stipulations or conditions by a process found by the  
 167 office to be acceptable and substantially equivalent to the  
 168 provisions of this chapter, the office may, pursuant to rule of  
 169 the commission, waive any requirements of this chapter with  
 170 respect to the provider if the office finds that such waivers  
 171 are not inconsistent with the security protections intended by  
 172 this chapter.

173 Section 3. Subsection (1) of section 651.071, Florida  
 174 Statutes, is amended to read:

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175 651.071 Contracts as preferred claims on liquidation or  
176 receivership.-

177 (1) In the event of bankruptcy, receivership, or  
178 liquidation proceedings against a provider, all continuing care  
179 and continuing care at-home contracts executed by a provider  
180 shall be deemed preferred claims against all assets owned by the  
181 provider; however, such claims are subordinate to ~~those priority~~  
182 ~~claims set forth in s. 631.271~~ and any secured claim.

183 Section 4. Subsections (4) and (5) of section 651.105,  
184 Florida Statutes, are amended, and subsection (6) is added to  
185 that section, to read:

186 651.105 Examination and inspections.-

187 (4) The office shall notify the provider and the executive  
188 officer of the governing body of the provider in writing of all  
189 deficiencies in its compliance with the provisions of this  
190 chapter and the rules adopted pursuant to this chapter and shall  
191 set a reasonable length of time for compliance by the provider.  
192 In addition, the office shall require corrective action or  
193 request a corrective action plan from the provider which plan  
194 demonstrates a good faith attempt to remedy the deficiencies by  
195 a specified date. If the provider fails to comply within the  
196 established length of time, the office may initiate action  
197 against the provider in accordance with the provisions of this  
198 chapter.

199 (5) At the time of the routine examination, the office  
200 shall determine if all disclosures required under this chapter  
201 have been made to the president or chair of the residents'  
202 council and the executive officer of the governing body of the  
203 provider.

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204 (6) A representative of the provider must give a copy of  
205 the final examination report and corrective action plan, if one  
206 is required by the office, to the executive officer of the  
207 governing body of the provider within 60 days after issuance of  
208 the report.

209 Section 5. Section 651.081, Florida Statutes, is amended to  
210 read:

211 651.081 Residents' council.-

212 (1) Residents living in a facility holding a valid  
213 certificate of authority under this chapter have the right of  
214 self-organization, the right to be represented by an individual  
215 of their own choosing, and the right to engage in concerted  
216 activities for the purpose of keeping informed on the operation  
217 of the facility that is caring for them or for the purpose of  
218 other mutual aid or protection.

219 (2) (a) Each facility shall establish a residents' council  
220 created for the purpose of representing residents on matters set  
221 forth in s. 651.085. The residents' council shall ~~may~~ be  
222 established through an election in which the residents, as  
223 defined in s. 651.011, vote by ballot, physically or by proxy.  
224 If the election is to be held during a meeting, a notice of the  
225 organizational meeting must be provided to all residents of the  
226 community at least 10 business days before the meeting. Notice  
227 may be given through internal mailboxes, communitywide  
228 newsletters, bulletin boards, in-house television stations, and  
229 other similar means of communication. An election creating a  
230 residents' council is valid if at least 40 percent of the total  
231 resident population participates in the election and a majority  
232 of the participants vote affirmatively for the council. The

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 233 initial residents' council created under this section is valid  
 234 for at least 12 months. A residents' organization formalized by  
 235 bylaws and elected officials must be recognized as the  
 236 residents' council under this section and s. 651.085. Within 30  
 237 days after the election of a newly elected president or chair of  
 238 the residents' council, the provider shall give the president or  
 239 chair a copy of this chapter and rules adopted thereunder, or  
 240 direct him or her to the appropriate public website to obtain  
 241 this information. Only one residents' council may represent  
 242 residents before the governing body of the provider as described  
 243 in s. 651.085(2).

244 (b) In addition to those matters provided in s. 651.085, a  
 245 residents' council shall provide a forum in which a resident may  
 246 submit issues or make inquiries related to, but not limited to,  
 247 subjects that impact the general residential quality of life and  
 248 cultural environment. The residents' council shall serve as a  
 249 formal liaison to provide input related to such matters to the  
 250 appropriate representative of the provider.

251 (c) The activities of a residents' council are independent  
 252 of the provider. The provider is not responsible for ensuring,  
 253 or for the associated costs of, compliance of the residents'  
 254 council with the provisions of this section with respect to the  
 255 operation of a residents' council.

256 (d) A residents' council shall adopt its own bylaws and  
 257 governance documents. The residents' council shall provide for  
 258 open meetings when appropriate. The governing documents shall  
 259 define the manner in which residents may submit an issue to the  
 260 council and define a reasonable timeframe in which the  
 261 residents' council shall respond to a resident submission or

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 262 inquiry. A residents' council may include term limits in its  
 263 governing documents to ensure consistent integration of new  
 264 leaders. If a licensed facility files for bankruptcy under  
 265 chapter 11 of the United States Bankruptcy Code, 11 U.S.C.  
 266 chapter 11, the facility, in its required filing of the 20  
 267 largest unsecured creditors with the United States Trustee,  
 268 shall include the name and contact information of a designated  
 269 resident selected by the residents' council and a statement  
 270 explaining that the designated resident was chosen by the  
 271 residents' council to serve as a representative of the  
 272 residents' interest on the creditors' committee.

273 Section 6. Section 651.085, Florida Statutes, is amended to  
 274 read:

275 651.085 Quarterly meetings between residents and the  
 276 governing body of the provider; resident representation before  
 277 the governing body of the provider.—

278 (1) The governing body of a provider, or the designated  
 279 representative of the provider, shall hold quarterly meetings  
 280 with the residents of the continuing care facility for the  
 281 purpose of free discussion of subjects including, but not  
 282 limited to, income, expenditures, and financial trends and  
 283 problems as they apply to the facility, as well as a discussion  
 284 on proposed changes in policies, programs, and services. At  
 285 quarterly meetings where monthly maintenance fee increases are  
 286 discussed, a summary of the reasons for raising the fee as  
 287 specified in subsection (4) must be provided in writing to the  
 288 president or chair of the residents' council. Upon request of  
 289 the residents' council, a member of the governing body of the  
 290 provider, such as a board member, general partner, principal



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291 owner, or designated representative shall attend such meetings.  
 292 Residents are entitled to at least 7 days' advance notice of  
 293 each quarterly meeting. An agenda and any materials that will be  
 294 distributed by the governing body or representative of the  
 295 provider shall be posted in a conspicuous place at the facility  
 296 and shall be available upon request to residents of the  
 297 facility. The office shall request verification from a facility  
 298 that quarterly meetings are held and open to all residents ~~if it~~  
 299 ~~receives a complaint from the residents' council that a facility~~  
 300 ~~is not in compliance with this subsection.~~ In addition, a  
 301 facility shall report to the office in the annual report  
 302 required under s. 651.026 the dates on which quarterly meetings  
 303 were held during the reporting period.

304 (2) A residents' council formed pursuant to s. 651.081,  
 305 members of which are elected by the residents, shall may  
 306 designate a resident to represent them before the governing body  
 307 of the provider ~~or organize a meeting or ballot election of the~~  
 308 ~~residents to determine whether to elect a resident to represent~~  
 309 ~~them before the governing body of the provider. If a residents'~~  
 310 ~~council does not exist, any resident may organize a meeting or~~  
 311 ~~ballot election of the residents of the facility to determine~~  
 312 ~~whether to elect a resident to represent them before the~~  
 313 ~~governing body and, if applicable, elect the representative. The~~  
 314 ~~residents' council, or the resident that organizes a meeting or~~  
 315 ~~ballot election to elect a representative, shall give all~~  
 316 ~~residents notice at least 10 business days before the meeting or~~  
 317 ~~election. Notice may be given through internal mailboxes,~~  
 318 ~~communitywide newsletters, bulletin boards, in-house television~~  
 319 ~~stations, and other similar means of communication. An election~~

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320 ~~of the representative is valid if at least 40 percent of the~~  
 321 ~~total resident population participates in the election and a~~  
 322 ~~majority of the participants vote affirmatively for the~~  
 323 ~~representative.~~ The initial designated representative elected  
 324 under this section shall be elected to serve at least 12 months.

325 (3) The designated representative shall be notified at  
 326 least 14 days in advance of any meeting of the full governing  
 327 body at which proposed changes in resident fees or services will  
 328 be discussed. The representative shall be invited to attend and  
 329 participate in that portion of the meeting designated for the  
 330 discussion of such changes.

331 (4) At a quarterly meeting prior to the implementation of  
 332 any increase in the monthly maintenance fee, the designated  
 333 representative of the provider must provide the reasons, by  
 334 department cost centers, for any increase in the fee that  
 335 exceeds the most recently published Consumer Price Index for All  
 336 Urban Consumers, all items, Class A Areas of the Southern  
 337 Region. Nothing in this subsection shall be construed as placing  
 338 a cap or limitation on the amount of any increase in the monthly  
 339 maintenance fee, establishing a presumption of the  
 340 appropriateness of the Consumer Price Index as the basis for any  
 341 increase in the monthly maintenance fee, or limiting or  
 342 restricting the right of a provider to establish or set monthly  
 343 maintenance fee increases.

344 (5) The board of directors or governing board of a licensed  
 345 provider may at its sole discretion allow a resident of the  
 346 facility to be a voting member of the board or governing body of  
 347 the facility. The board of directors or governing board of a  
 348 licensed provider may establish specific criteria for the

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349 nomination, selection, and term of a resident as a member of the  
350 board or governing body. If the board or governing body of a  
351 licensed provider operates more than one licensed facility,  
352 regardless of whether the facility is in-state or out-of-state,  
353 the board or governing body may select at its sole discretion  
354 one resident from among its facilities to serve on the board of  
355 directors or governing body on a rotating basis.

356 Section 7. Paragraph (d) of subsection (2) of section  
357 651.091, Florida Statutes, is amended to read:

358 651.091 Availability, distribution, and posting of reports  
359 and records; requirement of full disclosure.—

360 (2) Every continuing care facility shall:

361 (d) Distribute a copy of the full annual statement and a  
362 copy of the most recent third-party financial audit filed with  
363 the annual report to the president or chair of the residents'  
364 council within 30 days after filing the annual report with the  
365 office, and designate a staff person to provide explanation  
366 thereof.

367 Section 8. This act shall take effect October 1, 2015.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/15  
Meeting Date

SB1126  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Bob Asztalos

Job Title Chief Lobbyist

Address 307 W Park Ave  
Street

Phone 850-284-1166

Tallahassee FL 32301  
City State Zip

Email basztalos@fhca.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Health Care Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-15

Meeting Date

1126

Bill Number (if applicable)

Topic Continuing Care Retirement Communities Amendment Barcode (if applicable)

Name Beta Vecchiodi

Job Title Sr. Policy Advisor

Address 315 S. Calhoun St.

Phone 850-425-5623

Street Tallah City FL State 32301 Zip

Email beta.vechiodi@shaw.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Leading Age FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: SB 1138

INTRODUCER: Senator Brandes

SUBJECT: Unclaimed Property

DATE: April 7, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1138 is intended to allow the Department of Financial Services (DFS), through their Unclaimed Property bureau the ability to obtain the title to unclaimed savings bonds issued by the U.S. Department of the Treasury (Treasury) to citizens of the state, when such unclaimed bonds are more than five years past their maturity date.

There is no fiscal impact to state funds.

The effective date of the bill is July 1, 2015.

**II. Present Situation:**

**Florida Disposition of Unclaimed Property Act**

In 1987, the Florida Legislature adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (chapter 717, F.S., the Act).<sup>1</sup> The Act defines unclaimed property as any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.<sup>2</sup> The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the DFS Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the

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<sup>1</sup> Ch. 87-105, L.O.F. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (Last visited March 26, 2014)

<sup>2</sup> ss. 717.104 – 717.116, F.S.

property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.<sup>3</sup> Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate the apparent owners within 180 days after an account becomes inactive.<sup>4</sup> Once this search period expires, holders must file an annual report with the DFS for all property, valued at \$50 or more, that is presumed unclaimed for the preceding year.<sup>5</sup> The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.<sup>6</sup>

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.<sup>7</sup> The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.<sup>8</sup> The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department must deliver or pay to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.<sup>9</sup>

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.<sup>10</sup> The DFS is allowed to retain up to \$15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund.<sup>11</sup>

Like many other state unclaimed property programs, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property but instead obtains its custody and beneficial use pending identification of the property owner.<sup>12</sup>

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<sup>3</sup> s. 717.102(1), F.S.

<sup>4</sup> s. 717.117(4), F.S.

<sup>5</sup> s. 717.117, F.S.

<sup>6</sup> s. 717.119, F.S.

<sup>7</sup> s. 717.1201, F.S.

<sup>8</sup> ss. 717.117 and 717.124, F.S.

<sup>9</sup> s. 717.124, F.S.

<sup>10</sup> s. 717.123, F.S.

<sup>11</sup> Id.

<sup>12</sup> Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.

## U.S. Savings Bonds<sup>13</sup>

Pursuant to its constitutional power “to borrow money on the credit of the United States,”<sup>14</sup> Congress delegated authority to the United States Department of the Treasury (Treasury), with approval of the President, to issue savings bonds “for expenditures authorized by law.”<sup>15</sup> United States (U.S.) savings bonds are debt securities issued by the Treasury to help pay for the federal government’s borrowing needs and are backed by the full faith and credit of the U.S. government. A U.S. savings bond is a contract between the federal government and the bond’s owner that is controlled by federal law. However, in disputes which do not concern the rights and duties of the United States, questions of title are to be decided by state law.<sup>16</sup>

The federal government began selling savings bonds in 1941 for World War II defense spending and, subsequently, to encourage thrift and savings by small investors. The majority of the bonds at issue are Series E bonds (known informally as Defense Bonds), which were issued between 1941 and 1980 and had maturity terms of 30-40 years. In 2011, the last Series E bonds matured and stopped earning interest.<sup>17</sup>

Due to the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, a significant number of bonds remain unclaimed. As of January 31, 2015, the Treasury holds nearly 49.3 million matured, unredeemed savings bonds, with a maturity value of \$16.5 billion.<sup>18</sup> The federal regulations do not impose any time limits for bond owners to redeem Series E savings bonds.

There are two types of unclaimed savings bonds:

- *Bonds in possession* are U.S. savings bonds physically held by an unclaimed property administrator’s office, typically discovered from expired safe-deposit boxes. These bonds are delivered to the DFS pursuant to the Act. However, the DFS currently cannot redeem bonds in possession without first taking title to these bonds via escheatment.
- *Absent bonds* are the class of U.S. savings bonds issued to an individual whose last known address is in Florida, but have been lost, stolen, or destroyed. As such, these bonds are not physically in the possession of the DFS. The records regarding absent bonds (such as registration information, serial numbers, and addresses) are exclusively held by the Treasury. The Treasury’s online unredeemed bonds database, Treasury Hunt, does not contain a record

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<sup>13</sup> Except where specifically identified, this portion of the analysis is derived from the facts and background in *Treasurer of New Jersey v U.S. Dep’t of Treasury*, 684 F.3d 382 (3rd Cir. 2012).

<sup>14</sup> U.S. CONST. art. I, s. 8, cl. 2.

<sup>15</sup> 31 U.S.C. s. 3105(a). The federal legislation authorizing Treasury to sell U.S. savings bonds was signed into law in 1935. See TREASURY DIRECT, *The History of U.S. Savings Bonds*, <http://www.treasurydirect.gov/timeline.htm> (Last visited March 26, 2014)

<sup>16</sup> 91 C.J.S. United States s. 249 (Government bonds, generally).

<sup>17</sup> TREASURYDIRECT, *The Volunteer Program and Series E Savings Bonds*, [http://www.treasurydirect.gov/indiv/research/history/history\\_ebond.htm](http://www.treasurydirect.gov/indiv/research/history/history_ebond.htm). (Last visited March 26, 2014) The federal government sold the Series E bonds at a discount and paid interest on them only at maturity. While Series E bonds have stopped earning interest, owners of E bonds may still redeem them. Series E bonds were replaced by the Series EE bond in 1980.

<sup>18</sup> TREASURYDIRECT, *Matured, Unredeemed Debt and Unclaimed Moneys Reports: Statistical report of matured, unredeemed savings bonds and notes* (Jan. 21, 2015), [http://www.treasurydirect.gov/foia/foia\\_mud.htm](http://www.treasurydirect.gov/foia/foia_mud.htm). (Last visited March 26, 2014)

of all savings bonds. The system only provides information on Series E bonds issued in 1974 or after, and is organized by social security number. Additionally, pursuant to the Privacy Act of 1974, Treasury Hunt only provides limited information to anyone who is not the bond owner or co-owner.<sup>19</sup>

In Florida, the DFS presently is in possession of unclaimed *physical* U.S. savings bonds with a face value of more than \$1.2 million. According to the DFS, the total amount of unclaimed, matured *absent* U.S. savings bonds registered to persons with a last known address in Florida is estimated to be well over \$100 million.<sup>20</sup>

Unlike many other types of securities, “savings bonds are not transferable and are payable only to the owners named on the bonds,” except as specifically provided for in the federal regulations.<sup>21</sup> There are limited exceptions to this general rule against transferability of savings bonds, including cases in which a third party attains an interest in a bond through valid judicial proceedings.<sup>22</sup> A registered owner of a bond is presumed conclusively to be its owner, absent errors in registration.<sup>23</sup>

While federal law pervades the terms and conditions of the U.S. savings bond program (including the authority to fix the bonds’ investment yield, transfer, redemption, and sales prices),<sup>24</sup> there is no federal escheat or unclaimed property law requiring the federal government to search for and reunite bond owners with the bonds. Instead, the federal government will hold these bonds in perpetuity. State unclaimed property laws, on the other hand, govern the significant public policy concerns of the abandonment of intangible personal property.<sup>25</sup>

For several decades, various states have sought to recover the proceeds from matured but unredeemed savings bonds. In 1952, the Treasury issued a bulletin (referred to as the “Escheat Decision”) explaining that it would pay the proceeds of savings bonds to the state of New York if it actually obtained *title* to the bonds, but would not do so if the state merely obtained a right to the *custody* of the proceeds.<sup>26</sup> In 2000, the Treasury published online guidance consistent with the 1952 Escheat Decision.<sup>27</sup> Both articulations of the Treasury policy raised serious concerns with releasing U.S. bonds to states with custody-based statutes, because such a state that replaces the *payor* (Treasury) merely as a custodian would not discharge Treasury of its contractual obligation and liability to bond holders.<sup>28</sup> On the other hand, the Treasury guidance appears to

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<sup>19</sup> TREASURYDIRECT, *Treasury Hunt*, at [http://www.treasurydirect.gov/indiv/tools/tools\\_treasuryhunt.htm](http://www.treasurydirect.gov/indiv/tools/tools_treasuryhunt.htm). (Last visited March 26, 2014)

<sup>20</sup> Department of Financial Services Agency Analysis, March 17, 2015. (On file with the Banking and Insurance Committee.)

<sup>21</sup> 31 C.F.R. ss. 315.15, 353.15.

<sup>22</sup> 31 C.F.R. ss. 315.20(b), 353.20(b).

<sup>23</sup> 31 C.F.R. ss. 315.15, 353.15.

<sup>24</sup> 31 U.S.C. s. 3105.

<sup>25</sup> Other scenarios involving the application of state unclaimed property laws to unclaimed intangible property in the federal government’s possession include unclaimed accounts from liquidated nationally-chartered financial institutions or property subject to administration by the U.S. bankruptcy courts.

<sup>26</sup> *New Jersey v. Treasury*, at 390-391.

<sup>27</sup> TREASURYDIRECT, *EE/E Savings Bonds FAQs*, [http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res\\_e\\_bonds\\_eefaq.htm](http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds_eefaq.htm) (Last visited March 26, 2014)

<sup>28</sup> In *New Jersey v. Treasury*, several states with custody-based statutes offered to indemnify Treasury in exchange for the bond proceeds; however, Treasury declined.



accept a state replacing the *payee* (the bond owner) through a valid judicial determination made under a title-based law.

### **Kansas Title-Based Statute and Recovery of Proceeds from Bonds in Possession**

In 2000, the state of Kansas enacted a change in state law to designate its state treasurer's office as the official *title owner* of unclaimed U.S. savings bonds,<sup>29</sup> in order to align with long-standing Treasury policy. Based on this state law, Kansas obtained a favorable declaratory judgment in state trial court awarding title to 1,447 fully matured and unclaimed U.S. savings bonds in possession found in unclaimed safe deposit boxes. In January 2014, the Kansas state treasurer announced the receipt of \$861,908 from the Treasury for those physical bonds (bonds in possession).<sup>30</sup>

In contrast to the outcome in Kansas, a federal appeals court in 2012 denied an attempt by several state unclaimed property administrators to recover proceeds of unredeemed physical U.S. savings bonds from the Treasury, based on several constitutional grounds.<sup>31</sup> However, a significant aspect of the court's holding turned on the fact that these states' unclaimed property acts were "custody" statutes, not "title" statutes, thus conflicting with Treasury's policy.<sup>32</sup>

To date, seven states have enacted similar title-based unclaimed property laws based on the Kansas statute, in an effort to seek the proceeds of bonds in possession. Title-based unclaimed property legislation is currently pending in at least nine other states.

### **Unclaimed Absent Bonds**

Following its receipt of proceeds from the Treasury for unclaimed physical bonds, Kansas next petitioned the Treasury to redeem the remaining class of matured *absent* savings bonds issued to owners with a last known address in Kansas. While the Treasury made limited information available to Kansas about matured savings bonds issued after 1974 on its Treasury Hunt website, it did not provide other information necessary to search the database (such as the original owners' social security number) or any information about older bonds.

In December 2014, the Kansas state treasurer initiated suit against the Treasury in the U.S. Court of Federal Claims,<sup>33</sup> seeking payment for \$151 million in unclaimed absent bonds and for

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<sup>29</sup> Kan. Stat. Ann. ss. 58-3979 and 3980 (2014).

<sup>30</sup> KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: <https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php>. (Last visited March 26, 2014)

<sup>31</sup> The constitutional issues in *New Jersey v. Treasury* involved preemption, intergovernmental immunity, and waiver of sovereign immunity under the federal Administrative Procedures Act.

<sup>32</sup> *New Jersey v. Treasury*, at 389. The plaintiff states were New Jersey, North Carolina, Montana, Kentucky, Oklahoma, Missouri, and Pennsylvania.

<sup>33</sup> *Ron Estes, Treasurer of the State of Kansas v. United States*, U.S. Ct. of Fed. Claims (Case No. 1:13-cv-01011-EDK). The U.S. Court of Federal Claims is an Article I, congressionally created court that has exclusive jurisdiction over claims for monetary damages against the federal government and that arise from federal constitutional, statutory, and regulatory laws, as well as contracts with the U.S. government. *See* 28 U.S.C. s. 1491.

records identifying the original owners.<sup>34</sup> This lawsuit is still pending. The parties recently completed supplemental briefing on the Treasury's motion to dismiss, but a final ruling has not yet been issued.<sup>35</sup>

### III. Effect of Proposed Changes:

The bill creates a judicial process for the DFS to file a civil action in a court of competent jurisdiction in Leon County, Florida, to determine if title to unclaimed U.S. savings bonds issued to residents of the state shall escheat to the state. This is similar to what was done in the state of Kansas. If the DFS is successful in obtaining title to these bonds, it places the DFS in the same position as the record owner of the bond, which is necessary to recover proceeds from the Treasury.

The bill stipulates that U.S. savings bonds are not considered unclaimed until they have matured and have remained unclaimed for five years after the bond maturity date (typically 30-40 years). This five year post-maturity period will indicate that the bonds are lost, stolen, or destroyed, allowing the DFS to initiate escheat proceedings.

If the proceeds from such unclaimed bonds are received by the DFS, the bill requires all proceeds to be deposited in accordance with any other unclaimed property, which requires deposit of proceeds into the Unclaimed Property Trust Fund and allows the DFS to retain \$15 million to pay proceeds and administrative expenses, and requires deposit of remaining funds into the State School Fund.

The bill creates a claims process to return the money to valid claimants and requires the DFS to comport with due process prior to any escheat hearing. Due process means that DFS must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication.<sup>36</sup> Even after the bonds escheat to the state, an original bond owner may still recover the proceeds of the bond under the claims process set forth in the bill, and may make a claim with the DFS for the proceeds of the bond. This "second chance" provision allows originally named bond owners who did not or could not comply with Treasury's regulations for redemption.

Once the DFS obtains title to these bonds, it may petition the Treasury for redemption of these bonds in possession and, if necessary, to render a full accounting of the necessary information of absent bonds, which would identify the class of bonds registered with the last known address in Florida.<sup>37</sup>

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<sup>34</sup> KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: <https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php>. (Last visited March 26, 2014)

<sup>35</sup> Supplemental briefs in *Estes v. United States* (On file with the Banking and Insurance committee).

<sup>36</sup> Service of process by publication is set forth in ch. 49, F.S. (Constructive Service of Process).

<sup>37</sup> If necessary, the state may join the lawsuit against Treasury. Because the value of absent bonds is significantly higher than the bonds in possession, it is likely that the state will have to file suit to recover the proceeds from the absent bonds.

**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:

Under SB 1138, the fiscal impact to the private sector is indeterminate given the pending litigation on the escheatment of such bonds to a state.

## C. Government Sector Impact:

The fiscal impact to state funds is indeterminate given the pending litigation on the escheatment of such bonds to a state. This bill could generate additional funds transferred to the State School Fund if it results in more money transferred to the state than claimed by claimants.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 717.1382 and 717.1383.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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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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By Senator Brandes

22-00806A-15

20151138\_\_

A bill to be entitled

An act relating to unclaimed property; creating s. 717.1382, F.S.; providing for escheatment to the state of unclaimed United States savings bonds; providing for judicial determination of escheatment; providing procedures for challenging escheatment; providing for deposit of the proceeds of escheatment; creating s. 717.1383, F.S.; providing that a person claiming a United States savings bond may file a claim with the Department of Financial Services; providing limitations on such claim; providing applicability; providing an effective date.

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

Section 1. Section 717.1382, Florida Statutes, is created to read:

717.1382 United States savings bond; unclaimed property; escheatment; procedure.-

(1) Notwithstanding any other provision of law, a United States savings bond in the possession of the department or registered to a person with a last known address in the state, including a bond that is lost, stolen, or destroyed, is presumed abandoned and unclaimed 5 years after the bond reaches maturity and no longer earns interest and shall be reported and remitted to the department by the financial institution or other holder in accordance with ss. 717.117(1) and (3) and 717.119, if the department is not in possession of the bond.

(2) (a) After a United States savings bond is abandoned and

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

22-00806A-15

20151138\_\_

unclaimed in accordance with subsection (1), the department may commence a civil action in a court of competent jurisdiction in Leon County for a determination that the bond shall escheat to the state. Upon determination of escheatment, all property rights to the bond or proceeds from the bond, including all rights, powers, and privileges of survivorship of an owner, coowner, or beneficiary, shall vest solely in the state.

(b) Service of process by publication may be made on a party in a civil action pursuant to this section. A notice of action shall state the name of any known owner of the bond, the nature of the action or proceeding in short and simple terms, the name of the court in which the action or proceeding is instituted, and an abbreviated title of the case.

(c) The notice of action shall require a person claiming an interest in the bond to file a written defense with the clerk of the court and serve a copy of the defense by the date fixed in the notice. The date must not be less than 28 or more than 60 days after the first publication of the notice.

(d) The notice of action shall be published once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County. Proof of publication shall be placed in the court file.

(e)1. If no person files a claim with the court for the bond and if the department has substantially complied with the provisions of this section, the court shall enter a default judgment that the bond, or proceeds from such bond, has escheated to the state.

2. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant

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

22-00806A-15

20151138\_\_

59 is not entitled to the bonds claimed by such claimant, the court  
60 shall enter a judgment that such bonds, or proceeds from such  
61 bonds, have escheated to the state.

62 3. If a person files a claim for one or more bonds and,  
63 after notice and hearing, the court determines that the claimant  
64 is entitled to the bonds claimed by such claimant, the court  
65 shall enter a judgment in favor of the claimant.

66 (3) The department may redeem a United States savings bond  
67 escheated to the state pursuant to this section or, in the event  
68 that the department is not in possession of the bond, seek to  
69 obtain the proceeds from such bond. Proceeds received by the  
70 department shall be deposited in accordance with s. 717.123.

71 Section 2. Section 717.1383, Florida Statutes, is created  
72 to read:

73 717.1383 United States savings bond; claim for bond.—A  
74 person claiming a United States savings bond escheated to the  
75 state under s. 717.1382, or for the proceeds from such bond, may  
76 file a claim with the department. The department may approve the  
77 claim if the person is able to provide sufficient proof of the  
78 validity of the person's claim. Once a bond, or the proceeds  
79 from such bond, are remitted to a claimant, no action thereafter  
80 may be maintained by any other person against the department,  
81 the state, or any officer thereof, for or on account of such  
82 funds. The person's sole remedy, if any, shall be against the  
83 claimant who received the bond or the proceeds from such bond.

84 Section 3. This act applies to any United States savings  
85 bond that reaches maturity on, before, or after the effective  
86 date of this act.

87 Section 4. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/15

Meeting Date

SB 1138

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 400 N. Monroe St

Phone 850-413-2863

tallahassee FL 32399

Email elizabeth.boyd@myflorideps.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: CS/SB 1190

INTRODUCER: Banking and Insurance Committee and Senator Lee

SUBJECT: Insurer Solvency

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1190 substantially revises the solvency requirements for health maintenance organizations (HMOs) in the areas of minimum surplus, premium-to-surplus writing ratios, risk-based capital, financial reporting, financial management, and governance. These changes will require HMOs to meet the same regulatory requirements as insurers in these areas, thereby increasing consumer protections against insolvencies. The bill also increases the cap on HMO financial examination costs for examinations conducted by the Office of Insurance Regulation (OIR).

The OIR is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company or HMO, monitoring the financial condition through examinations and audits, and procedures for the administrative supervision, rehabilitation, or liquidation of a company if it is in unsound financial condition or insolvent.

Increasing the cap that the HMOs pay for examinations from \$50,000 to \$100,000 will result in a reduction of expenditures of state funds from the Insurance Regulatory Trust Fund within the Department of Financial Services.

The bill is effective upon becoming law, except as specified.



## II. Present Situation:

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities.<sup>1</sup> The Florida Insurance Code contains many provisions designed to prevent insurers from becoming insolvent and to protect and provide recovery for policyholders in the event of insolvency. Section 624.401, F.S., generally requires insurers and other risk-bearing entities to obtain a certificate of authority prior to engaging in insurance transactions and to meet certain initial and ongoing solvency requirements, such as minimum capital and surplus requirements, writing ratios, and financial reporting requirements.

### Minimum Surplus Requirements Initial Licensure

For purposes of obtaining a certificate of authority, s. 624.408, F.S., requires an insurer writing health benefit plans<sup>2</sup> or long-term plans to maintain a minimum surplus as to policyholders of not less than the greater of \$2.5 million or four percent of the insurer's total liabilities plus six percent of the insurer's liabilities relative to health insurance.<sup>3</sup> An HMO is required to have a minimum surplus of not less than the greater of \$1.5 million, 10 percent of total liabilities, or two percent of total, annualized premiums. The current minimum surplus dollar thresholds for licensure have not changed for life and health insurers since 1989 and, for HMOs, since 1988.<sup>4</sup>

### Requirements after Licensure

To maintain a certificate of authority to transact insurance, life and health insurers are required to maintain a minimum surplus as to policyholders not less than the greater of \$1.5 million, or four percent of the insurer's total liabilities, plus six percent of the insurer's liabilities relative to health insurance.<sup>5</sup> The HMOs are required to meet the same requirements provided for initial licensure. The current minimum surplus dollar thresholds applicable to life and health insurers and HMOs beyond licensure have not changed since 1989 for life and health insurers,<sup>6</sup> and since 1998 for HMOs.<sup>7</sup>

### Risk-Based Capital

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital that an insurer must maintain, based on the inherent risks in the insurer's operations. The RBC standard provides a safety net for insurers and provides state insurance regulators with authority for timely corrective action. On or before March 1 of each year, insurers and multi-state HMOs and prepaid limited health services organizations (PLHSOs)<sup>8</sup> must file risk-based capital reports and plans with the National Association of Insurance Commissioners (NAIC), while all

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<sup>1</sup> Section 20.121(3)(a), F.S.

<sup>2</sup> Section 627.6699, F.S., defines the term, "health benefit plan," to mean any hospital or medical policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract.

<sup>3</sup> Section 624.407, F.S.

<sup>4</sup> Sections 25 and 26, ch. 89-360, Laws of Florida (insurers); s. 5, ch. 88-388, Laws of Florida (HMOs).

<sup>5</sup> Section 624.407, F.S.

<sup>6</sup> Section 26, ch. 89-360, Laws of Florida.

<sup>7</sup> Section 20, ch. 98-159, Laws of Florida. The change to \$1.5 million enacted in 1998 was phased in over three years.

<sup>8</sup> A PLHSO provides limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment that is authorized under chapter 636, F.S.

domestic insurers must also file a copy with the OIR, in accordance with statutory RBC requirements.<sup>9</sup> As of September 30, 2014, there was one multi-state HMO and four multi-state PLHSOs in Florida.<sup>10</sup>

### **Premium-to-Surplus Writing Ratios**

Insurers are subject to premium-to-surplus ratios that determine the amount of premium they can write based on the amount of surplus. Section 624.4095, F.S., sets maximum ratios of premiums written to surplus as to policyholders. The basic ratio is 10-to-1 for gross written premiums and 4-to-10 for net written premiums.<sup>11</sup> The HMOs are not subject to such a requirement.

### **Management Services Organizations**

For the purpose of determining the financial condition or solvency of an HMO and pursuant to s. 641.35, F.S., the OIR provides that specified assets can be included as admitted assets and other assets are excluded as non-admitted assets according to statutory accounting principles. Statutory accounting principles are characterized as a conservative approach since it evaluates the HMO's liquidity and the ability to pay claims in the future.

Certain entities, such as "management services organizations" (MSOs) provide services for HMOs. A MSO may provide management and administrative services to a practice, or it may acquire a practice's assets (thereby providing capital to the practice) and subsequently enter into agreements to provide the practice with space, equipment, or both.<sup>12</sup> Non-healthcare provider investors, a hospital, a group of physicians, a joint venture between a hospital and physicians, or a health plan may own a MSO.<sup>13</sup> A MSO is not regulated by the OIR; therefore, the OIR is unaware of its financial condition. If an HMO records a MSO transaction as a receivable or asset on its financial statements, the OIR is unable to determine if these transactions and amounts are accurate and that sufficient assets are available to pay losses and claims. Therefore, if a MSO receivable is recorded as an admitted asset, it could misrepresent the financial condition or solvency of an HMO. According to the OIR, very few HMOs currently book MSO receivables as admitted assets.

### **Financial Reporting**

Section 624.424, F.S., requires insurers to submit annual and quarterly financial statements and an annual audited financial report. Insurers must file annual financial reports with the OIR on or before March 1. The HMOs and PLHSOs must file "within 3 months after the end of its fiscal year." Unlike insurers and HMOs, PLHSOs must also file a 4<sup>th</sup> quarter financial report, in

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<sup>9</sup> Section 624.4085, F.S.

<sup>10</sup> Office of Insurance Regulation, Senate Bill 1190 Analysis (March 5, 2015) (on file with Banking and Insurance Committee).

<sup>11</sup> This ratio is modified by a factor of 0.8 for health insurance. This means that premiums may not be more than 3.2 times surplus. However, this provision does not apply to life and health insurers which have a surplus as to policyholders greater than \$40 million and which have written health insurance during each of the immediately preceding five calendar years.

<sup>12</sup> Gregory D. Anderson and Emily B. Grey, *The MSO'S Prognosis after the ACA: A Viable Integration Tool?* Physicians and Physician Organizations Law Institute, February 11 and 12, 2013, Phoenix, Arizona.

<sup>13</sup> *Id.*

addition to the three other quarterly reports. For PLHSOs, the audited financial statements are submitted as part of the annual report.

## **Governance and Financial Management**

### ***Board of Directors***

Florida law requires domestic insurers to be managed by a board of at least five directors.<sup>14</sup> A majority of the directors must be U.S. citizens. Current law does not impose similar requirements upon HMOs. Florida law also prescribes standards for insurer directors in discharging their duties, including among others, consideration of the benefits to the insurer by remaining independent. Former officers and directors of insolvent insurers serving within two years of the insolvency may not serve in that capacity for another insurer without demonstrating that his or her actions or omissions were not a significant contributing cause of the insolvency.

### ***Dividends***

Stock insurers and HMOs may only pay dividends<sup>15</sup> out of available and accumulated surplus funds derived from realized net operating profits on their business and net realized capital gains. The HMOs must receive approval from the OIR to pay dividends or distribute cash if, immediately before or after such distribution, their available and accumulated surplus funds are or would be less than zero. The OIR approval is not required if the HMO would have at least 115 percent of required statutory surplus after payment of the dividend (i.e., ordinary dividends). Under current law, an HMO with negative retained earnings may still pay a dividend without OIR approval.

Stock insurer dividend payments or distributions to stockholders made without the prior written approval of the OIR must not exceed the larger of:

- The lesser of ten percent of surplus or net gain from operations (life and health companies) or net income (property and casualty companies), not including realized capital gains, plus a two year carry forward for property and casualty companies;
- Ten percent of surplus, with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains;
- The lesser of ten percent of surplus or net investment income (net gain before capital gains for life and health companies) plus a three-year carry forward (two-year carry forward for life and health companies) with dividends payable constrained to unassigned funds minus 25 percent of unrealized capital gains.

The OIR may approve a stock insurer dividend or distribution in excess of the maximum amount if it determines that the distribution or dividend does not jeopardize the financial condition of the insurer.

Any director of an HMO or domestic stock or mutual insurer who knowingly votes for or concurs in declaration or payment of a dividend to stockholders or members in violation of these provisions is guilty of a misdemeanor of the second degree, and is jointly and severally liable for

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<sup>14</sup> Section 628.231, F.S.

<sup>15</sup> Sections 628.371 and 641.365, F.S.

any loss sustained by creditors of the insurer. Any stockholder receiving such an illegal dividend is liable in the amount thereof to the insurer. The OIR may revoke or suspend the Certificate of Authority of an insurer, which has declared or paid such an illegal dividend.<sup>16</sup>

### **OIR Examination Costs**

The OIR is required to examine the “affairs, transactions, accounts, business records and assets” of each authorized HMO as often as it deems expedient for the protection of the public, but no less frequently than once every five years.<sup>17</sup> Insurers subject to financial examination must reimburse the OIR for 100 percent of the examination costs incurred. These funds are deposited into the Insurance Regulatory Trust Fund (Trust Fund).<sup>18</sup> By contrast, an HMO examination cost reimbursement is capped at \$50,000, with any excess amounts paid out of the Trust Fund. Generally, this results in a subsidy of HMO examination costs exceeding \$50,000.

## **III. Effect of Proposed Changes:**

### **Minimum Surplus Requirements**

**Sections 1, 2, 6, and 7** provide the identical minimum surplus requirements for initial licensure and the maintenance of a license for an HMO or a life and health insurer writing health benefit plans or long-term care plans (ss. 624.407 and 624.408, F.S.). The bill increases the minimum dollar threshold for a certificate of authority to \$10 million, up from the current \$1.5 million required of HMOs and the \$2.5 million required of life and health insurers.<sup>19</sup> It also extends the two percent of total annualized premium surplus threshold currently applied to HMOs to life and health insurers issuing health benefit plans. Current law requires life and health insurers and HMOs applying for an original certificate of authority to have minimum surplus in an amount that is the greater of a set dollar amount, or percentage of total liabilities or, in the case of HMOs, a percentage of total annualized premium.

The bill makes the minimum surplus required to be maintained by an HMO and a life and health insurer writing health benefit plans or long-term care plans after licensure, identical. The minimum surplus dollar thresholds required to be maintained after licensure is increased to \$10 million, from the current \$1.5 million for both HMOs and life and health insurers.

For newly licensed companies, the increased minimum surplus required to be maintained takes effect upon the bill becoming a law. For currently licensed companies (i.e., those holding a COA before the effective date of the act), the change in the minimum surplus dollar threshold required to be maintained is phased in over ten years, as follows:

- As of July 1, 2017: \$3 million
- As of July 1, 2021: \$6 million
- As of July 1, 2025: \$10 million

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<sup>16</sup>Section 628.391, F.S.

<sup>17</sup> Section 641.27, F.S.

<sup>18</sup> Section 624.320, F.S.

<sup>19</sup> Section 624.407, F.S.

As of the end of the 3<sup>rd</sup> quarter in 2014, Florida had 33 active HMOs and 454 active life and health insurers. Based on a preliminary analysis, the OIR found that 11 of these 487 existing companies could be impacted by the proposed revisions to surplus maintenance requirements—this includes six domestic HMOs, three domestic insurers and two foreign insurers. However, the bill authorizes the OIR to reduce the required level of surplus for health insurers and HMOs on a case-by-case basis if it finds it to be “in the public interest.” In making this determination, the OIR may consider factors including, a company having fewer than 6,000 policies in force, less than \$1 million in premium, or a limited geographic service area. This provision is similar to existing statutory authority provided to the OIR when similar surplus changes affecting residential property insurers were enacted in 2011. Although the OIR determination is discretionary and not tied to any one factor, all 11 companies appear to meet at least one of these criteria.

### **Risk-Based Capital Requirements**

**Section 3.** The risk-based capital requirements for insurers are applied to newly licensed single-state HMOs and prepaid limited health services organizations (PLHSOs) (i.e., those initially authorized on or after July 1, 2015). As of September 30, 2014, there were 32 single-state HMO’s and 18 single-state PLHSOs. Single-state HMOs and PLHSOs in existence prior to July 1, 2015, will be grandfathered in under the bill and not subject to these new risk-based capital requirements.

### **Premium-to-Surplus Writing Ratios**

**Section 6** subjects HMOs to the same (gross) premium-to-surplus writing ratio applicable to life and health insurers, which is a writing ratio of 10-to-1 on a gross premium basis (s. 624.4095, F.S.). Premium-to-surplus ratios on a net premium basis are not relevant to HMOs. In calculating the ratios for HMOs, the bill requires that risk revenue be included in addition to premium. For new HMOs (i.e., those not holding a certificate of authority before the effective date of the act), the 10-to-1 premium to surplus writing ratio is imposed effective upon the bill becoming a law; for existing HMOs (i.e., those licensed before the effective date of the act), the change is phased in over ten years, as follows:

- As of July 1, 2017: 30-to-1
- As of July 1, 2021: 20-to-1
- As of July 1, 2025: 10-to-1

### **Management Services Organizations**

**Sections 5 and 10** define “receivables from a management services organization” (MSO) under contract with health maintenance organizations and requires such receivables to be classified as non-admitted assets. “Management services organization” is defined in the bill as “an entity providing one or more medical practice management services to health care providers, including, but not limited to, administrative, financial, operational, personnel, records management, educational, compliance, and managed care services.”

## **Financial Reporting**

**Sections 4 and 8** align PLHSO and HMO annual and quarterly reporting requirements with that of life and health insurers. For example, the bill changes the due date for submitting the annual financial report from “within 3 months after the end of its fiscal year” (i.e., April 1) to March 1. The section also eliminates the PLHSO 4<sup>th</sup> quarter report—a report insurers and HMOs are not currently required to file. The financial information in the 4<sup>th</sup> quarter report is reviewed in the context of the annual report. The bill also provides that the PLHSO and HMO annual audited financial statements are standalone filings due June 1, instead of “3 months after the end of its fiscal year.”

The bill also requires PLHSOs and HMOs to adhere to insurer audit rules adopted by the Financial Services Commission (e.g., Rule 69O-137.002, F.A.C.), beginning with financial statements filed for calendar year 2015.

## **Governance and Financial Management**

**Section 6** applies stock insurer board of director provisions (s. 628.231, F.S.) to HMOs. It also extends current restrictions applicable to former officers and directors of insolvent insurers to former officers and directors of HMOs. (s. 624.4073, F.S.)

**Sections 6 and 11** extend the provisions (ss. 628.371 and 628.391, F.S.) applicable to insurers for the payment of dividends to HMOs. While the standards applicable to HMOs for paying dividends will change, sanctions for payment of illegal dividends remains the same since they are treated the same for both insurers and HMOs under current law. Dividends paid when unassigned surplus is negative will require approval. Section 641.365, F.S., relating to the payment of dividends by an HMO, is repealed.

## **OIR Examination Costs**

**Section 9** increases the OIR financial examination cost cap from \$50,000 to \$100,000 for an HMO.

## **Miscellaneous**

**Sections 12 and 13** provide a technical, conforming cross reference.

**Section 14.** The Division of Law Revision and Information is directed to replace the phrase “the effective date of this act” where it occurs in this act with the date the act becomes law.

**Section 15.** Except as otherwise provided, the bill takes effect upon becoming a law.

## **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 impact of CS/SB 1190 on the private sector is indeterminate. According to HMO representatives, sometimes the HMOs are asked by the OIR to waive the current fee cap and pay the additional costs. The increase in the cap for examination costs will increase examination costs for HMOs.

**C. Government Sector Impact:**

The bill has an indeterminate positive fiscal impact to the Insurance Regulatory Trust fund from increasing the cap HMOs must pay for examinations from \$50,000 to \$100,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 624.407, 624.408, 624.4085, 636.043, 641.19, 641.201, 641.225, 641.26, 641.27, 641.35, 817.234 and 817.50.

This bill repeals section 641.365 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Banking and Insurance on March 17, 2015:**

The bill increases the cap on the costs of an OIR financial examination an HMO must

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incur from \$50,000 to \$100,000, rather than requiring the HMO to reimburse the actual costs.

The bill clarifies the formula for calculating the minimum surplus requirements applicable for insurers and HMOs.

**B. Amendments:**

None.



By the Committee on Banking and Insurance; and Senator Lee

597-02405-15

20151190c1

1 A bill to be entitled  
 2 An act relating to insurer solvency; amending s.  
 3 624.407, F.S.; revising the amount of surplus which  
 4 must be possessed by insurers applying for an original  
 5 certificate of authority; defining the term "health  
 6 benefit plan"; amending s. 624.408, F.S.; revising the  
 7 amount of surplus which must be possessed by insurers  
 8 in order to retain a certificate of authority;  
 9 authorizing the Office of Insurance Regulation to  
 10 reduce certain surplus requirements under specified  
 11 circumstances; defining the term "health benefit  
 12 plan"; amending s. 624.4085, F.S.; revising the term  
 13 "life and health insurer" to include specified health  
 14 maintenance and prepaid limited health service  
 15 organizations; amending s. 636.043, F.S.; revising the  
 16 due date and required content for the mandatory annual  
 17 report of a prepaid limited health service  
 18 organization to the office; revising the time periods  
 19 to be covered by such organization's required  
 20 quarterly reports to the office; amending s. 641.19,  
 21 F.S.; defining the term "management services  
 22 organization"; amending s. 641.201, F.S.; providing  
 23 that a health maintenance organization is considered  
 24 an insurer for purposes of specified provisions of law  
 25 relating to insolvent insurers, requirements for the  
 26 directors of domestic insurers, the payment of  
 27 dividends and distributions of other property by  
 28 domestic stock insurers, penalties for domestic and  
 29 mutual stock insurers that illegally pay dividends,

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

597-02405-15

20151190c1

30 and certain restrictions on premiums written;  
 31 providing that health maintenance organizations are  
 32 considered life and health insurers for purposes of  
 33 specified provisions of law relating to insurer  
 34 surplus requirements; amending s. 641.225, F.S.;  
 35 conforming provisions to changes made by the act;  
 36 amending s. 641.26, F.S.; revising the due date and  
 37 required content for the mandatory annual report and  
 38 audited financial statement of a health maintenance  
 39 organization which must be submitted to the office;  
 40 amending s. 641.27, F.S.; revising the annual limit  
 41 applicable to health maintenance organizations for the  
 42 examination expenses incurred by the office; amending  
 43 s. 641.35, F.S.; excluding receivables from a  
 44 management services organization from being included  
 45 in the assets of a health maintenance organization for  
 46 purposes of determining the organization's financial  
 47 condition; repealing s. 641.365, F.S., relating to the  
 48 payment of dividends and distributions of other  
 49 property by health maintenance organizations; amending  
 50 ss. 817.234 and 817.50, F.S.; conforming cross-  
 51 references; providing a directive to the Division of  
 52 Law Revision and Information; providing an effective  
 53 date.

54  
 55 Be It Enacted by the Legislature of the State of Florida:

56  
 57 Section 1. Section 624.407, Florida Statutes, is amended to  
 58 read:

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

597-02405-15

20151190c1

59 624.407 Surplus required ~~of, new~~ insurers applying for an  
60 original certificate of authority.-

61 (1) To receive authority to transact any one kind or  
62 combinations of kinds of insurance, as defined in part V of this  
63 chapter, an insurer applying for its original certificate of  
64 authority in this state must ~~shall~~ possess surplus as to  
65 policyholders in at least the following amount greater of:

66 (a) For a property and casualty insurer, \$5 million or 10  
67 percent of the insurer's total liabilities, whichever is  
68 greater, except for a domestic insurer that transacts  
69 residential property insurance and is:

70 1. Not a wholly owned subsidiary of an insurer domiciled in  
71 any other state, which must have a surplus of \$15 million.

72 2. A wholly owned subsidiary of an insurer domiciled in any  
73 other state, which must have a surplus of \$50 million. ~~or \$2.5~~  
74 ~~million for any other insurer;~~

75 (b) For a life insurer insurers, \$2.5 million or 4 percent  
76 of the insurer's total liabilities, whichever is greater.

77 (c) For a life and health insurer that will issue a health  
78 benefit plan or a long-term care insurance policy on or after  
79 the effective date of this act, the greater of:

80 1. The sum of \$10 million plus the amount of startup  
81 losses, excluding profits, projected to be incurred on the  
82 insurer's startup projection until the projection reflects  
83 statutory net profits for 12 consecutive months; insurers,

84 2. Four 4 percent of the insurer's total liabilities, plus  
85 6 percent of the insurer's liabilities relative to health  
86 insurance, based on the insurer's startup projection; or

87 3. Two percent of the insurer's total projected premiums

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88 relative to health insurance, based on the insurer's startup  
89 projection.

90 (d) For a life and health insurer that is not subject to  
91 paragraph (c), the greater of:

92 1. The sum of \$2.5 million; or

93 2. Four percent of the insurer's total liabilities, plus 6  
94 percent of the insurer's liabilities relative to health  
95 insurance.

96 (e) For all other insurers, the greater of \$2.5 million or  
97 other than life insurers and life and health insurers, 10  
98 percent of the insurer's total liabilities. ~~or~~

99 ~~(e) Notwithstanding paragraph (a) or paragraph (d), for a~~  
100 ~~domestic insurer that transacts residential property insurance~~  
101 ~~and is:~~

102 1. Not a wholly owned subsidiary of an insurer domiciled in  
103 any other state, \$15 million.

104 2. A wholly owned subsidiary of an insurer domiciled in any  
105 other state, \$50 million.

106 (2) Notwithstanding subsection (1), a new insurer may not  
107 be required to have surplus as to policyholders greater than  
108 \$100 million.

109 (3) The requirements of this section shall be based upon  
110 all the kinds of insurance actually transacted or to be  
111 transacted by the insurer in any and all areas in which it  
112 operates, regardless of whether ~~or not~~ only a portion of such  
113 kinds of insurance are transacted in this state.

114 (4) As to surplus as to policyholders required for  
115 qualification to transact one or more kinds of insurance,  
116 domestic mutual insurers are governed by chapter 628, and

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117 domestic reciprocal insurers are governed by chapter 629.

118 (5) For the purposes of this section, liabilities do not  
119 include liabilities required under s. 625.041(5). For purposes  
120 of computing minimum surplus as to policyholders pursuant to s.  
121 625.305(1), liabilities include liabilities required under s.  
122 625.041(5).

123 (6) As used in this section, the term "health benefit plan"  
124 has the same meaning as in s. 627.6699.

125 Section 2. Section 624.408, Florida Statutes, is amended to  
126 read:

127 624.408 Surplus required ~~for~~ current insurers to maintain  
128 a certificate of authority.-

129 (1) To maintain a certificate of authority to transact any  
130 one kind or combinations of kinds of insurance, as defined in  
131 part V of this chapter, an insurer in this state must at all  
132 times maintain surplus as to policyholders in at least the  
133 following amount greater of:

134 (a) ~~Except as provided in paragraphs (c), (f), and (g),~~  
135 ~~\$1.5 million.~~

136 ~~(b) For a life insurer insurers, \$1.5 million or 4 percent~~  
137 ~~of the insurer's total liabilities, whichever is greater.~~

138 (b) For a life and health insurer that is authorized to  
139 issue a health benefit plan or long-term care insurance policy,  
140 the greater of:

141 1. Four percent of the insurer's total liabilities, plus 6  
142 percent of the insurer's liabilities relative to health  
143 insurance;

144 2. Two percent of the insurer's total annualized premium  
145 relative to health insurance; or

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146 3. If the insurer:

147 a. Does not hold a certificate of authority before the  
148 effective date of this act, \$10 million; or

149 b. Holds a certificate of authority before the effective  
150 date of this act, \$1.5 million until June 30, 2017; \$3 million  
151 on or after July 1, 2017, and until June 30, 2021; \$6 million on  
152 or after July 1, 2021, and until June 30, 2025; and \$10 million  
153 on or after July 1, 2025.

154  
155 The office may reduce the surplus requirement imposed under sub-  
156 paragraph 3.a. or sub-paragraph 3.b. if the office finds  
157 the reduction to be in the public interest because the insurer  
158 is not writing new business in this state, the insurer is  
159 writing business only within a limited geographic service area,  
160 the insurer has premiums in force of less than \$1 million  
161 annually, or the insurer has a policy count of fewer than 6,000,  
162 or because of any other factor relevant to making such a  
163 finding.

164 (c) For a life and health insurer that is not subject to  
165 paragraph (b) insurers, the greater of:

166 1. The sum of \$1.5 million; or

167 2. Four 4 percent of the insurer's total liabilities, plus  
168 6 percent of the insurer's liabilities relative to health  
169 insurance.

170 (d) ~~For all insurers other than mortgage guaranty insurers,~~  
171 ~~life insurers, and life and health insurers, 10 percent of the~~  
172 ~~insurer's total liabilities.~~

173 ~~(e) For a property and casualty insurer insurers, \$4~~  
174 ~~million, except for a property and casualty insurer insurers~~

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175 authorized to underwrite any line of residential property  
176 insurance.

177 ~~(e)(f)~~ For a residential property insurer:

178 1. insurers Not holding a certificate of authority before  
179 July 1, 2011, \$15 million.

180 ~~2.(g) For residential property insurers~~ Holding a  
181 certificate of authority before July 1, 2011, \$5 million and  
182 until June 30, 2016, \$5 million; \$10 million on or after July 1,  
183 2016, and until June 30, 2021, \$10 million; and \$15 million on  
184 or after July 1, 2021, \$15 million.

185

186 The office may reduce the surplus requirement under this  
187 paragraph in paragraphs (f) and (g) if the insurer is not  
188 writing new business, has premiums in force of less than \$1  
189 million per year in residential property insurance, or is a  
190 mutual insurance company.

191 (f) For all other insurers, the greater of \$1.5 million or  
192 10 percent of the insurer's total liabilities.

193 (2) For purposes of this section, liabilities do not  
194 include liabilities required under s. 625.041(5). For purposes  
195 of computing minimum surplus as to policyholders pursuant to s.  
196 625.305(1), liabilities include liabilities required under s.  
197 625.041(5).

198 (3) This section does not require an insurer to have  
199 surplus as to policyholders greater than \$100 million.

200 (4) A mortgage guaranty insurer shall maintain a minimum  
201 surplus as required by s. 635.042.

202 (5) As used in this section, the term "health benefit plan"  
203 has the same meaning as in s. 627.6699.

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204 Section 3. Effective July 1, 2015, paragraph (g) of  
205 subsection (1) of section 624.4085, Florida Statutes, is amended  
206 to read:

207 624.4085 Risk-based capital requirements for insurers.—

208 (1) As used in this section, the term:

209 (g) "Life and health insurer" means an insurer authorized  
210 or eligible under the Florida Insurance Code to underwrite life  
211 or health insurance. The term also includes:

212 1. A property and casualty insurer that writes accident and  
213 health insurance only.

214 2. Effective January 1, 2015, the term also includes a  
215 health maintenance organization that is authorized in this state  
216 and one or more other states, jurisdictions, or countries and a  
217 prepaid limited health service organization that is authorized  
218 in this state and one or more other states, jurisdictions, or  
219 countries.

220 3. A health maintenance organization and a prepaid limited  
221 health service organization initially authorized in this state  
222 on or after July 1, 2015, and not authorized in any other state,  
223 jurisdiction, or country.

224

225 As used in this paragraph, the term "health maintenance  
226 organization" has the same meaning as in s. 641.19 and the term  
227 "prepaid limited health service organization" has the same  
228 meaning as in s. 636.003.

229 Section 4. Effective July 1, 2015, subsection (1),  
230 paragraph (a) of subsection (2), and subsections (4) and (6) of  
231 section 636.043, Florida Statutes, are amended to read:

232 636.043 Annual, quarterly, and miscellaneous reports.—

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233 (1) Each prepaid limited health service organization must  
 234 file an annual report with the office on or before March 1 of  
 235 each year showing its condition on the last day of the  
 236 immediately preceding calendar year. The annually, within 3  
 237 months after the end of its fiscal year, a report must be  
 238 verified by the notarized oath of at least two officers covering  
 239 the preceding calendar year. Any organization licensed prior to  
 240 October 1, 1993, shall not be required to file a financial  
 241 statement, as required by paragraph (2) (a), based on statutory  
 242 accounting principles until the first annual report for fiscal  
 243 years ending after December 31, 1994.

244 (2) ~~The such~~ report must be on forms prescribed by the  
 245 commission and must include:

246 (a)1. A statutory financial statement of the organization  
 247 prepared in accordance with statutory accounting principles and  
 248 filed by electronic means in a computer-readable format  
 249 acceptable to the office, including its balance sheet, income  
 250 statement, and statement of changes in cash flow for the  
 251 preceding year, certified by an independent certified public  
 252 accountant, or a consolidated audited financial statement of its  
 253 parent company prepared on the basis of statutory accounting  
 254 principles, certified by an independent certified public  
 255 accountant, attached to which must be consolidating financial  
 256 statements of the parent company, including the prepaid limited  
 257 health service organization.

258 2. Any entity subject to this chapter may make written  
 259 application to the office for approval to file audited financial  
 260 statements prepared in accordance with generally accepted  
 261 accounting principles in lieu of statutory financial statements.

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262 The office shall approve the application if it finds it to be in  
 263 the best interest of the subscribers. An application for  
 264 exemption is required each year and must be filed with the  
 265 office at least 2 months prior to the end of the fiscal year for  
 266 which the exemption is being requested.

267 (4) (a) Each authorized prepaid limited health service  
 268 organization must file a quarterly report for each calendar  
 269 quarter. The report for the quarter ending March 31 shall be  
 270 filed with the office on or before May 15, the report for the  
 271 quarter ending June 30 shall be filed on or before August 15,  
 272 and the report for the quarter ending September 30 shall be  
 273 filed on or before November 15. The quarterly report must be  
 274 verified by the notarized oath of two officers of the  
 275 organization within 45 days after the end of the quarter. The  
 276 report must shall contain:

277 1. ~~(a)~~ A financial statement prepared in accordance with  
 278 statutory accounting principles. Any entity licensed before  
 279 October 1, 1993, is shall not be required to file a financial  
 280 statement based on statutory accounting principles until the  
 281 first quarterly filing after the entity files its annual  
 282 financial statement based on statutory accounting principles as  
 283 required by subsection (1).

284 2. ~~(b)~~ A listing of providers.

285 3. ~~(c)~~ Such other information relating to the performance of  
 286 the prepaid limited health service organization as is reasonably  
 287 required by the commission or office.

288 (b) On or before June 1, each authorized prepaid limited  
 289 health service organization shall annually file with the office  
 290 an audited financial statement of the organization for the

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291 preceding year ending December 31. The office may require the  
 292 organization to file an audited financial report earlier than  
 293 June 1 upon notifying the organization at least 90 days in  
 294 advance. The audited financial statement must include:

295 1. A balance sheet, income statement, and statement of  
 296 changes in cash flow for the preceding year, all of which must  
 297 be certified by an independent certified public accountant; or

298 2. A consolidated audited financial statement of the  
 299 organization's parent company, prepared on the basis of  
 300 statutory accounting principles, which must be certified by an  
 301 independent certified public accountant and to which are  
 302 attached the consolidated financial statements of the parent  
 303 company, including those of the prepaid limited health service  
 304 organization.

305  
 306 Beginning with the financial statement filed for the year ending  
 307 December 31, 2015, the audited financial statement or  
 308 consolidated audited financial statement required by this  
 309 paragraph is subject to commission rules applicable to insurer  
 310 audits.

311 (6) Each authorized prepaid limited health service  
 312 organization shall retain an independent certified public  
 313 accountant, ~~hereinafter referred to as "CPA,"~~ who agrees by  
 314 written contract with the prepaid limited health service  
 315 organization to comply with ~~the provisions of~~ this act. The  
 316 contract must state that:

317 (a) The independent certified public accountant must CPA  
 318 ~~will~~ provide to the prepaid limited health service organization  
 319 audited statutory financial statements consistent with this act.

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320 (b) Any determination by the independent certified public  
 321 accountant CPA that the prepaid limited health service  
 322 organization does not meet minimum surplus requirements as set  
 323 forth in this act ~~must will~~ be stated by the independent  
 324 certified public accountant CPA, in writing, in the audited  
 325 financial statement.

326 (c) The completed workpapers and any written communications  
 327 between the independent certified public accountant CPA and the  
 328 prepaid limited health service organization relating to the  
 329 audit of the prepaid limited health service organization must  
 330 ~~will~~ be made available for review on a visual-inspection-only  
 331 basis by the office at the offices of the prepaid limited health  
 332 service organization, at the office, or at any other reasonable  
 333 place as mutually agreed between the office and the prepaid  
 334 limited health service organization. The independent certified  
 335 public accountant CPA must retain for review the workpapers and  
 336 written communications for a period of not less than 6 years.

337 Section 5. Present subsections (14) through (22) of section  
 338 641.19, Florida Statutes, are redesignated as subsections (15)  
 339 through (23), respectively, and a new subsection (14) is added  
 340 to that section, to read:

341 641.19 Definitions.—As used in this part, the term:

342 (14) "Management services organization" means an entity  
 343 that provides one or more medical practice management services  
 344 to health care providers, including, but not limited to,  
 345 administrative, financial, operational, personnel, records  
 346 management, educational, compliance, and managed care services.

347 Section 6. Section 641.201, Florida Statutes, is amended to  
 348 read:

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349 641.201 Applicability of other laws.—

350 (1) Except as provided in this part, health maintenance  
 351 organizations are shall be governed by the provisions of this  
 352 part and part III of this chapter and are shall be exempt from  
 353 all other provisions of the Florida Insurance Code except those  
 354 provisions of the Florida Insurance Code that are explicitly  
 355 made applicable to health maintenance organizations.

356 (2) Health maintenance organizations are considered  
 357 insurers for purposes of:

358 (a) Sections 624.4073, 628.231, 628.371, and 628.391.

359 (b) Section 624.4095, except that:

360 1. The ratio of actual or projected annual gross written  
 361 premiums to current or projected surplus as to policyholders for  
 362 a health maintenance organization holding a certificate of  
 363 authority before the effective date of this act, may not exceed  
 364 30 to 1 on or after July 1, 2017, until June 30, 2021; 20 to 1  
 365 on or after July 1, 2021, until June 30, 2025; and 10 to 1 on or  
 366 after July 1, 2025.

367 2. In calculating the premium-to-surplus ratio of a health  
 368 maintenance organization pursuant to s. 624.4095(1), actual or  
 369 projected risk revenue must be added to actual or projected  
 370 written premiums.

371 (3) Health maintenance organizations are considered life  
 372 and health insurers for purposes of ss. 624.407 and 624.408.

373 Section 7. Subsections (1) and (2) of section 641.225,  
 374 Florida Statutes, are amended to read:

375 641.225 Surplus requirements.—

376 (1) Each health maintenance organization shall at all times  
 377 maintain a minimum surplus as provided in s. 624.408 in an

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378 ~~amount that is the greater of \$1,500,000, or 10 percent of total~~  
 379 ~~liabilities, or 2 percent of total annualized premium.~~

380 (2) The office ~~may shall~~ not issue a certificate of  
 381 authority, except as provided in subsection (3), unless the  
 382 health maintenance organization has at least the a minimum  
 383 surplus required in s. 624.407 in an amount which is the greater  
 384 ~~of:~~

385 ~~(a) Ten percent of their total liabilities based on their~~  
 386 ~~startup projection as set forth in this part;~~

387 ~~(b) Two percent of their total projected premiums based on~~  
 388 ~~their startup projection as set forth in this part; or~~

389 ~~(c) \$1,500,000, plus all startup losses, excluding profits,~~  
 390 ~~projected to be incurred on their startup projection until the~~  
 391 ~~projection reflects statutory net profits for 12 consecutive~~  
 392 ~~months.~~

393 Section 8. Effective July 1, 2015, subsections (1), (3),  
 394 and (5) of section 641.26, Florida Statutes, are amended to  
 395 read:

396 641.26 Annual and quarterly reports.—

397 (1) Each Every health maintenance organization must file an  
 398 annual report with the office on or before March 1 of each year  
 399 showing its condition on the last day of the immediately  
 400 preceding calendar year. The report must be shall, annually  
 401 within 3 months after the end of its fiscal year, or within an  
 402 extension of time therefor as the office, for good cause, may  
 403 grant, in a form prescribed by the commission, file a report  
 404 with the office, verified by the notarized oath of two officers  
 405 of the organization or, if not a corporation, of two persons who  
 406 are principal managing directors of the affairs of the

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407 organization, on a form prescribed by the commission. For good  
 408 cause, the office may grant the organization an extension of  
 409 time to file the report. The report must properly notarized,  
 410 showing its condition on the last day of the immediately  
 411 preceding reporting period. Such report shall include:

412 (a) A financial statement of the health maintenance  
 413 organization filed by electronic means in a computer-readable  
 414 form using a format acceptable to the office.

415 (b) A financial statement of the health maintenance  
 416 organization filed on forms acceptable to the office.

417 ~~(c) An audited financial statement of the health~~  
 418 ~~maintenance organization, including its balance sheet and a~~  
 419 ~~statement of operations for the preceding year certified by an~~  
 420 ~~independent certified public accountant, prepared in accordance~~  
 421 ~~with statutory accounting principles.~~

422 (c) ~~(d)~~ The number of health maintenance contracts issued  
 423 and outstanding and the number of health maintenance contracts  
 424 terminated.

425 (d) ~~(e)~~ The number and amount of damage claims for medical  
 426 injury initiated against the health maintenance organization and  
 427 any of the providers engaged by it during the reporting year,  
 428 broken down into claims with and without formal legal process,  
 429 and the disposition, if any, of each such claim.

430 (e) ~~(f)~~ An actuarial certification that:  
 431 1. The health maintenance organization is actuarially  
 432 sound, which certification must ~~shall~~ consider the rates,  
 433 benefits, and expenses of, and any other funds available for the  
 434 payment of obligations of, the organization.

435 2. The rates being charged or to be charged are actuarially

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436 adequate to the end of the period for which rates have been  
 437 guaranteed.

438 3. Incurred but not reported claims and claims reported but  
 439 not fully paid have been adequately provided for.

440 4. The health maintenance organization has adequately  
 441 provided for all obligations required by s. 641.35(3)(a).

442 ~~(g) A report prepared by the certified public accountant~~  
 443 ~~and filed with the office describing material weaknesses in the~~  
 444 ~~health maintenance organization's internal control structure as~~  
 445 ~~noted by the certified public accountant during the audit. The~~  
 446 ~~report must be filed with the annual audited financial report as~~  
 447 ~~required in paragraph (c). The health maintenance organization~~  
 448 ~~shall provide a description of remedial actions taken or~~  
 449 ~~proposed to correct material weaknesses, if the actions are not~~  
 450 ~~described in the independent certified public accountant's~~  
 451 ~~report.~~

452 (f) ~~(h)~~ Such other information relating to the performance  
 453 of health maintenance organizations as is required by the  
 454 commission or office.

455 (3) (a) ~~Each~~ Every health maintenance organization shall  
 456 file quarterly, for the first three calendar quarters of each  
 457 year, an unaudited financial statement of the organization as  
 458 described in paragraphs (1)(a) and (b). The statement for the  
 459 quarter ending March 31 shall be filed with the office on or  
 460 before May 15, the statement for the quarter ending June 30  
 461 shall be filed on or before August 15, and the statement for the  
 462 quarter ending September 30 shall be filed on or before November  
 463 15. The quarterly report must ~~shall~~ be verified by the notarized  
 464 oath of two officers of the organization, ~~properly notarized.~~



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465 (b) Each health maintenance organization shall file  
 466 annually, for the preceding year ending December 31, an audited  
 467 financial statement of the organization. The statement for the  
 468 year ending December 31 must be filed with the office on or  
 469 before the following June 1. The office may require a health  
 470 maintenance organization to file an audited financial report  
 471 earlier than June 1 upon notifying the organization at least 90  
 472 days in advance. The audited financial statement must include a  
 473 balance sheet and statement of operations for the preceding year  
 474 certified by an independent certified public accountant and must  
 475 be prepared in accordance with statutory accounting principles.  
 476 The audited financial statement filed for the year ending  
 477 December 31, 2015, is subject to commission rules applicable to  
 478 insurer audits.

479 (5) Each authorized health maintenance organization shall  
 480 retain an independent certified public accountant, ~~referred to~~  
 481 ~~in this section as "CPA,"~~ who agrees by written contract with  
 482 the health maintenance organization to comply with ~~the~~  
 483 ~~provisions of~~ this part.

484 (a) The independent certified public accountant CPA shall  
 485 provide to the health maintenance organization HMO audited  
 486 financial statements consistent with this part.

487 (b) Any determination by the independent certified public  
 488 accountant CPA that the health maintenance organization does not  
 489 meet minimum surplus requirements as set forth in this part must  
 490 ~~shall~~ be stated by the independent certified public accountant  
 491 CPA, in writing, in the audited financial statement.

492 (c) The completed work papers and any written  
 493 communications between the independent certified public

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494 accountant CPA firm and the health maintenance organization  
 495 relating to the audit of the health maintenance organization  
 496 shall be made available for review on a visual-inspection-only  
 497 basis by the office at the offices of the health maintenance  
 498 organization, at the office, or at any other reasonable place as  
 499 mutually agreed between the office and the health maintenance  
 500 organization. The independent certified public accountant CPA  
 501 must retain for review the work papers and written  
 502 communications for a period of not less than 6 years.

503 (d) The independent certified public accountant CPA shall  
 504 provide to the office a written report describing material  
 505 weaknesses in the health maintenance organization's internal  
 506 control structure as noted during the audit. The report must be  
 507 filed with the annual audited financial statement required under  
 508 paragraph (3) (b). The health maintenance organization must  
 509 provide a description of remedial actions taken or proposed to  
 510 be taken to correct material weaknesses, if the actions are not  
 511 described in the written report provided to the office by the  
 512 independent certified public accountant.

513 Section 9. Effective July 1, 2015, section 641.27, Florida  
 514 Statutes, is amended to read:

515 641.27 Examination by the office department.-

516 (1) The office shall examine the affairs, transactions,  
 517 accounts, business records, and assets of any health maintenance  
 518 organization as often as it deems it expedient for the  
 519 protection of the people of this state, but not less frequently  
 520 than once every 5 years. However, except when the medical  
 521 records are requested and copies furnished pursuant to s.  
 522 456.057, medical records of individuals and records of

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523 physicians providing service under contract to the health  
 524 maintenance organization ~~are shall~~ not be subject to audit,  
 525 although they may be subject to subpoena by court order upon a  
 526 showing of good cause. For the purpose of examinations, the  
 527 office may administer oaths to and examine the officers and  
 528 agents of a health maintenance organization concerning its  
 529 business and affairs. The examination of each health maintenance  
 530 organization by the office shall be subject to the same terms  
 531 and conditions as apply to insurers under chapter 624. In no  
 532 event shall expenses of all examinations exceed a maximum of  
 533 \$100,000 ~~\$50,000~~ for any 1-year period. Any rehabilitation,  
 534 liquidation, conservation, or dissolution of a health  
 535 maintenance organization shall be conducted under the  
 536 supervision of the department, which shall have all power with  
 537 respect thereto granted to it under the laws governing the  
 538 rehabilitation, liquidation, reorganization, conservation, or  
 539 dissolution of life insurance companies.

540 (2) The office may contract, at reasonable fees for work  
 541 performed, with qualified, impartial outside sources to perform  
 542 audits or examinations or portions thereof pertaining to the  
 543 qualification of an entity for issuance of a certificate of  
 544 authority or to determine continued compliance with the  
 545 requirements of this part, in which case the payment must be  
 546 made directly to the contracted examiner by the health  
 547 maintenance organization examined, in accordance with the rates  
 548 and terms agreed to by the office and the examiner. Any  
 549 contracted assistance shall be under the direct supervision of  
 550 the office. The results of any contracted assistance ~~are shall~~  
 551 ~~be~~ subject to the review of, and approval, disapproval, or

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552 modification by, the office.

553 Section 10. Paragraph (j) is added to subsection (2) of  
 554 section 641.35, Florida Statutes, to read:  
 555 641.35 Assets, liabilities, and investments.—  
 556 (2) ASSETS NOT ALLOWED.—In addition to assets impliedly  
 557 excluded by the provisions of subsection (1), the following  
 558 assets ~~are expressly shall~~ not be allowed as assets in any  
 559 determination of the financial condition of a health maintenance  
 560 organization:  
 561 (j) Beginning on or after January 1, 2016, any receivables  
 562 from a management services organization pursuant to contract  
 563 with the health maintenance organization.

564 Section 11. Section 641.365, Florida Statutes, is repealed.

565 Section 12. Paragraph (b) of subsection (2) of section  
 566 817.234, Florida Statutes, is amended to read:  
 567 817.234 False and fraudulent insurance claims.—  
 568 (2)  
 569 (b) In addition to any other provision of law, systematic  
 570 upcoding by a provider, as defined in s. 641.19(14), with the  
 571 intent to obtain reimbursement otherwise not due from an insurer  
 572 is punishable as provided in s. 641.52(5).

573 Section 13. Subsection (1) of section 817.50, Florida  
 574 Statutes, is amended to read:  
 575 817.50 Fraudulently obtaining goods, services, etc., from a  
 576 health care provider.—  
 577 (1) Whoever shall, willfully and with intent to defraud,  
 578 obtain or attempt to obtain goods, products, merchandise, or  
 579 services from any health care provider in this state, as defined  
 580 in s. 641.19(14), commits a misdemeanor of the second degree,

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581 punishable as provided in s. 775.082 or s. 775.083.

582       Section 14. The Division of Law Revision and Information is  
583 directed to replace the phrase "the effective date of this act"  
584 where it occurs in this act with the date the act becomes a law.

585       Section 15. Except as otherwise provided, this act shall  
586 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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: CS/SB 1284

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Soto

SUBJECT: Maintenance of Agency Final Orders

DATE: April 7, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1284 revises the requirements governing the maintenance of all agency final orders and requires each state agency to electronically transmit specified final orders rendered on or after July 1, 2015, to the electronic database of the Division of Administrative Hearings (DOAH) within 90 days of rendering such order. Before electronically transmitting agency final orders to DOAH's database, each agency must redact all information in the document which is exempt or confidential and exempt from public records requirements. The bill provides database requirements for the DOAH.

The bill also requires that each state agency maintain a list of all final orders that are not required to be electronically transmitted to the DOAH's database. A state agency must maintain a subject-matter index for final orders rendered before July 1, 2015, and identify the location of this index on the agency's website. The DOAH's database will constitute the official compilation of administrative final orders rendered after July 1, 2015, for each agency.

The bill revises the duties of the Department of State (DOS) to coordinate the transmittal and listing of agency final orders. The DOS is required to provide standards and guidelines for the certification, electronic transmittal, and maintenance of agency final orders in DOAH's database.

The bill authorizes the DOS to adopt rules that are binding on state agencies and the DOAH, which acts in the capacity of official compiler of final orders. The DOS is also authorized to designate an alternative official compiler under certain circumstances.

Further, the technical assistance advisements issued by the Department of Revenue (DOR) continue to be exempt from the final order maintenance requirements specified in s. 120.53, F.S.

The bill may have a minimal, indeterminate fiscal impact on some state agencies not presently submitting electronic copies of their final orders to the DOAH. The bill may reduce some agency costs associated with reporting or indexing and maintaining final orders for public access.

The bill has an effective date of July 1, 2015.

## II. Present Situation:

### Administrative Procedure Act

Chapter 120, F.S., known as the Administrative Procedure Act (APA),<sup>1</sup> regulates administrative rulemaking, administrative enforcement and administrative resolution of disputes arising out of administrative actions of most state agencies and some subdivisions of state government. The term “agency” is defined in s. 120.52(1), F.S., as:

- Each state officer and state department, and departmental unit described in s. 20.04, F.S.<sup>2</sup>
- The Board of Governors of the State University System, the Commission on Ethics, and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
- A regional water supply authority.
- A regional planning agency.
- A multicounty special district with a majority of its governing board comprised of non-elected persons.
- Educational units.
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.
- Other units of government in the state, including counties and municipalities, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.<sup>3</sup>

The definition of “agency” also includes the Governor<sup>4</sup> in the exercise of all executive powers other than those derived from the State Constitution.

Administrative actions authorized by law and regulated by the APA include adoption of a rule,<sup>5</sup> granting or denying a permit or license, an order enforcing a law or rule that assesses a fine or other discipline and final decisions in administrative disputes or other matters resulting in an agency decision. Such disputes include challenges to the validity of a rule or proposed rule or

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<sup>1</sup> Section 120.51, F.S.

<sup>2</sup> Section 20.04, F.S., sets the structure of the executive branch of state government.

<sup>3</sup> The definition of agency expressly excludes certain legal entities or organizations found in chs. 343, 348, 349 and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

<sup>4</sup> Section 120.52(1)(a), F.S.

<sup>5</sup> Section 120.54, F.S.

challenges to agency reliance on unadopted rules,<sup>6</sup> as well as challenges to other proposed agency actions which affect substantial interests of any party.<sup>7</sup> In addition to disputes, agency action occurs when the agency acts on a petition for a declaratory statement<sup>8</sup> or settles a dispute through mediation.<sup>9</sup>

### Agency Final Orders

Section 120.52(7), F.S., defines the term “final order,” in pertinent part, as “a written final decision which results from a proceeding under ss. 120.56,<sup>10</sup> 120.565,<sup>11</sup> 120.569,<sup>12</sup> 120.57,<sup>13</sup> 120.573,<sup>14</sup> or 120.574, F.S.,<sup>15</sup> which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it.”

The APA requires agencies to “maintain” all final orders (with certain exceptions) and a hierarchical subject-matter index thereof, allowing orders to be located and publicly accessed for research or copying.<sup>16</sup> One purpose of the requirement was to enhance public notice of agency policy expressed in precedents.<sup>17</sup> In lieu of the requirement for making available for public inspection and copying a hierarchical subject-matter index of agency orders, the APA authorizes agencies to maintain an electronic database of final orders that allow public users to research and retrieve the full text of final orders using common logical search terms.<sup>18</sup>

Currently, state agencies must index the following within 120 days of rendering:<sup>19</sup>

- Each final order resulting from a proceeding under s. 120.57, F.S., or s. 120.573, F.S.
- Each final agency order rendered pursuant to s. 120.57(4), F.S.,<sup>20</sup> which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.

<sup>6</sup> Section 120.56, F.S.

<sup>7</sup> Section 120.569, F.S.

<sup>8</sup> Section 120.565, F.S.

<sup>9</sup> Section 120.573, F.S.

<sup>10</sup> Section 120.56, F.S., provides procedures for challenging the validity of an agency’s existing rule, proposed rule, agency statements defined as rules, and emergency rules.

<sup>11</sup> Section 120.565, F.S., governs procedures for requesting a declaratory statement from an agency by a substantially affected person regarding the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the person’s particular set of circumstances.

<sup>12</sup> Section 120.569, F.S., governs procedures which affect substantial interests.

<sup>13</sup> Section 120.57, F.S., provides additional procedures for particular cases regarding hearings involving disputed issues of material fact and hearings not involving disputed issues of material fact.

<sup>14</sup> Section 120.573, F.S., governs procedures for the mediation of disputes of agency action that affects substantial interests.

<sup>15</sup> Section 120.574, F.S., governs summary hearing procedures.

<sup>16</sup> Section 120.53(1)(a)2.a., F.S.

<sup>17</sup> *McDonald v. Department of Banking and Finance*, 346 So.2d 569, 582 (1<sup>st</sup> DCA 1977). Also, see *Gessler v. Dep’t of Bus. & Prof. Reg.*, 627 So.2d 501, 503 (Fla. 4<sup>th</sup> DCA 1993) (“Persons have the right to examine agency precedent and the right to know the factual basis and policy reasons for agency action.”).

<sup>18</sup> Section 120.53(1)(a)2.b., F.S.

<sup>19</sup> Section 120.53(1)(b), F.S.

<sup>20</sup> Section 120.57(4), F.S., provides that “[u]nless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.”

- Each declaratory statement issued by an agency.
- Each final order resulting from a proceeding under s. 120.56, F.S., or s. 120.574, F.S.

Agency final orders may be maintained in hard copy in agency files, published by a reporter<sup>21</sup> or made available online in an electronic database. These various methods can make finding agency final orders difficult at times. The Ad Hoc Orders Access Committee of the Florida Bar's Administrative Law Section surveyed state agencies to gather information on how agencies index final orders and where final orders may be accessed.<sup>22</sup> The survey revealed that some agencies still require a public records request to access their index and copies of final orders, or they simply identify a particular agency employee to contact for access. Such methods are not always in keeping with the information age. Florida's public records law require agencies to permanently maintain records of agency final orders.<sup>23</sup>

### **Coordination of Indexing of Final Orders by Department of State**

In addition to its supervisory role in the archiving of state records,<sup>24</sup> the DOS is required to administer the coordination of the indexing, management, preservation, and availability of agency final orders that must be indexed or listed in accordance with s. 120.53(1), F.S.<sup>25</sup> The DOS has rulemaking authority over the system of indexing that agencies may use<sup>26</sup> and the storage and retrieval systems used to provide access.<sup>27</sup> The DOS may approve more than one system.<sup>28</sup> Authorized storage and retrieval systems for agencies include reporters, microfilm, automated systems or any other system considered appropriate by the DOS.<sup>29</sup> Also, the DOS is required to determine which final orders agencies must index.<sup>30</sup> Agencies must receive approval in writing from the DOS regarding various provisions for indexing final orders.<sup>31</sup>

### **Division of Administrative Hearings**

The DOAH is a state agency consisting of an independent group of administrative law judges (ALJs) that presides over disputes under the APA and other state laws.<sup>32</sup> The DOAH is placed administratively under the Department of Management Services (DMS);<sup>33</sup> however, DOAH is not subject to any control, supervision, or direction by the DMS. The director of the DOAH, who

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<sup>21</sup> Section 120.53(2)(a), F.S., provides, in part, that “[a]n agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public . . .”

<sup>22</sup> Jowanna N. Oates, *Access to Agency Final Orders*, The Florida Bar, Administrative Law Section Newsletter, Vol. XXXIV, No. 4 (June 2013). For an updated list on accessing agency final orders, see <http://www.fladminlaw.org/pdf/information-about-accessing-agency-final-orders.pdf>.

<sup>23</sup> Section 119.021(3), F.S.

<sup>24</sup> Section 257.35, F.S., Also, see s. 15.02, F.S.

<sup>25</sup> Section 120.533(1), F.S.

<sup>26</sup> Section 120.533(2), F.S.

<sup>27</sup> Section 120.533(3), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 120.533(4), F.S. The rules adopted under this section are found in ch. 1B-32, F.A.C.

<sup>31</sup> Section 120.53(1)(c), F.S.

<sup>32</sup> Section 120.65, F.S.

<sup>33</sup> Section 120.65(1), F.S.

also serves as chief administrative law judge, has effective administrative control over DOAH, its resources and operations.<sup>34</sup>

Since the 2008 amendments to the APA,<sup>35</sup> agencies have been permitted to satisfy the final order index requirement by electronically transmitting a copy of its final orders to DOAH for posting on its website.<sup>36</sup> Many agencies use the DOAH alternative.<sup>37</sup> There does not appear to be any law requiring the DOAH to maintain its electronic database that is accessible for searching orders. However, the DOS has adopted a rule governing the use of a database for maintaining final orders. The rule provides:

If an electronic database is used by an agency, it shall allow users to research and retrieve agency orders by searching the text of the order and descriptive information about the order, which shall contain, at a minimum, major subject headings. To promote consistent, reliable indexing, the indexing system for an electronic database shall have fixed fields to ensure common usage of search terms by anyone that uses the system.<sup>38</sup>

### **Department of Revenue (DOR) Technical Assistance Advisements**

Upon request, the DOR issues informal technical assistance regarding certain tax consequences.<sup>39</sup> Currently, these technical assistance advisements are exempted from the requirements of s. 120.53(1), F.S.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 119.021(3), F.S., to make conforming changes regarding the requirement of each state agency to permanently maintain all final orders rendered before July 1, 2015, which were indexed or listed pursuant to s. 120.53, F.S., and agency final orders rendered on or after July 1, 2015, which must be listed or copies of which must be electronically transmitted to the DOAH pursuant to s. 120.53, F.S.

**Section 2** amends s. 120.53, F.S., to require each state agency, in addition to the agency requirement of maintaining records in accordance with s. 119.021(3), F.S., to electronically

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<sup>34</sup> *Id.*

<sup>35</sup> Ch. 2008-104, L.O.F.

<sup>36</sup> Section 120.53(2)(a), F.S., provides, in part that that “[a]n agency may comply with subparagraphs (1)(a)1. and 2. by . . . electronically transmitting to the division a copy of such orders for posting on the division’s website.” Also, see DOAH’s website at <https://www.doah.state.fl.us/FLAIO/>.

<sup>37</sup> The DOAH website lists the following agencies having final orders accessible: Department of Agriculture and Consumer Services, Agency for Persons with Disabilities, Department of Children and Family Services, Department of Corrections, Department of Community Affairs, Department of Economic Opportunity, Department of Environmental Protection, Department of Health, Department of Education, Department of State, Department of Business and Professional Regulation, Florida Housing Finance Corporation, Office of the Governor, Agency for Health Care Administration, and Department of Highway Safety and Motor Vehicles.

<sup>38</sup> Chapter 1B-32.002(2)(e), F.A.C.

<sup>39</sup> Section 213.22(1), F.S.



transmit a certified text-searchable copy of each agency final orders rendered on or after July 1, 2015, to a centralized electronic database maintained by the DOAH.

The DOAH database must allow users to search and retrieve the full texts of agency final orders by the:

- Name of the agency that issued the final order.
- Date the final agency order was issued.
- Type of final order.
- Subject of the final order.
- Terms contained in the text of the final order.

The types of agency final orders that must be electronically transmitted to DOAH's database include the following:

- Each final order resulting from a proceeding under s. 120.57, F.S., or s. 120.573, F.S.
- Each final order rendered pursuant to s. 120.57(4), F.S., which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.
- Each declaratory statement issued by an agency.
- Each final order resulting from a proceeding under s. 120.56, F.S., or s. 120.574, F.S.

Also, the bill requires each agency to maintain a list of all agency final orders rendered pursuant to s. 120.57(4), F.S., which are not required to be electronically transmitted to DOAH's database.

The bill requires each agency to maintain a subject matter index for final orders rendered before July 1, 2015, and the agency must identify where this index is located on its website.

Within 90 days after the final order is rendered, each agency must electronically transmit the order to DOAH's database. If the final order is rendered pursuant to s. 120.57(4), F.S., the agency must maintain such order on its list as required by this bill.

Additionally, for cases where DOAH has final order authority, the DOAH must transmit the final order to its database within 90 days of issuance of such order.

The bill authorizes an agency to electronically transmit to DOAH's database certified copies of all final orders rendered before July 1, 2015, that are required to be placed in a subject-matter index. The DOAH's centralized electronic database constitutes the official compilation of administrative final orders rendered on or after July 1, 2015.

The bill requires each agency to redact all information in a final order that is exempt or confidential and exempt from public records requirements before electronically transmitting the agency final order to DOAH.

**Section 3** amends s. 120.533, F.S., to require the Department of State (DOS) to coordinate the transmittal of agency final orders pursuant to s. 120.53, F.S. The DOS is required to provide for storage and retrieval systems to be maintained by agencies pursuant to s. 120.53(5), F.S., for

indexing and making available agency final orders by subject matter. The DOS is authorized to approve more than one of these systems.

The DOS is required to provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to DOAH in accordance with s. 120.53, F.S., and for protection of integrity and authenticity of information publicly accessible through the electronic database.

The DOS is also required to provide standards and guidelines to ensure security of copies of agency final orders transmitted and maintained in DOAH's electronic database.

The bill authorizes the DOS to adopt rules to administer its responsibilities that are binding on state agencies and DOAH, which acts in capacity of official compiler of administrative final orders under s. 120.53, F.S. The DOS is also authorized to designate an alternative official compiler if the Administration Commission<sup>40</sup> determines that DOAH's performance is unsatisfactory.

**Section 4** amends s. 213.22, F.S., to make conforming changes regarding the non-applicability of s. 120.53, F.S., requirements to technical assistance advisements issued by the DOR.

**Section 5** provides an effective date of July 1, 2015.

#### **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:

CS/SB 1284 may have a slight positive economic impact on the private sector by offering easy internet access to agency orders that may only be accessible in person under current law.

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<sup>40</sup> Section 14.202, F.S. Also, see s. 120.65, F.S.

**C. Government Sector Impact:**

The bill may have a minimal fiscal impact on some state agencies that do not presently use a searchable electronic database of final orders; however this impact is should be minimal and most likely could be absorbed within agency resources. The bill could reduce some agency costs associated with reporting or indexing and maintaining final orders for public access.

According to the DOAH, the agency supports the uniform indexing and maintenance of final orders set forth in the bill, and it can maintain all final orders on its website and host full public access with current resources, personnel and equipment.<sup>41</sup>

According to the Department of State (DOS), rulemaking, coordinating and providing standards and guidelines related to the certification, electronic transmittal, and maintenance of agency final orders in the DOAH's database may have a minimal fiscal impact that can be absorbed with existing resources. The fiscal impact related to authorizing the DOS to provide an alternative official compiler if the Administration Commission determines that the DOAH's performance is unsatisfactory is indeterminate at this time.<sup>42</sup>

**VI. Technical Deficiencies:**

Amendments to s. 120.533(7), F.S. contained in Section 3 of the bill, requires the DOAH to act as the official compiler of "administrative final orders" under s. 120.53, F.S. The bill consistently refers to "agency final orders". The use of the word "administrative" may create ambiguity in regards to the DOAH's responsibilities under this legislation. It is recommended that the word "administrative" be deleted and replaced with the word "agency."

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 119.021, 120.53, 120.533, and 213.22.

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<sup>41</sup> See DOAH legislative bill analysis dated February 12, 2015. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

<sup>42</sup> Telephone conversation with the Department of State staff on April 2, 2015.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

**CS by Governmental Oversight and Accountability on March 17, 2015:**

Each agency is required to redact all information in a final order that is exempt or confidential and exempt from public records requirements before electronically transmitting such order to DOAH.

The DOAH's electronic database will constitute the official compilation of administrative final orders rendered after July 1, 2015, for each agency.

The bill amends s. 120.533, F.S., regarding DOS's duty to coordinate the transmittal and listing of agency final orders.

The DOS is required to provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to DOAH in accordance with s. 120.53, F.S., and for protection of integrity and authenticity of information publicly accessible through the electronic database.

The DOS is also required to provide standards and guidelines to ensure security of copies of agency final orders transmitted and maintained in DOAH's electronic database.

The DOS is authorized to adopt rules to administer its responsibilities that are binding on state agencies and DOAH, which acts in capacity of official compiler of administrative final orders under s. 120.53, F.S. DOS is also authorized to designate an alternative official compiler if the Administration Commission determines that DOAH's performance is unsatisfactory.

**B. Amendments:**

None.

By the Committee on Governmental Oversight and Accountability;  
and Senator Soto

585-02413-15

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1 A bill to be entitled  
2 An act relating to the maintenance of agency final  
3 orders; amending s. 119.021, F.S.; conforming a  
4 provision to changes made by the act; amending s.  
5 120.53, F.S.; requiring agencies to electronically  
6 transmit certain agency final orders to a centralized  
7 electronic database maintained by the Division of  
8 Administrative Hearings; providing the methods by  
9 which such final orders can be searched; requiring  
10 each agency to maintain a list of final orders that  
11 are not required to be electronically transmitted to  
12 the database; providing a timeframe for electronically  
13 transmitting or listing the final orders; authorizing  
14 agencies to maintain subject matter indexes of final  
15 orders issued before a specified date or to  
16 electronically transmit such orders to the database;  
17 providing that the centralized electronic database is  
18 the official compilation of administrative final  
19 orders issued on or after a specified date for each  
20 agency; requiring an agency to redact information  
21 exempt from public records requirements before  
22 electronically transmitting final orders to the  
23 database; deleting obsolete provisions regarding  
24 filing, indexing, and publishing final orders;  
25 amending s. 120.533, F.S.; requiring the Department of  
26 State to provide standards and guidelines for the  
27 certification and electronic transmittal and the  
28 secure transmittal and maintenance of agency final  
29 orders; authorizing the department to adopt rules;

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30 authorizing the department to provide for an  
31 alternative official compiler of agency final orders  
32 under certain circumstances; conforming provisions to  
33 changes made by the act; amending s. 213.22, F.S.;  
34 conforming a cross-reference; providing an effective  
35 date.  
36  
37 Be It Enacted by the Legislature of the State of Florida:  
38  
39 Section 1. Subsection (3) of section 119.021, Florida  
40 Statutes, is amended to read:  
41 119.021 Custodial requirements; maintenance, preservation,  
42 and retention of public records.-  
43 (3) Agency final orders rendered before July 1, 2015, which  
44 were indexed or listed pursuant to s. 120.53, and agency final  
45 orders rendered on or after July 1, 2015, which must be listed  
46 or copies of which must be transmitted to the Division of  
47 Administrative Hearings ~~orders that comprise final agency action~~  
48 and that must be indexed or listed pursuant to s. 120.53, have  
49 continuing legal significance; therefore, notwithstanding any  
50 other provision of this chapter or any provision of chapter 257,  
51 each agency shall permanently maintain records of such orders  
52 pursuant to the applicable rules of the Department of State.  
53 Section 2. Section 120.53, Florida Statutes, is amended to  
54 read:  
55 120.53 Maintenance of agency final orders; ~~indexing;~~  
56 listing; ~~organizational information.~~  
57 (1) In addition to maintaining records contained in s.  
58 119.021(3), each agency shall also electronically transmit a

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59 certified text-searchable copy of each agency final order listed  
 60 in subsection (2) rendered on or after July 1, 2015, to a  
 61 centralized electronic database of agency final orders  
 62 maintained by the division. The database must allow users to  
 63 research and retrieve the full texts of agency final orders by:  
 64 (a) The name of the agency that issued the final order.  
 65 (b) The date the final order was issued.  
 66 (c) The type of final order.  
 67 (d) The subject of the final order.  
 68 (e) Terms contained in the text of the final order.  
 69 ~~(a) Each agency shall maintain:~~  
 70 ~~1. All agency final orders:~~  
 71 ~~2.a. A current hierarchical subject matter index,~~  
 72 ~~identifying for the public any rule or order as specified in~~  
 73 ~~this subparagraph.~~  
 74 ~~b. In lieu of the requirement for making available for~~  
 75 ~~public inspection and copying a hierarchical subject-matter~~  
 76 ~~index of its orders, an agency may maintain and make available~~  
 77 ~~for public use an electronic database of its orders that allows~~  
 78 ~~users to research and retrieve the full texts of agency orders~~  
 79 ~~by devising an ad hoc indexing system employing any logical~~  
 80 ~~search terms in common usage which are composed by the user and~~  
 81 ~~which are contained in the orders of the agency or by~~  
 82 ~~descriptive information about the order which may not be~~  
 83 ~~specifically contained in the order.~~  
 84 (2)e- The agency final orders that must be electronically  
 85 transmitted to the centralized electronic database indexed,  
 86 unless excluded under paragraph (c) or paragraph (d), include:  
 87 (a)(i) Each final agency order resulting from a proceeding

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88 under s. 120.57 or s. 120.573.  
 89 ~~(b)(ii)~~ Each final ~~agency~~ order rendered pursuant to s.  
 90 120.57(4) which contains a statement of agency policy that may  
 91 be the basis of future agency decisions or that may otherwise  
 92 contain a statement of precedential value.  
 93 ~~(c)(iii)~~ Each declaratory statement issued by an agency.  
 94 ~~(d)(iv)~~ Each final order resulting from a proceeding under  
 95 s. 120.56 or s. 120.574.  
 96 ~~(3)3-~~ Each agency shall maintain a list of all final orders  
 97 rendered pursuant to s. 120.57(4) that are not required to be  
 98 electronically transmitted to the centralized electronic  
 99 database which have been excluded from the indexing requirement  
 100 of this section, with the approval of the Department of State,  
 101 because they do not contain statements of agency policy or  
 102 statements of precedential value. The list must include the name  
 103 of the parties to the proceeding and the number assigned to the  
 104 final order.  
 105 ~~4. All final orders listed pursuant to subparagraph 3-~~  
 106 ~~(4)(b)~~ Each An agency final order, whether rendered by the  
 107 agency or the division, that must be electronically transmitted  
 108 to the centralized electronic database or maintained on a list  
 109 pursuant to subsection (3) must be electronically transmitted to  
 110 the database or added to the list within 90 days after the final  
 111 indexed or listed pursuant to paragraph (a) must be indexed or  
 112 listed within 120 days after the order is rendered. Each final  
 113 order that must be electronically transmitted to the database or  
 114 added to the list indexed or listed pursuant to paragraph (a)  
 115 must have attached a copy of the complete text of any materials  
 116 incorporated by reference; however, if the quantity of the

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117 materials incorporated makes attachment of the complete text of  
 118 the materials impractical, the final order may contain a  
 119 statement of the location of such materials and the manner in  
 120 which the public may inspect or obtain copies of the materials  
 121 incorporated by reference. ~~The Department of State shall~~  
 122 ~~establish by rule procedures for indexing final orders, and~~  
 123 ~~procedures of agencies for indexing orders must be approved by~~  
 124 ~~the department.~~

125 (5) Nothing in this section relieves an agency from its  
 126 responsibility for maintaining a subject matter index of final  
 127 orders rendered before July 1, 2015, and identifying the  
 128 location of the subject matter index on the agency's website. In  
 129 addition, an agency may electronically transmit to the  
 130 centralized electronic database certified copies of all of the  
 131 final orders that were rendered before July 1, 2015, which were  
 132 required to be in the subject matter index. The centralized  
 133 electronic database constitutes the official compilation of  
 134 administrative final orders rendered on or after July 1, 2015,  
 135 for each agency.

136 (6) Before electronically transmitting agency final orders  
 137 to the centralized electronic database, each agency shall redact  
 138 all information in a final order which is exempt or confidential  
 139 and exempt from public records requirements.

140 ~~(e) Each agency must receive approval in writing from the~~  
 141 ~~Department of State for:~~

142 ~~1. The specific types and categories of agency final orders~~  
 143 ~~that may be excluded from the indexing and public inspection~~  
 144 ~~requirements, as determined by the department pursuant to~~  
 145 ~~paragraph (d).~~

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146 ~~2. The method for maintaining indexes, lists, and final~~  
 147 ~~orders that must be indexed or listed and made available to the~~  
 148 ~~public.~~

149 ~~3. The method by which the public may inspect or obtain~~  
 150 ~~copies of indexes, lists, and final orders.~~

151 ~~4. A sequential numbering system which numbers all final~~  
 152 ~~orders required to be indexed or listed pursuant to paragraph~~  
 153 ~~(a), in the order rendered.~~

154 ~~5. Proposed rules for implementing the requirements of this~~  
 155 ~~section for indexing and making final orders available for~~  
 156 ~~public inspection.~~

157 ~~(d) In determining which final orders may be excluded from~~  
 158 ~~the indexing and public inspection requirements, the Department~~  
 159 ~~of State may consider all factors specified by an agency,~~  
 160 ~~including precedential value, legal significance, and purpose.~~  
 161 ~~Only agency final orders that are of limited or no precedential~~  
 162 ~~value, that are of limited or no legal significance, or that are~~  
 163 ~~ministerial in nature may be excluded.~~

164 ~~(e) Each agency shall specify the specific types or~~  
 165 ~~categories of agency final orders that are excluded from the~~  
 166 ~~indexing and public inspection requirements.~~

167 ~~(f) Each agency shall specify the location or locations~~  
 168 ~~where agency indexes, lists, and final orders that are required~~  
 169 ~~to be indexed or listed are maintained and shall specify the~~  
 170 ~~method or procedure by which the public may inspect or obtain~~  
 171 ~~copies of indexes, lists, and final orders.~~

172 ~~(g) Each agency shall specify all systems in use by the~~  
 173 ~~agency to search and locate agency final orders that are~~  
 174 ~~required to be indexed or listed, including, but not limited to,~~

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175 any automated system. An agency shall make the search  
 176 capabilities employed by the agency available to the public  
 177 subject to reasonable terms and conditions, including a  
 178 reasonable charge, as provided by s. 119.07. The agency shall  
 179 specify how assistance and information pertaining to final  
 180 orders may be obtained.

181 ~~(h) Each agency shall specify the numbering system used to~~  
 182 ~~identify agency final orders.~~

183 ~~(2)(a) An agency may comply with subparagraphs (1)(a)1. and~~  
 184 ~~2. by designating an official reporter to publish and index by~~  
 185 ~~subject matter each agency order that must be indexed and made~~  
 186 ~~available to the public, or by electronically transmitting to~~  
 187 ~~the division a copy of such orders for posting on the division's~~  
 188 ~~website. An agency is in compliance with subparagraph (1)(a)3.~~  
 189 ~~if it publishes in its designated reporter a list of each agency~~  
 190 ~~final order that must be listed and preserves each listed order~~  
 191 ~~and makes it available for public inspection and copying.~~

192 ~~(b) An agency may publish its official reporter or may~~  
 193 ~~contract with a publishing firm to publish its official~~  
 194 ~~reporter; however, if an agency contracts with a publishing firm~~  
 195 ~~to publish its reporter, the agency is responsible for the~~  
 196 ~~quality, timeliness, and usefulness of the reporter. The~~  
 197 ~~Department of State may publish an official reporter for an~~  
 198 ~~agency or may contract with a publishing firm to publish the~~  
 199 ~~reporter for the agency; however, if the department contracts~~  
 200 ~~for publication of the reporter, the department is responsible~~  
 201 ~~for the quality, timeliness, and usefulness of the reporter. A~~  
 202 ~~reporter that is designated by an agency as its official~~  
 203 ~~reporter and approved by the Department of State constitutes the~~

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204 official compilation of the administrative final orders for that  
 205 agency.

206 ~~(c) A reporter that is published by the Department of State~~  
 207 ~~may be made available by annual subscription, and each agency~~  
 208 ~~that designates an official reporter published by the department~~  
 209 ~~may be charged a space rate payable to the department. The~~  
 210 ~~subscription rate and the space rate must be equitably~~  
 211 ~~apportioned to cover the costs of publishing the reporter.~~

212 ~~(d) An agency that designates an official reporter need not~~  
 213 ~~publish the full text of an agency final order that is rendered~~  
 214 ~~pursuant to s. 120.57(4) and that must be indexed pursuant to~~  
 215 ~~paragraph (1)(a), if the final order is preserved by the agency~~  
 216 ~~and made available for public inspection and copying and the~~  
 217 ~~official reporter indexes the final order and includes a~~  
 218 ~~synopsis of the order. A synopsis must include the names of the~~  
 219 ~~parties to the order; any rule, statute, or constitutional~~  
 220 ~~provision pertinent to the order; a summary of the facts, if~~  
 221 ~~included in the order, which are pertinent to the final~~  
 222 ~~disposition; and a summary of the final disposition.~~

223 ~~(3) Agency orders that must be indexed or listed are~~  
 224 ~~documents of continuing legal value and must be permanently~~  
 225 ~~preserved and made available to the public. Each agency to which~~  
 226 ~~this chapter applies shall provide, under the direction of the~~  
 227 ~~Department of State, for the preservation of orders as required~~  
 228 ~~by this chapter and for maintaining an index to those orders.~~

229 ~~(4) Each agency must provide any person who makes a request~~  
 230 ~~with a written description of its organization and the general~~  
 231 ~~course of its operations.~~

232 Section 3. Section 120.533, Florida Statutes, is amended to



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233 read:

234 120.533 Coordination of the transmittal, indexing, and  
 235 listing of agency final orders by Department of State.—The  
 236 Department of State shall:

237 (1) ~~Coordinate~~ Administer the coordination of the  
 238 transmittal, indexing, management, preservation, and  
 239 availability of agency final orders that must be transmitted,  
 240 indexed, or listed pursuant to s. 120.53 ~~s. 120.53(1).~~

241 (2) Provide, ~~by rule,~~ guidelines for ~~the~~ indexing of agency  
 242 final orders. More than one system for indexing may be approved  
 243 by the Department of State, including systems or methods in use,  
 244 or proposed for use, by an agency. More than one system may be  
 245 approved for use by a single agency as best serves the needs of  
 246 that agency and the public.

247 (3) Provide, ~~by rule,~~ for storage and retrieval systems to  
 248 be maintained by agencies pursuant to s. 120.53(5) for indexing,  
 249 and making available, agency final orders by subject matter. The  
 250 Department of State may authorize ~~approve~~ more than one system,  
 251 including systems in use, ~~or proposed for use,~~ by an agency.  
 252 Storage and retrieval systems that may be used by an agency  
 253 include, without limitation, a designated reporter or reporters,  
 254 a microfilming system, an automated system, or any other system  
 255 considered appropriate by the Department of State.

256 (4) Provide standards and guidelines for the certification  
 257 and electronic transmittal of copies of agency final orders to  
 258 the division as required under s. 120.53, and, to protect the  
 259 integrity and authenticity of information publicly accessible  
 260 through the electronic database, coordinate and provide  
 261 standards and guidelines to ensure the security of copies of

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262 agency final orders transmitted and maintained in the electronic  
 263 database by the division under s. 120.53(1).

264 ~~(5)(4)~~ For each agency, determine which final orders must  
 265 be indexed ~~or transmitted for each agency.~~

266 ~~(6)(5)~~ Require each agency to report to the department  
 267 concerning which types or categories of agency orders establish  
 268 precedent for each agency.

269 (7) Adopt rules as necessary to administer its  
 270 responsibilities under this section, which shall be binding on  
 271 all agencies, including the division acting in the capacity of  
 272 official compiler of administrative final orders under s.  
 273 120.53, notwithstanding s. 120.65. The Department of State may  
 274 provide for an alternative official compiler to manage and  
 275 operate the division's database and related services if the  
 276 Administration Commission determines that the performance of the  
 277 division as official compiler is unsatisfactory.

278 Section 4. Subsection (1) of section 213.22, Florida  
 279 Statutes, is amended to read:

280 213.22 Technical assistance advisements.—

281 (1) The department may issue informal technical assistance  
 282 advisements to persons, upon written request, as to the position  
 283 of the department on the tax consequences of a stated  
 284 transaction or event, under existing statutes, rules, or  
 285 policies. After the issuance of an assessment, a technical  
 286 assistance advisement may not be issued to a taxpayer who  
 287 requests an advisement relating to the tax or liability for tax  
 288 in respect to which the assessment has been made, except that a  
 289 technical assistance advisement may be issued to a taxpayer who  
 290 requests an advisement relating to the exemptions in s.

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291 212.08(1) or (2) at any time. Technical assistance advisements  
292 shall have no precedential value except to the taxpayer who  
293 requests the advisement and then only for the specific  
294 transaction addressed in the technical assistance advisement,  
295 unless specifically stated otherwise in the advisement. Any  
296 modification of an advisement shall be prospective only. A  
297 technical assistance advisement is not an order issued pursuant  
298 to s. 120.565 or s. 120.569 or a rule or policy of general  
299 applicability under s. 120.54. The provisions of s. 120.53 ~~s.~~  
300 ~~120.53(1)~~ are not applicable to technical assistance  
301 advisements.

302 Section 5. This act shall take effect July 1, 2015.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-8-19

Meeting Date

1284

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Daniel Nordby

Job Title \_\_\_\_\_

Address 215 S. Monroe Street, Suite 804

Phone \_\_\_\_\_

Street

Tallahassee, FL 32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Bar - Administrative Law Section

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/08/2015

*Meeting Date*

SB1284

*Bill Number (if applicable)*

Topic Maintenance of Final Agency Orders

*Amendment Barcode (if applicable)*

Name Bob Cohen

Job Title Director and Chief Judge

Address 1230 Apalachee Parkway

Phone 850-488-9675

*Street*

Tallahassee

FL

32301

Email bob.cohen@doah.state.fl.us

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Division of Administrative Hearings

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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BILL: PCS/CS/SB 1402 (801726)

INTRODUCER: Appropriations Subcommittee on General Government; Banking and Insurance Committee; and Senator Lee

SUBJECT: Organization of the Department of Financial Services

DATE: April 10, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

PCS/CS/SB 1402 changes the organization of the Department of Financial Services (DFS or department). The bill gives the Chief Financial Officer (CFO) the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote effective and efficient operations. The bill does not change the review and approval process by the Department of Management Services and the Executive Office of the Governor.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The Strategic Markets Research and Assessment Unit, which is currently not active nor funded, is repealed.

The bill provides that Division of Accounting and Auditing positions directly responsible for performing investigations, audits, or management studies for the purpose of making recommendations for corrective action within the DFS are exempt from the career service requirements.

The \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund.

The department has indicated the cost of changing the 66 accountants and auditors to the select exempt service classification from career service is estimated to be \$75,000 from the General Revenue Fund and \$12,000 from the Administrative Trust Fund. The department has indicated that it has sufficient current appropriations to cover these increased costs.

The effective date of the bill is July 1, 2015.

## II. Present Situation:

The CFO is a member of the Cabinet<sup>1</sup> and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS.<sup>2</sup> The DFS is organized in fourteen divisions and some specialized offices. The divisions are:

- The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agent and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.<sup>3</sup>

Section 20.04, F.S., provides for the establishment of divisions, bureaus, sections, or subsections within a state department. A department head may recommend the establishment of additional divisions, bureaus, sections, and subsections to promote efficient and effective operation of the

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<sup>1</sup> See Art. IV, s. 4, Fla. Const.

<sup>2</sup> See s. 20.121(1), F.S.

<sup>3</sup> See s. 20.121(2), F.S.

department.<sup>4</sup> The Department of Management Services and the Executive Office of the Governor review and approve reorganization requests.<sup>5</sup>

### **Bureau of Unclaimed Property**

Chapter 717, Florida Statutes, governs the disposition of unclaimed property and requires the DFS to administer the statute. Currently, the DFS holds unclaimed property accounts valued at more than \$1 billion from dormant accounts in financial institutions, insurance and utility companies, securities, trust holdings, and unclaimed safe deposit boxes. The Bureau of Unclaimed Property within the DFS is the bureau responsible for administering chapter 717, F.S.<sup>6</sup>

### **The Office of Fiscal Integrity**

The Office of Fiscal Integrity is a criminal justice entity within the DFS whose mission is to detect and investigate the misappropriation or misuse of state assets. The office performs functions related to the duty of the CFO to examine, audit, adjust, and settle the accounts of all state officers and any other person who has received state funds or moneys.<sup>7</sup> The Office of Fiscal Integrity has sworn law enforcement officers on staff to conduct investigations or provide investigative assistance to other law enforcement agencies.<sup>8</sup>

### **Division of Insurance Fraud**

The Division of Insurance Fraud investigates various types of insurance fraud including Personal Injury Protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's fraud, and healthcare fraud.<sup>9</sup> The division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,<sup>10</sup> false and fraudulent insurance claims,<sup>11</sup> and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.<sup>12</sup> The division employs sworn law enforcement officers to investigate insurance fraud. In Fiscal Year 2012-2013, the division received over 15,440 referrals.

### **Division of Consumer Services**

The Division of Consumer Services within the DFS is created by s. 20.121, F.S., and handles consumer issues and complaints related to the jurisdiction of the DFS and the Office of Insurance Regulation ("OIR"). The division:

- Receives inquiries and complaints from consumers;

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<sup>4</sup> See s. 20.04(7)(b), F.S.

<sup>5</sup> See s. 20.04(7)(c), F.S.

<sup>6</sup> See <https://www.fltreasurehunt.org/> (discussing the Bureau of Unclaimed Property)(last accessed March 11, 2015).

<sup>7</sup> Section 17.04, F.S.

<sup>8</sup> See <http://www.myfloridacfo.com/Division/AA/StateAgencies/OfficeofFiscalIntegrity.htm#.VQCOFPnF8eE> (last accessed March 11, 2015).

<sup>9</sup> See <http://www.myfloridacfo.com/Division/Fraud/#.VQDPuPnF8eF> (last accessed March 11, 2015).

<sup>10</sup> Section 626.9541, F.S.

<sup>11</sup> Section 817.234, F.S.

<sup>12</sup> Section 624.15, F.S.

- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to appropriate division within DFS or the OIR, as appropriate.<sup>13</sup>

### **Strategic Markets Research and Assistance Unit**

Section 20.121, F.S., creates the Strategic Markets Research and Assessment Unit within the DFS. It requires the CFO or his or her designee to report quarterly to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives on the status of the state's financial services markets. The CFO must also provide findings and recommendations regarding regulatory and policy changes to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. According to the DFS, the unit has not functioned since before 2010 and funding was discontinued in 2009.<sup>14</sup>

### **Audit and Accounting Positions in the Department of Financial Services**

Article III, s. 14, Florida Constitution, requires the Legislature to create a civil service system for state employees, except for those employees specifically exempted. Employees in the civil service system are "career service" employees<sup>15</sup> while employees exempted from the career service system are called "select exempt"<sup>16</sup> or "senior management."<sup>17</sup> In general, career service employees are subject to dismissal for cause while senior management and select exempt employees serve at the pleasure of the agency head.<sup>18</sup> The various classes also have different pay scales, different leave rules, and different levels of insurance subsidies. Section 110.205, F.S., provides a number of classes of employees that are exempt from the career service and serve in the senior management or select exempt classifications.

According to the DFS, in 2008 the Department of Management Services authorized that DFS "investigators and auditors" could remain in the select exempt class but suggested that the department should seek a legislative change to make the authorization permanent. Positions reverted to career service as they became vacant. There are currently 66 accounting and auditing positions which the DFS seeks to change from career service to select exempt.

### **Service of Process**

Section 624.502, F.S., requires that in all instances as provided in any section of the insurance code and s. 48.151(3), F.S.,<sup>19</sup> in which service of process is authorized to be made upon the CFO

---

<sup>13</sup> See s. 20.121(2)(h), F.S.

<sup>14</sup> See Department of Financial Services, *SB 1402 Analysis* (March 11, 2015)(on file with the Senate Committee on Banking and Insurance).

<sup>15</sup> See s. 110.205, F.S.

<sup>16</sup> See Part V, ch. 110, F.S.

<sup>17</sup> See Part III, ch. 110, F.S.

<sup>18</sup> See ss. 110.227, 110.402, and 110.604, F.S.

<sup>19</sup> Section 48.151(3), provides that the CFO or his or her designee is the agent for service of process on all insurers applying for authority to transact insurance, all licensed nonresident insurance agents, all nonresident disability insurance agents,



or the director of the OIR, the plaintiff shall pay \$15 to the DFS or the OIR for service of process. The fee is deposited into the Insurance Regulatory Trust Fund. Chapter 2014-53, Laws of Florida, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

### III. Effect of Proposed Changes:

#### Organization of the DFS

**Section 1** makes various changes to the organization of the DFS. The bill gives the CFO the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote the effective and efficient operation of the DFS pursuant to s. 20.04, F.S. The bill does not change the review and approval process of s. 20.04, F.S.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions, but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The Division of Insurance Fraud is renamed the Division of Criminal Investigations. The division will retain the same powers and duties as the Division of Insurance Fraud.

**Sections 6 through 27** amend various statutory provisions to reflect the name change of the Division of Insurance Fraud to the Division of Criminal Investigation.

The Strategic Markets Research and Assessment Unit, which is not currently active nor funded, is repealed.

#### Relocation of the Division of Consumer Services Statute

**Sections 1, 3, and 4** relocate statutory references to the duties of the Division of Consumer Services from s. 20.121, F.S., to the Insurance Code at s. 624.307, F.S., and provide conforming changes.

#### Audit and Accounting Positions in the Department of Financial Services

**Section 2** amends s. 110.205, F.S., to provide that all auditing and accounting positions in the DFS are exempt from the career services provisions of law.

**Service of Process Fees**

**Section 5** of this bill amends s. 624.502, F.S., to provide that the \$15 service of process fee paid to the DFS will be deposited in the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund. The Insurance Regulatory Trust Fund, created by s. 624.523, F.S., is appropriated for use by the DFS and the OIR to defray the expenses in the discharge of administrative and regulatory powers. Chapter 2014-53, Laws of Florida, implementing the 2014-2015 General Appropriations Act, directed those funds to the Administrative Trust Fund for the 2014-15 fiscal year.

**Effective Date**

**Section 28** provides an effective date of July 1, 2015.

**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:**

None.

**C. Government Sector Impact:**

The DFS reports that PCS/CS/SB 1402 would result in an additional cost of \$75,000 to the General Revenue Fund and \$12,000 from the Administrative Trust Fund, to reclassify 66 positions from the career service to the select exempt service. These additional costs can be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 20.121, 110.205, 624.26, 624.307, 624.502, 16.59, 400.9935, 409.91212, 440.105, 440.1051, 440.12, 624.521, 626.016, 626.989, 626.9891, 626.9892, 626.9893, 626.9894, 626.9895, 626.99278, 627.351, 627.711, 627.736, 627.7401, 631.156, 641.30, and 932.7055.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

**Recommended CS/CS by Appropriations Subcommittee on General Government on April 8, 2015:**

The proposed committee substitute restores all the filing fee deposits into the Administrative Trust Fund and the requirements for the Department of Financial Services to enter into an agreement with the Florida Clerks of Court Operations Corporation to audit court-related expenditures of individual clerks. The proposed committee substitute also narrows the positions which are exempt from career service within the Division of Accounting and Auditing.

**CS by Banking and Insurance on March 17, 2015:**

The committee adopted an amendment to change the name of the “Division of Insurance Fraud” to the “Division of Criminal Investigations” in various sections of law.

**B. Amendments:**

None.



504836

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

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Appropriations Subcommittee on General Government (Lee)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 135 - 374

and insert:

Section 2. Paragraph (y) is added to subsection (2) of  
section 110.205, Florida Statutes, to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not  
covered by this part include the following:

(y) Positions in the Division of Accounting and Auditing of



504836

11 the Department of Financial Services which are directly  
12 responsible for performing investigations, audits, or management  
13 studies for the purpose of making recommendations for corrective  
14 action, such as an employee disciplinary action, a civil  
15 recovery action, a criminal prosecution, or a revision of agency  
16 operational procedures.

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 Delete lines 7 - 19

21 and insert:

22 department; amending s. 110.205, F.S.; exempting  
23 certain positions within the department's Division of  
24 Accounting and Auditing from career service  
25 requirements; amending

By the Committee on Banking and Insurance; and Senator Lee

597-02406-15

20151402c1

1 A bill to be entitled  
 2 An act relating to the organization of the Department  
 3 of Financial Services; amending s. 20.121, F.S.;  
 4 revising the divisions and functions of the  
 5 department; authorizing the Chief Financial Officer to  
 6 establish divisions, bureaus, or offices of the  
 7 department; amending s. 28.2401, F.S.; providing  
 8 funding from certain probate petition service charges  
 9 to the Florida Clerks of Court Operations Corporation  
 10 for clerk education provided by the corporation;  
 11 amending s. 28.241, F.S., relating to the deposit of  
 12 certain filing fees for trial and appellate  
 13 proceedings, to conform provisions to changes made by  
 14 the act; amending s. 28.35, F.S.; deleting a  
 15 requirement that the Florida Clerks of Court  
 16 Operations Corporation contract with the department  
 17 for certain audits; amending s. 110.205, F.S.;  
 18 exempting audit and accounting positions of the  
 19 department from career service requirements; amending  
 20 s. 624.26, F.S.; conforming provisions to changes made  
 21 by the act; amending s. 624.307, F.S.; providing  
 22 powers and duties of the department's Division of  
 23 Consumer Services; authorizing the division to impose  
 24 certain penalties; authorizing the department to adopt  
 25 rules relating to the division; providing for  
 26 construction; amending s. 624.502, F.S.; requiring  
 27 that certain service of process fees be deposited into  
 28 the Administrative Trust Fund; amending ss. 16.59,  
 29 400.9935, 409.91212, 440.105, 440.1051, 440.12,

Page 1 of 32

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

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30 624.521, 626.016, 626.989, 626.9891, 626.9892,  
 31 626.9893, 626.9894, 626.9895, 626.99278, 627.351,  
 32 627.711, 627.736, 627.7401, 631.156, 641.30, and  
 33 932.7055, F.S.; conforming provisions to changes made  
 34 by act; making technical changes; providing an  
 35 effective date.  
 36

37 Be It Enacted by the Legislature of the State of Florida:  
 38

39 Section 1. Subsections (2) and (6) of section 20.121,  
 40 Florida Statutes, are amended to read:

41 20.121 Department of Financial Services.—There is created a  
 42 Department of Financial Services.

43 (2) DIVISIONS.—The Department of Financial Services shall  
 44 consist of the following divisions and offices:

45 (a) The Division of Accounting and Auditing, ~~which shall~~  
 46 ~~include the following bureau and office:~~

47 1. ~~The Bureau of Unclaimed Property.~~

48 2. ~~The Office of Fiscal Integrity which shall function as a~~  
 49 ~~criminal justice agency for purposes of ss. 943.045-943.08 and~~  
 50 ~~shall have a separate budget. The office may conduct~~  
 51 ~~investigations within or outside this state as the bureau deems~~  
 52 ~~necessary to aid in the enforcement of this section. If during~~  
 53 ~~an investigation the office has reason to believe that any~~  
 54 ~~criminal law of this state has or may have been violated, the~~  
 55 ~~office shall refer any records tending to show such violation to~~  
 56 ~~state or federal law enforcement or prosecutorial agencies and~~  
 57 ~~shall provide investigative assistance to those agencies as~~  
 58 ~~required.~~

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59 (b) The Division of State Fire Marshal.

60 (c) The Division of Risk Management.

61 (d) The Division of Treasury, which shall include a Bureau

62 of Deferred Compensation responsible for administering the

63 Government Employees Deferred Compensation Plan established

64 under s. 112.215 for state employees.

65 (e) The Division of Criminal Investigations, which shall

66 function as a criminal justice agency for purposes of ss.

67 943.045-943.08 Insurance Fraud.

68 (f) The Division of Rehabilitation and Liquidation.

69 (g) The Division of Insurance Agent and Agency Services.

70 (h) The Division of Consumer Services.

71 1. The Division of Consumer Services shall perform the

72 following functions concerning products or services regulated by

73 the department or by the Office of Insurance Regulation:

74 a. Receive inquiries and complaints from consumers.

75 b. Prepare and disseminate such information as the

76 department deems appropriate to inform or assist consumers.

77 c. Provide direct assistance and advocacy for consumers who

78 request such assistance or advocacy.

79 d. With respect to apparent or potential violations of law

80 or applicable rules by a person or entity licensed by the

81 department or office, report apparent or potential violations to

82 the office or the appropriate division of the department, which

83 may take such further action as it deems appropriate.

84 e. Designate an employee of the division as primary contact

85 for consumers on issues relating to sinkholes.

86 2. Any person licensed or issued a certificate of authority

87 by the department or by the Office of Insurance Regulation shall

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88 ~~respond, in writing, to the Division of Consumer Services within~~

89 ~~20 days after receipt of a written request for information from~~

90 ~~the division concerning a consumer complaint. The response must~~

91 ~~address the issues and allegations raised in the complaint. The~~

92 ~~division may impose an administrative penalty for failure to~~

93 ~~comply with this subparagraph of up to \$2,500 per violation upon~~

94 ~~any entity licensed by the department or the office and \$250 for~~

95 ~~the first violation, \$500 for the second violation, and up to~~

96 ~~\$1,000 per violation thereafter upon any individual licensed by~~

97 ~~the department or the office.~~

98 ~~3. The department may adopt rules to administer this~~

99 ~~paragraph.~~

100 ~~4. The powers, duties, and responsibilities expressed or~~

101 ~~granted in this paragraph do not limit the powers, duties, and~~

102 ~~responsibilities of the Department of Financial Services, the~~

103 ~~Financial Services Commission, the Office of Insurance~~

104 ~~Regulation, or the Office of Financial Regulation set forth~~

105 ~~elsewhere in the Florida Statutes.~~

106 (i) The Division of Workers' Compensation.

107 ~~(j) The Division of Administration.~~

108 ~~(k) The Division of Legal Services.~~

109 ~~(l) The Division of Information Systems.~~

110 (j)(m) The Office of Insurance Consumer Advocate.

111 (k)(n) The Division of Funeral, Cemetery, and Consumer

112 Services.

113 (l)(o) The Division of Public Assistance Fraud.

114

115 The Chief Financial Officer may establish any other division,

116 bureau, or office of the department that he or she deems

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117 necessary to promote the efficient and effective operation of  
 118 the department pursuant to s. 20.04.

119 ~~(6) STRATEGIC MARKETS RESEARCH AND ASSESSMENT UNIT. The~~  
 120 ~~Strategic Markets Research and Assessment Unit is established~~  
 121 ~~within the Department of Financial Services. The Chief Financial~~  
 122 ~~Officer or his or her designee shall report on September 1,~~  
 123 ~~2008, and quarterly thereafter, to the Cabinet, the President of~~  
 124 ~~the Senate, and the Speaker of the House of Representatives on~~  
 125 ~~the status of the state's financial services markets. At a~~  
 126 ~~minimum, the report must include a summary of issues, trends,~~  
 127 ~~and threats that broadly impact the condition of the financial~~  
 128 ~~services industries, along with the effect of such conditions on~~  
 129 ~~financial institutions, the securities industries, other~~  
 130 ~~financial entities, and the credit market. The Chief Financial~~  
 131 ~~Officer shall also provide findings and recommendations~~  
 132 ~~regarding regulatory and policy changes to the Cabinet, the~~  
 133 ~~President of the Senate, and the Speaker of the House of~~  
 134 ~~Representatives.~~

135 Section 2. Subsection (3) of section 28.2401, Florida  
 136 Statutes, is amended to read:

137 28.2401 Service charges and filing fees in probate  
 138 matters.—

139 (3) An additional service charge of \$4 on petitions seeking  
 140 summary administration, formal administration, ancillary  
 141 administration, guardianship, curatorship, and conservatorship  
 142 shall be paid to the clerk. The clerk shall transfer \$3.50 to  
 143 the Department of Revenue for deposit into the Court Education  
 144 Trust Fund and shall transfer 50 cents to the Department of  
 145 Revenue for deposit into the Department of Financial Services'

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146 Administrative Trust Fund to fund clerk education provided by  
 147 the Florida Clerks of Court Operations Corporation. No  
 148 additional fees, charges, or costs shall be added to the service  
 149 charges or filing fees imposed under this section, except as  
 150 authorized by general law.

151 Section 3. Paragraph (a) of subsection (1) of section  
 152 28.241, Florida Statutes, is amended to read:

153 28.241 Filing fees for trial and appellate proceedings.—

154 (1) Filing fees are due at the time a party files a  
 155 pleading to initiate a proceeding or files a pleading for  
 156 relief. Reopen fees are due at the time a party files a pleading  
 157 to reopen a proceeding if at least 90 days have elapsed since  
 158 the filing of a final order or final judgment with the clerk. If  
 159 a fee is not paid upon the filing of the pleading as required  
 160 under this section, the clerk shall pursue collection of the fee  
 161 pursuant to s. 28.246.

162 (a)1.a. Except as provided in sub-subparagraph b. and  
 163 subparagraph 2., the party instituting any civil action, suit,  
 164 or proceeding in the circuit court shall pay to the clerk of  
 165 that court a filing fee of up to \$395 in all cases in which  
 166 there are not more than five defendants and an additional filing  
 167 fee of up to \$2.50 for each defendant in excess of five. Of the  
 168 first ~~\$199~~ ~~\$200~~ in filing fees, \$195 must be remitted to the  
 169 Department of Revenue for deposit into the State Courts Revenue  
 170 Trust Fund ~~and~~, \$4 must be remitted to the Department of Revenue  
 171 for deposit into the Administrative Trust Fund within the  
 172 Department of Financial Services and used to fund the contract  
 173 with the Florida Clerks of Court Operations Corporation created  
 174 in s. 28.35, ~~and \$1 must be remitted to the Department of~~



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175 Revenue for deposit into the Administrative Trust Fund within  
 176 the Department of Financial Services to fund audits of  
 177 individual clerks' court-related expenditures conducted by the  
 178 Department of Financial Services. By the 10th of each month, the  
 179 clerk shall submit that portion of the filing fees collected in  
 180 the previous month which is in excess of one-twelfth of the  
 181 clerk's total budget to the Department of Revenue for deposit  
 182 into the Clerks of the Court Trust Fund.

183 b. The party instituting any civil action, suit, or  
 184 proceeding in the circuit court under chapter 39, chapter 61,  
 185 chapter 741, chapter 742, chapter 747, chapter 752, or chapter  
 186 753 shall pay to the clerk of that court a filing fee of up to  
 187 \$295 in all cases in which there are not more than five  
 188 defendants and an additional filing fee of up to \$2.50 for each  
 189 defendant in excess of five. Of the first \$99 ~~\$100~~ in filing  
 190 fees, \$95 must be remitted to the Department of Revenue for  
 191 deposit into the State Courts Revenue Trust Fund and, \$4 must be  
 192 remitted to the Department of Revenue for deposit into the  
 193 Administrative Trust Fund within the Department of Financial  
 194 Services and used to fund the contract with the Florida Clerks  
 195 of Court Operations Corporation created in s. 28.35, and \$1 must  
 196 be remitted to the Department of Revenue for deposit into the  
 197 Administrative Trust Fund within the Department of Financial  
 198 Services to fund audits of individual clerks' court-related  
 199 expenditures conducted by the Department of Financial Services.

200 c. An additional filing fee of \$4 shall be paid to the  
 201 clerk. The clerk shall remit \$3.50 to the Department of Revenue  
 202 for deposit into the Court Education Trust Fund and shall remit  
 203 50 cents to the Department of Revenue for deposit into the

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204 Administrative Trust Fund within the Department of Financial  
 205 Services to fund clerk education provided by the Florida Clerks  
 206 of Court Operations Corporation. An additional filing fee of up  
 207 to \$18 shall be paid by the party seeking each severance that is  
 208 granted. The clerk may impose an additional filing fee of up to  
 209 \$85 for all proceedings of garnishment, attachment, replevin,  
 210 and distress. Postal charges incurred by the clerk of the  
 211 circuit court in making service by certified or registered mail  
 212 on defendants or other parties shall be paid by the party at  
 213 whose instance service is made. Additional fees, charges, or  
 214 costs may not be added to the filing fees imposed under this  
 215 section, except as authorized in this section or by general law.

216 2.a. Notwithstanding the fees prescribed in subparagraph  
 217 1., a party instituting a civil action in circuit court relating  
 218 to real property or mortgage foreclosure shall pay a graduated  
 219 filing fee based on the value of the claim.

220 b. A party shall estimate in writing the amount in  
 221 controversy of the claim upon filing the action. For purposes of  
 222 this subparagraph, the value of a mortgage foreclosure action is  
 223 based upon the principal due on the note secured by the  
 224 mortgage, plus interest owed on the note and any moneys advanced  
 225 by the lender for property taxes, insurance, and other advances  
 226 secured by the mortgage, at the time of filing the foreclosure.  
 227 The value shall also include the value of any tax certificates  
 228 related to the property. In stating the value of a mortgage  
 229 foreclosure claim, a party shall declare in writing the total  
 230 value of the claim, as well as the individual elements of the  
 231 value as prescribed in this sub-subparagraph.

232 c. In its order providing for the final disposition of the

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233 matter, the court shall identify the actual value of the claim.  
 234 The clerk shall adjust the filing fee if there is a difference  
 235 between the estimated amount in controversy and the actual value  
 236 of the claim and collect any additional filing fee owed or  
 237 provide a refund of excess filing fee paid.

238 d. The party shall pay a filing fee of:

239 (I) Three hundred and ninety-five dollars in all cases in  
 240 which the value of the claim is \$50,000 or less and in which  
 241 there are not more than five defendants. The party shall pay an  
 242 additional filing fee of up to \$2.50 for each defendant in  
 243 excess of five. Of the first \$199 ~~\$200~~ in filing fees, \$195 must  
 244 be remitted by the clerk to the Department of Revenue for  
 245 deposit into the General Revenue Fund and, \$4 must be remitted  
 246 to the Department of Revenue for deposit into the Administrative  
 247 Trust Fund within the Department of Financial Services and used  
 248 to fund the contract with the Florida Clerks of Court Operations  
 249 Corporation created in s. 28.35, ~~and \$1 must be remitted to the~~  
 250 ~~Department of Revenue for deposit into the Administrative Trust~~  
 251 ~~Fund within the Department of Financial Services to fund audits~~  
 252 ~~of individual clerks' court-related expenditures conducted by~~  
 253 ~~the Department of Financial Services;~~

254 (II) Nine hundred dollars in all cases in which the value  
 255 of the claim is more than \$50,000 but less than \$250,000 and in  
 256 which there are not more than five defendants. The party shall  
 257 pay an additional filing fee of up to \$2.50 for each defendant  
 258 in excess of five. Of the first \$704 ~~\$705~~ in filing fees, \$700  
 259 must be remitted by the clerk to the Department of Revenue for  
 260 deposit into the General Revenue Fund and, \$4 must be remitted  
 261 to the Department of Revenue for deposit into the Administrative

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262 Trust Fund within the Department of Financial Services and used  
 263 to fund the contract with the Florida Clerks of Court Operations  
 264 Corporation created in s. 28.35, ~~and \$1 must be remitted to the~~  
 265 ~~Department of Revenue for deposit into the Administrative Trust~~  
 266 ~~Fund within the Department of Financial Services to fund audits~~  
 267 ~~of individual clerks' court-related expenditures conducted by~~  
 268 ~~the Department of Financial Services; or~~

269 (III) One thousand nine hundred dollars in all cases in  
 270 which the value of the claim is \$250,000 or more and in which  
 271 there are not more than five defendants. The party shall pay an  
 272 additional filing fee of up to \$2.50 for each defendant in  
 273 excess of five. Of the first \$1,704 ~~\$1,705~~ in filing fees, \$930  
 274 must be remitted by the clerk to the Department of Revenue for  
 275 deposit into the General Revenue Fund, \$770 must be remitted to  
 276 the Department of Revenue for deposit into the State Courts  
 277 Revenue Trust Fund and, \$4 must be remitted to the Department of  
 278 Revenue for deposit into the Administrative Trust Fund within  
 279 the Department of Financial Services to fund the contract with  
 280 the Florida Clerks of Court Operations Corporation created in s.  
 281 28.35, ~~and \$1 must be remitted to the Department of Revenue for~~  
 282 ~~deposit into the Administrative Trust Fund within the Department~~  
 283 ~~of Financial Services to fund audits of individual clerks'~~  
 284 ~~court-related expenditures conducted by the Department of~~  
 285 ~~Financial Services.~~

286 e. An additional filing fee of \$4 shall be paid to the  
 287 clerk. The clerk shall remit \$3.50 to the Department of Revenue  
 288 for deposit into the Court Education Trust Fund and shall remit  
 289 50 cents to the Department of Revenue for deposit into the  
 290 Administrative Trust Fund within the Department of Financial

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291 Services to fund clerk education provided by the Florida Clerks  
 292 of Court Operations Corporation. An additional filing fee of up  
 293 to \$18 shall be paid by the party seeking each severance that is  
 294 granted. The clerk may impose an additional filing fee of up to  
 295 \$85 for all proceedings of garnishment, attachment, replevin,  
 296 and distress. Postal charges incurred by the clerk of the  
 297 circuit court in making service by certified or registered mail  
 298 on defendants or other parties shall be paid by the party at  
 299 whose instance service is made. Additional fees, charges, or  
 300 costs may not be added to the filing fees imposed under this  
 301 section, except as authorized in this section or by general law.

302 Section 4. Paragraphs (e) through (h) of subsection (2) of  
 303 section 28.35, Florida Statutes, are amended to read:

304 28.35 Florida Clerks of Court Operations Corporation.—

305 (2) The duties of the corporation shall include the  
 306 following:

307 ~~(e) Entering into a contract with the Department of~~  
 308 ~~Financial Services for the department to audit the court-related~~  
 309 ~~expenditures of individual clerks pursuant to s. 17.03-~~

310 (e)(f) Reviewing, certifying, and recommending proposed  
 311 budgets submitted by clerks of the court pursuant to s. 28.36.

312 As part of this process, the corporation shall:

313 1. Calculate the minimum amount of revenue necessary for  
 314 each clerk of the court to efficiently perform the list of  
 315 court-related functions specified in paragraph (3)(a). The  
 316 corporation shall apply the workload measures appropriate for  
 317 determining the individual level of review required to fund the  
 318 clerk's budget.

319 2. Prepare a cost comparison of similarly situated clerks

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320 of the court, based on county population and numbers of filings,  
 321 using the standard list of court-related functions specified in  
 322 paragraph (3)(a).

323 3. Conduct an annual base budget review and an annual  
 324 budget exercise examining the total budget of each clerk of the  
 325 court. The review shall examine revenues from all sources,  
 326 expenses of court-related functions, and expenses of noncourt-  
 327 related functions as necessary to determine that court-related  
 328 revenues are not being used for noncourt-related purposes. The  
 329 review and exercise shall identify potential targeted budget  
 330 reductions in the percentage amount provided in Schedule VIII-B  
 331 of the state's previous year's legislative budget instructions,  
 332 as referenced in s. 216.023(3), or an equivalent schedule or  
 333 instruction as may be adopted by the Legislature.

334 4. Identify those proposed budgets containing funding for  
 335 items not included on the standard list of court-related  
 336 functions specified in paragraph (3)(a).

337 5. Identify those clerks projected to have court-related  
 338 revenues insufficient to fund their anticipated court-related  
 339 expenditures.

340 6. Use revenue estimates based on the official estimate for  
 341 funds accruing to the clerks of the court made by the Revenue  
 342 Estimating Conference.

343 7. Identify and report pay and benefit increases in any  
 344 proposed clerk budget, including, but not limited to, cost of  
 345 living increases, merit increases, and bonuses.

346 8. Provide detailed explanation for increases in  
 347 anticipated expenditures in any clerk budget that exceeds the  
 348 current year budget by more than 3 percent.

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349 9. Identify and report the budget of any clerk which  
350 exceeds the average budget of similarly situated clerks by more  
351 than 10 percent.

352 ~~(f)(g)~~ Developing and conducting clerk education programs.  
353 ~~(g)(h) Before Beginning August 1, 2014, and each August 1~~  
354 ~~of each year thereafter~~, submitting to the Legislative Budget  
355 Commission, as provided in s. 11.90, its proposed budget and the  
356 information described in paragraph ~~(e)~~ ~~(f)~~, as well as the  
357 proposed budgets for each clerk of the court. Before October 1  
358 of each year ~~beginning in 2014~~, the Legislative Budget  
359 Commission shall consider the submitted budgets and shall  
360 approve, disapprove, or amend and approve the corporation's  
361 budget and shall approve, disapprove, or amend and approve the  
362 total of the clerks' combined budgets or any individual clerk's  
363 budget. If the Legislative Budget Commission fails to approve or  
364 amend and approve the corporation's budget or the clerks'  
365 combined budgets before October 1, the clerk shall continue to  
366 perform the court-related functions based upon the clerk's  
367 budget for the previous county fiscal year.

368 Section 5. Paragraph (y) is added to subsection (2) of  
369 section 110.205, Florida Statutes, to read:

370 110.205 Career service; exemptions.-

371 (2) EXEMPT POSITIONS.-The exempt positions that are not  
372 covered by this part include the following:

373 (y) All audit and accounting positions of the Division of  
374 Accounting and Auditing of the Department of Financial Services.

375 Section 6. Subsection (4) of section 624.26, Florida  
376 Statutes, is amended to read:

377 624.26 Collaborative arrangement with the Department of

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378 Health and Human Services.-

379 (4) The department's Division of Consumer Services may  
380 respond to complaints by consumers relating to a requirement of  
381 PPACA ~~as authorized under s. 20.121(2)(h)~~, and report apparent  
382 or potential violations to the office and to the federal  
383 Department of Health and Human Services.

384 Section 7. Subsection (10) is added to section 624.307,  
385 Florida Statutes, to read:

386 624.307 General powers; duties.-

387 (10)(a) The department's Division of Consumer Services  
388 shall perform the following functions concerning products or  
389 services regulated by the department or office:

390 1. Receive inquiries and complaints from consumers.

391 2. Prepare and disseminate such information as the  
392 department deems appropriate to inform or assist consumers.

393 3. Provide direct assistance and advocacy for consumers who  
394 request such assistance or advocacy.

395 4. With respect to apparent or potential violations of law  
396 or applicable rules by a person or entity licensed by the  
397 department or office, report apparent or potential violations to  
398 the office or the appropriate division of the department, which  
399 may take such further action as it deems appropriate.

400 5. Designate an employee of the division as primary contact  
401 for consumers on issues relating to sinkholes.

402 (b) Any person licensed or issued a certificate of  
403 authority by the department or the office shall respond, in  
404 writing, to the division within 20 days after receipt of a  
405 written request for information from the division concerning a  
406 consumer complaint. The response must address the issues and

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407 allegations raised in the complaint. The division may impose an  
 408 administrative penalty for failure to comply with this paragraph  
 409 of up to \$2,500 per violation upon any entity licensed by the  
 410 department or the office and \$250 for the first violation, \$500  
 411 for the second violation, and up to \$1,000 per violation  
 412 thereafter upon any individual licensed by the department or the  
 413 office.

414 (c) The department may adopt rules to administer this  
 415 subsection.

416 (d) The powers, duties, and responsibilities expressed or  
 417 granted in this subsection do not limit the powers, duties, and  
 418 responsibilities of the Department of Financial Services, the  
 419 Financial Services Commission, the Office of Insurance  
 420 Regulation, or the Office of Financial Regulation as otherwise  
 421 provided by law.

422 Section 8. Section 624.502, Florida Statutes, as amended by  
 423 chapter 2014-53, Laws of Florida, is amended to read:

424 624.502 Service of process fee.—In all instances as  
 425 provided in any section of the insurance code and s. 48.151(3)  
 426 in which service of process is authorized to be made upon the  
 427 Chief Financial Officer or the director of the office, the  
 428 plaintiff shall pay to the department or office a fee of \$15 for  
 429 such service of process, which fee shall be deposited into the  
 430 Administrative Trust Fund ~~Insurance Regulatory Trust Fund~~.

431 Section 9. Section 16.59, Florida Statutes, is amended to  
 432 read:

433 16.59 Medicaid fraud control.—The Medicaid Fraud Control  
 434 Unit is created in the Department of Legal Affairs to  
 435 investigate all violations of s. 409.920 and any criminal

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436 violations discovered during the course of those investigations.  
 437 The Medicaid Fraud Control Unit may refer any criminal violation  
 438 so uncovered to the appropriate prosecuting authority. The  
 439 offices of the Medicaid Fraud Control Unit, the Agency for  
 440 Health Care Administration Medicaid program integrity program,  
 441 and the Divisions of Criminal Investigations ~~Insurance Fraud~~ and  
 442 Public Assistance Fraud within the Department of Financial  
 443 Services shall, to the extent possible, be collocated; however,  
 444 positions dedicated to Medicaid managed care fraud within the  
 445 Medicaid Fraud Control Unit shall be collocated with the  
 446 Division of Criminal Investigations ~~Insurance Fraud~~. The Agency  
 447 for Health Care Administration, the Department of Legal Affairs,  
 448 and the Divisions of Criminal Investigations ~~Insurance Fraud~~ and  
 449 Public Assistance Fraud within the Department of Financial  
 450 Services shall conduct joint training and other joint activities  
 451 designed to increase communication and coordination in  
 452 recovering overpayments.

453 Section 10. Subsection (9) of section 400.9935, Florida  
 454 Statutes, is amended to read:

455 400.9935 Clinic responsibilities.—

456 (9) In addition to the requirements of part II of chapter  
 457 408, the clinic shall display a sign in a conspicuous location  
 458 within the clinic readily visible to all patients indicating  
 459 that, pursuant to s. 626.9892, the Department of Financial  
 460 Services may pay rewards of up to \$25,000 to persons providing  
 461 information leading to the arrest and conviction of persons  
 462 committing crimes investigated by the Division of Criminal  
 463 Investigations ~~Insurance Fraud~~ arising from violations of s.  
 464 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234. An

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465 authorized employee of the Division of Criminal Investigations  
 466 ~~Insurance Fraud~~ may make unannounced inspections of a clinic  
 467 licensed under this part as necessary to determine whether the  
 468 clinic is in compliance with this subsection. A licensed clinic  
 469 shall allow full and complete access to the premises to such  
 470 authorized employee of the division who makes an inspection to  
 471 determine compliance with this subsection.

472 Section 11. Subsection (6) of section 409.91212, Florida  
 473 Statutes, is amended to read:

474 409.91212 Medicaid managed care fraud.—

475 (6) Each managed care plan shall report all suspected or  
 476 confirmed instances of provider or recipient fraud or abuse  
 477 within 15 calendar days after detection to the Office of  
 478 Medicaid Program Integrity within the agency. At a minimum the  
 479 report must contain the name of the provider or recipient, the  
 480 Medicaid billing number or tax identification number, and a  
 481 description of the fraudulent or abusive act. The Office of  
 482 Medicaid Program Integrity in the agency shall forward the  
 483 report of suspected overpayment, abuse, or fraud to the  
 484 appropriate investigative unit, including, but not limited to,  
 485 the Bureau of Medicaid program integrity, the Medicaid fraud  
 486 control unit, the Division of Public Assistance Fraud, the  
 487 Division of Criminal Investigations Insurance Fraud, or the  
 488 Department of Law Enforcement.

489 (a) Failure to timely report shall result in an  
 490 administrative fine of \$1,000 per calendar day after the 15th  
 491 day of detection.

492 (b) Failure to timely report may result in additional  
 493 administrative, civil, or criminal penalties.

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494 Section 12. Paragraph (a) of subsection (1) of section  
 495 440.105, Florida Statutes, is amended to read:

496 440.105 Prohibited activities; reports; penalties;  
 497 limitations.—

498 (1) (a) Any insurance carrier, any individual self-insured,  
 499 any commercial or group self-insurance fund, any professional  
 500 practitioner licensed or regulated by the Department of Health,  
 501 except as otherwise provided by law, any medical review  
 502 committee as defined in s. 766.101, any private medical review  
 503 committee, and any insurer, agent, or other person licensed  
 504 under the insurance code, or any employee thereof, having  
 505 knowledge or who believes that a fraudulent act or any other act  
 506 or practice which, upon conviction, constitutes a felony or  
 507 misdemeanor under this chapter is being or has been committed  
 508 shall send to the Division of Criminal Investigations Insurance  
 509 ~~Fraud~~, Bureau of Workers' Compensation Fraud, a report or  
 510 information pertinent to such knowledge or belief and such  
 511 additional information relative thereto as the bureau may  
 512 require. The bureau shall review such information or reports and  
 513 select such information or reports as, in its judgment, may  
 514 require further investigation. It shall then cause an  
 515 independent examination of the facts surrounding such  
 516 information or report to be made to determine the extent, if  
 517 any, to which a fraudulent act or any other act or practice  
 518 which, upon conviction, constitutes a felony or a misdemeanor  
 519 under this chapter is being committed. The bureau shall report  
 520 any alleged violations of law which its investigations disclose  
 521 to the appropriate licensing agency and state attorney or other  
 522 prosecuting agency having jurisdiction with respect to any such

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523 violations of this chapter. If prosecution by the state attorney  
524 or other prosecuting agency having jurisdiction with respect to  
525 such violation is not begun within 60 days of the bureau's  
526 report, the state attorney or other prosecuting agency having  
527 jurisdiction with respect to such violation shall inform the  
528 bureau of the reasons for the lack of prosecution.

529 Section 13. Subsections (1) and (2) of section 440.1051,  
530 Florida Statutes, are amended to read

531 440.1051 Fraud reports; civil immunity; criminal  
532 penalties.—

533 (1) The Bureau of Workers' Compensation Insurance Fraud of  
534 the Division of Criminal Investigations ~~Insurance Fraud~~ of the  
535 department shall establish a toll-free telephone number to  
536 receive reports of workers' compensation fraud committed by an  
537 employee, employer, insurance provider, physician, attorney, or  
538 other person.

539 (2) Any person who reports workers' compensation fraud to  
540 the Division of Criminal Investigations ~~Insurance Fraud~~ under  
541 subsection (1) is immune from civil liability for doing so, and  
542 the person or entity alleged to have committed the fraud may not  
543 retaliate against him or her for providing such report, unless  
544 the person making the report knows it to be false.

545 Section 14. Paragraph (c) of subsection (1) of section  
546 440.12, Florida Statutes, is amended to read:

547 440.12 Time for commencement and limits on weekly rate of  
548 compensation.—

549 (1) Compensation is not allowed for the first 7 days of  
550 the disability, except for benefits provided under s. 440.13.  
551 However, if the injury results in more than 21 days of

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552 disability, compensation is allowed from the commencement of the  
553 disability.

554 (c) Each carrier shall keep a record of all payments made  
555 under this subsection, including the time and manner of such  
556 payments, and shall furnish these records or a report based on  
557 these records to the Division of Criminal Investigations  
558 ~~Insurance Fraud~~ and the Division of Workers' Compensation, upon  
559 request.

560 Section 15. Subsection (1) of section 624.521, Florida  
561 Statutes, is amended to read:

562 624.521 Deposit of certain tax receipts; refund of improper  
563 payments.—

564 (1) The department ~~of Financial Services~~ shall promptly  
565 deposit in the State Treasury to the credit of the Insurance  
566 Regulatory Trust Fund all "state tax" portions of agents'  
567 licenses collected under s. 624.501 necessary to fund the  
568 Division of Criminal Investigations ~~Insurance Fraud~~. The balance  
569 of the tax shall be credited to the General Fund. All moneys  
570 received by the department ~~of Financial Services~~ or the office  
571 not in accordance with the provisions of this code or not in the  
572 exact amount as specified by the applicable provisions of this  
573 code shall be returned to the remitter. The records of the  
574 department or office shall show the date and reason for such  
575 return.

576 Section 16. Subsection (4) of section 626.016, Florida  
577 Statutes, is amended to read:

578 626.016 Powers and duties of department, commission, and  
579 office.—

580 (4) Nothing in this section is intended to limit the

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581 authority of the department and the Division of Criminal  
 582 Investigations Insurance Fraud, as specified in s. 626.989.  
 583 Section 17. Subsections (2) and (6) of section 626.989,  
 584 Florida Statutes, are amended to read:  
 585 626.989 Investigation by department or Division of Criminal  
 586 Investigations Insurance Fraud; compliance; immunity;  
 587 confidential information; reports to division; division  
 588 investigator's power of arrest.—  
 589 (2) If, by its own inquiries or as a result of complaints,  
 590 the department or its Division of Criminal Investigations  
 591 Insurance Fraud has reason to believe that a person has engaged  
 592 in, or is engaging in, a fraudulent insurance act, an act or  
 593 practice that violates s. 626.9541 or s. 817.234, or an act or  
 594 practice punishable under s. 624.15, it may administer oaths and  
 595 affirmations, request the attendance of witnesses or proffering  
 596 of matter, and collect evidence. The department shall not compel  
 597 the attendance of any person or matter in any such investigation  
 598 except pursuant to subsection (4).  
 599 (6) Any person, other than an insurer, agent, or other  
 600 person licensed under the code, or an employee thereof, having  
 601 knowledge or who believes that a fraudulent insurance act or any  
 602 other act or practice which, upon conviction, constitutes a  
 603 felony or a misdemeanor under the code, or under s. 817.234, is  
 604 being or has been committed may send to the Division of Criminal  
 605 Investigations Insurance Fraud a report or information pertinent  
 606 to such knowledge or belief and such additional information  
 607 relative thereto as the department may request. Any professional  
 608 practitioner licensed or regulated by the Department of Business  
 609 and Professional Regulation, except as otherwise provided by

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610 law, any medical review committee as defined in s. 766.101, any  
 611 private medical review committee, and any insurer, agent, or  
 612 other person licensed under the code, or an employee thereof,  
 613 having knowledge or who believes that a fraudulent insurance act  
 614 or any other act or practice which, upon conviction, constitutes  
 615 a felony or a misdemeanor under the code, or under s. 817.234,  
 616 is being or has been committed shall send to the Division of  
 617 Criminal Investigations Insurance Fraud a report or information  
 618 pertinent to such knowledge or belief and such additional  
 619 information relative thereto as the department may require. The  
 620 Division of Criminal Investigations Insurance Fraud shall review  
 621 such information or reports and select such information or  
 622 reports as, in its judgment, may require further investigation.  
 623 It shall then cause an independent examination of the facts  
 624 surrounding such information or report to be made to determine  
 625 the extent, if any, to which a fraudulent insurance act or any  
 626 other act or practice which, upon conviction, constitutes a  
 627 felony or a misdemeanor under the code, or under s. 817.234, is  
 628 being committed. The Division of Criminal Investigations  
 629 Insurance Fraud shall report any alleged violations of law which  
 630 its investigations disclose to the appropriate licensing agency  
 631 and state attorney or other prosecuting agency having  
 632 jurisdiction with respect to any such violation, as provided in  
 633 s. 624.310. If prosecution by the state attorney or other  
 634 prosecuting agency having jurisdiction with respect to such  
 635 violation is not begun within 60 days of the division's report,  
 636 the state attorney or other prosecuting agency having  
 637 jurisdiction with respect to such violation shall inform the  
 638 division of the reasons for the lack of prosecution.



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639 Section 18. Subsections (1), (2), and (3) of section  
640 626.9891, Florida Statutes, are amended to read:

641 626.9891 Insurer anti-fraud investigative units; reporting  
642 requirements; penalties for noncompliance.—

643 (1) ~~Each~~ Every insurer admitted to do business in this  
644 state who in the previous calendar year, at any time during that  
645 year, had \$10 million or more in direct premiums written shall:

646 (a) Establish and maintain a unit or division within the  
647 company to investigate possible fraudulent claims by insureds or  
648 by persons making claims for services or repairs against  
649 policies held by insureds; or

650 (b) Contract with others to investigate possible fraudulent  
651 claims for services or repairs against policies held by  
652 insureds.

653

654 An insurer subject to this subsection shall file with the  
655 Division of Criminal Investigations Insurance Fraud of the  
656 department on or before July 1, 1996, a detailed description of  
657 the unit or division established pursuant to paragraph (a) or a  
658 copy of the contract and related documents required by paragraph  
659 (b).

660 (2) Every insurer admitted to do business in this state,  
661 which in the previous calendar year had less than \$10 million in  
662 direct premiums written, must adopt an anti-fraud plan and file  
663 it with the Division of Criminal Investigations Insurance Fraud  
664 of the department on or before July 1, 1996. An insurer may, in  
665 lieu of adopting and filing an anti-fraud plan, comply with ~~the~~  
666 ~~provisions of~~ subsection (1).

667 (3) Each insurer's insurers anti-fraud plan must plans

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668 ~~shall~~ include all of the following:

669 (a) A description of the insurer's procedures for detecting  
670 and investigating possible fraudulent insurance acts.†

671 (b) A description of the insurer's procedures for the  
672 mandatory reporting of possible fraudulent insurance acts to the  
673 Division of Criminal Investigations Insurance Fraud of the  
674 department.†

675 (c) A description of the insurer's plan for anti-fraud  
676 education and training of its claims adjusters or other  
677 personnel.† ~~and~~

678 (d) A written description or chart outlining the  
679 organizational arrangement of the insurer's anti-fraud personnel  
680 who are responsible for the investigation and reporting of  
681 possible fraudulent insurance acts.

682 Section 19. Subsection (2) of section 626.9892, Florida  
683 Statutes, is amended to read:

684 626.9892 Anti-Fraud Reward Program; reporting of insurance  
685 fraud.—

686 (2) The department may pay rewards of up to \$25,000 to  
687 persons providing information leading to the arrest and  
688 conviction of persons committing crimes investigated by the  
689 Division of Criminal Investigations Insurance Fraud arising from  
690 violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or  
691 s. 817.234.

692 Section 20. Subsection (1) of section 626.9893, Florida  
693 Statutes, is amended to read:

694 626.9893 Disposition of revenues; criminal or forfeiture  
695 proceedings.—

696 (1) The Division of Criminal Investigations Insurance Fraud

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697 of the Department of Financial Services may deposit revenues  
 698 received as a result of criminal proceedings or forfeiture  
 699 proceedings, other than revenues deposited into the Department  
 700 of Financial Services' Federal Law Enforcement Trust Fund under  
 701 s. 17.43, into the Insurance Regulatory Trust Fund. Moneys  
 702 deposited pursuant to this section shall be separately accounted  
 703 for and shall be used solely for the division to carry out its  
 704 duties and responsibilities.

705 Section 21. Subsection (2) of section 626.9894, Florida  
 706 Statutes, is amended to read:

707 626.9894 Gifts and grants.—

708 (2) All rights to, interest in, and title to such donated  
 709 or granted property shall immediately vest in the Division of  
 710 Criminal Investigations ~~Insurance Fraud~~ upon donation. The  
 711 division may hold such property in coownership, sell its  
 712 interest in the property, liquidate its interest in the  
 713 property, or dispose of its interest in the property in any  
 714 other reasonable manner.

715 Section 22. Paragraph (a) of subsection (1) of section  
 716 626.9895, Florida Statutes, is amended to read:

717 626.9895 Motor vehicle insurance fraud direct-support  
 718 organization.—

719 (1) DEFINITIONS.—As used in this section, the term:

720 (a) "Division" means the Division of Criminal  
 721 Investigations ~~Insurance Fraud~~ of the Department of Financial  
 722 Services.

723 Section 23. Section 626.99278, Florida Statutes, is amended  
 724 to read:

725 626.99278 Viatical provider anti-fraud plan.—Every licensed

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726 viatical settlement provider and registered life expectancy  
 727 provider must adopt an anti-fraud plan and file it with the  
 728 Division of Criminal Investigations ~~Insurance Fraud~~ of the  
 729 department. Each anti-fraud plan shall include:

730 (1) A description of the procedures for detecting and  
 731 investigating possible fraudulent acts and procedures for  
 732 resolving material inconsistencies between medical records and  
 733 insurance applications.

734 (2) A description of the procedures for the mandatory  
 735 reporting of possible fraudulent insurance acts and prohibited  
 736 practices set forth in s. 626.99275 to the Division of Criminal  
 737 Investigations ~~Insurance Fraud~~ of the department.

738 (3) A description of the plan for anti-fraud education and  
 739 training of its underwriters or other personnel.

740 (4) A written description or chart outlining the  
 741 organizational arrangement of the anti-fraud personnel who are  
 742 responsible for the investigation and reporting of possible  
 743 fraudulent insurance acts and for the investigation of  
 744 unresolved material inconsistencies between medical records and  
 745 insurance applications.

746 (5) For viatical settlement providers, a description of the  
 747 procedures used to perform initial and continuing review of the  
 748 accuracy of life expectancies used in connection with a viatical  
 749 settlement contract or viatical settlement investment.

750 Section 24. Paragraph (k) of subsection (6) of section  
 751 627.351, Florida Statutes, is amended to read:

752 627.351 Insurance risk apportionment plans.—

753 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

754 (k)1. The corporation shall establish and maintain a unit

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755 or division to investigate possible fraudulent claims by  
 756 insureds or by persons making claims for services or repairs  
 757 against policies held by insureds; or it may contract with  
 758 others to investigate possible fraudulent claims for services or  
 759 repairs against policies held by the corporation pursuant to s.  
 760 626.9891. The corporation must comply with reporting  
 761 requirements of s. 626.9891. An employee of the corporation  
 762 shall notify the corporation's Office of the Inspector General  
 763 and the Division of Criminal Investigations ~~Insurance-Fraud~~  
 764 within 48 hours after having information that would lead a  
 765 reasonable person to suspect that fraud may have been committed  
 766 by any employee of the corporation.

767 2. The corporation shall establish a unit or division  
 768 responsible for receiving and responding to consumer complaints,  
 769 which unit or division is the sole responsibility of a senior  
 770 manager of the corporation.

771 Section 25. Subsections (4) and (7) of section 627.711,  
 772 Florida Statutes, are amended to read:

773 627.711 Notice of premium discounts for hurricane loss  
 774 mitigation; uniform mitigation verification inspection form.—

775 (4) An authorized mitigation inspector that signs a uniform  
 776 mitigation form, and a direct employee authorized to conduct  
 777 mitigation verification inspections under subsection paragraph  
 778 (3), may not commit misconduct in performing hurricane  
 779 mitigation inspections or in completing a uniform mitigation  
 780 form that causes financial harm to a customer or their insurer;  
 781 or that jeopardizes a customer's health and safety. Misconduct  
 782 occurs when an authorized mitigation inspector signs a uniform  
 783 mitigation verification form that:

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784 (a) Falsely indicates that he or she personally inspected  
 785 the structures referenced by the form;

786 (b) Falsely indicates the existence of a feature which  
 787 entitles an insured to a mitigation discount which the inspector  
 788 knows does not exist or did not personally inspect;

789 (c) Contains erroneous information due to the gross  
 790 negligence of the inspector; or

791 (d) Contains a pattern of demonstrably false information  
 792 regarding the existence of mitigation features that could give  
 793 an insured a false evaluation of the ability of the structure to  
 794 withstand major damage from a hurricane endangering the safety  
 795 of the insured's life and property.

796 (7) An insurer, person, or other entity that obtains  
 797 evidence of fraud or evidence that an authorized mitigation  
 798 inspector or an employee authorized to conduct mitigation  
 799 verification inspections under subsection paragraph (3) has made  
 800 false statements in the completion of a mitigation inspection  
 801 form shall file a report with the Division of Criminal  
 802 Investigations ~~Insurance-Fraud~~, along with all of the evidence  
 803 in its possession that supports the allegation of fraud or  
 804 falsity. An insurer, person, or other entity making the report  
 805 shall be immune from liability, in accordance with s.  
 806 626.989(4), for any statements made in the report, during the  
 807 investigation, or in connection with the report. The Division of  
 808 Criminal Investigations ~~Insurance-Fraud~~ shall issue an  
 809 investigative report if it finds that probable cause exists to  
 810 believe that the authorized mitigation inspector, or an employee  
 811 authorized to conduct mitigation verification inspections under  
 812 subsection paragraph (3), made intentionally false or fraudulent

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813 statements in the inspection form. Upon conclusion of the  
 814 investigation and a finding of probable cause that a violation  
 815 has occurred, the Division of Criminal Investigations ~~Insurance~~  
 816 ~~Fraud~~ shall send a copy of the investigative report to the  
 817 office and a copy to the agency responsible for the professional  
 818 licensure of the authorized mitigation inspector, whether or not  
 819 a prosecutor takes action based upon the report.

820 Section 26. Paragraph (i) of subsection (4) and subsection  
 821 (14) of section 627.736, Florida Statutes, are amended to read:  
 822 627.736 Required personal injury protection benefits;  
 823 exclusions; priority; claims.—

824 (4) PAYMENT OF BENEFITS.—Benefits due from an insurer under  
 825 ss. 627.730-627.7405 are primary, except that benefits received  
 826 under any workers' compensation law must be credited against the  
 827 benefits provided by subsection (1) and are due and payable as  
 828 loss accrues upon receipt of reasonable proof of such loss and  
 829 the amount of expenses and loss incurred which are covered by  
 830 the policy issued under ss. 627.730-627.7405. If the Agency for  
 831 Health Care Administration provides, pays, or becomes liable for  
 832 medical assistance under the Medicaid program related to injury,  
 833 sickness, disease, or death arising out of the ownership,  
 834 maintenance, or use of a motor vehicle, the benefits under ss.  
 835 627.730-627.7405 are subject to the Medicaid program. However,  
 836 within 30 days after receiving notice that the Medicaid program  
 837 paid such benefits, the insurer shall repay the full amount of  
 838 the benefits to the Medicaid program.

839 (i) If an insurer has a reasonable belief that a fraudulent  
 840 insurance act, for the purposes of s. 626.989 or s. 817.234, has  
 841 been committed, the insurer shall notify the claimant, in

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842 writing, within 30 days after submission of the claim that the  
 843 claim is being investigated for suspected fraud. Beginning at  
 844 the end of the initial 30-day period, the insurer has an  
 845 additional 60 days to conduct its fraud investigation.  
 846 Notwithstanding subsection (10), no later than 90 days after the  
 847 submission of the claim, the insurer must deny the claim or pay  
 848 the claim with simple interest as provided in paragraph (d).  
 849 Interest shall be assessed from the day the claim was submitted  
 850 until the day the claim is paid. All claims denied for suspected  
 851 fraudulent insurance acts shall be reported to the Division of  
 852 Criminal Investigations ~~Insurance~~ ~~Fraud~~.

853 (14) FRAUD ADVISORY NOTICE.—Upon receiving notice of a  
 854 claim under this section, an insurer shall provide a notice to  
 855 the insured or to a person for whom a claim for reimbursement  
 856 for diagnosis or treatment of injuries has been filed, advising  
 857 that:

858 (a) Pursuant to s. 626.9892, the Department of Financial  
 859 Services may pay rewards of up to \$25,000 to persons providing  
 860 information leading to the arrest and conviction of persons  
 861 committing crimes investigated by the Division of Criminal  
 862 Investigations ~~Insurance~~ ~~Fraud~~ arising from violations of s.  
 863 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

864 (b) Solicitation of a person injured in a motor vehicle  
 865 crash for purposes of filing personal injury protection or tort  
 866 claims could be a violation of s. 817.234, s. 817.505, or the  
 867 rules regulating The Florida Bar and should be immediately  
 868 reported to the Division of Criminal Investigations ~~Insurance~~  
 869 ~~Fraud~~ if such conduct has taken place.

870 Section 27. Paragraphs (b) and (c) of subsection (1) of

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871 section 627.7401, Florida Statutes, are amended to read:  
 872 627.7401 Notification of insured's rights.—  
 873 (1) The commission, by rule, shall adopt a form for the  
 874 notification of insureds of their right to receive personal  
 875 injury protection benefits under the Florida Motor Vehicle No-  
 876 Fault Law. Such notice shall include:  
 877 (b) An advisory informing insureds that:  
 878 1. Pursuant to s. 626.9892, the Department of Financial  
 879 Services may pay rewards of up to \$25,000 to persons providing  
 880 information leading to the arrest and conviction of persons  
 881 committing crimes investigated by the Division of Criminal  
 882 Investigations Insurance Fraud arising from violations of s.  
 883 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.  
 884 2. Pursuant to s. 627.736(5)(e)1., if the insured notifies  
 885 the insurer of a billing error, the insured may be entitled to a  
 886 certain percentage of a reduction in the amount paid by the  
 887 insured's motor vehicle insurer.  
 888 (c) A notice that solicitation of a person injured in a  
 889 motor vehicle crash for purposes of filing personal injury  
 890 protection or tort claims could be a violation of s. 817.234, s.  
 891 817.505, or the rules regulating The Florida Bar and should be  
 892 immediately reported to the Division of Criminal Investigations  
 893 Insurance Fraud if such conduct has taken place.  
 894 Section 28. Subsection (2) of section 631.156, Florida  
 895 Statutes, is amended to read:  
 896 631.156 Investigation by the department; scope of  
 897 authority; sharing of materials.—  
 898 (2) The department may provide documents, books, and  
 899 records; other investigative products, work product, and

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900 analysis; and copies of any or all of such materials to the  
 901 Division of Criminal Investigations Insurance Fraud or any other  
 902 appropriate government agency. The sharing of these materials  
 903 shall not waive any work product or other privilege otherwise  
 904 applicable under law.  
 905 Section 29. Subsection (4) of section 641.30, Florida  
 906 Statutes, is amended to read:  
 907 641.30 Construction and relationship to other laws.—  
 908 (4) The Division of Criminal Investigations Insurance Fraud  
 909 of the department is vested with all powers granted to it under  
 910 the Florida Insurance Code with respect to the investigation of  
 911 any violation of this part.  
 912 Section 30. Paragraph (1) of subsection (6) of section  
 913 932.7055, Florida Statutes, is amended to read:  
 914 932.7055 Disposition of liens and forfeited property.—  
 915 (6) If the seizing agency is a state agency, all remaining  
 916 proceeds shall be deposited into the General Revenue Fund.  
 917 However, if the seizing agency is:  
 918 (1) The Division of Criminal Investigations Insurance Fraud  
 919 of the Department of Financial Services, the proceeds accrued  
 920 pursuant to the provisions of the Florida Contraband Forfeiture  
 921 Act shall be deposited into the Insurance Regulatory Trust Fund  
 922 as provided in s. 626.9893 or into the Department of Financial  
 923 Services' Federal Law Enforcement Trust Fund as provided in s.  
 924 17.43, as applicable.  
 925 Section 31. This act shall take effect July 1, 2015.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/8/15

Meeting Date

SB 1402

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 400 N. Monroe St  
Street

Phone 850-413-2863

Tallahassee FL 32399  
City State Zip

Email elizabeth.Boyd@myfloridaleg.gov

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

# CourtSmart Tag Report

Room: EL 110

Case:

Caption: Senate Appropriations Subcommittee on General Government

Type:

Judge:

Started: 4/8/2015 10:04:43 AM

Ends: 4/8/2015 11:17:25 AM

Length: 01:12:43

10:04:45 AM Sen. Hays  
10:05:51 AM S 1032  
10:06:19 AM Sen. Richter  
10:06:41 AM Sen. Hays  
10:06:51 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida  
10:07:26 AM Sen. Hays  
10:07:38 AM S 1138  
10:07:57 AM Trent Phillips, Sen. Brandes' aide  
10:08:10 AM Sen. Hays  
10:08:24 AM Elizabeth Boyd, Legislative Director, CFO Atwater (waives in support)  
10:08:54 AM Sen. Hays  
10:09:06 AM S 918  
10:09:16 AM Sen. Dean  
10:09:18 AM  
10:09:49 AM Sen. Hays  
10:10:05 AM Am. 322890  
10:10:14 AM Sen. Dean  
10:15:58 AM Sen. Hays  
10:16:22 AM Greg Munson, AIF H2O Coalition  
10:17:10 AM Sen. Hays  
10:17:28 AM Am. 901608  
10:17:36 AM Sen. Simpson  
10:18:39 AM Sen. Hays  
10:18:43 AM Todd Bonlarron, Palm Beach County (waives in support)  
10:18:51 AM Nick Matthews, Broward County (waives in support)  
10:18:59 AM Sen. Dean  
10:19:22 AM Sen. Hays  
10:19:23 AM Am. 152138  
10:19:41 AM Sen. Hays  
10:19:45 AM Sen. Dean  
10:19:48 AM Sen. Hays  
10:19:58 AM Am 129140  
10:20:03 AM Sen. Simpson  
10:20:27 AM Sen. Hays  
10:20:35 AM Nick Matthews, Broward County (waives in support)  
10:20:43 AM Todd Bonlarron, Palm Beach County (waives in support)  
10:20:55 AM Am. 229130  
10:21:10 AM Sen. Margolis  
10:21:33 AM Sen. Hays  
10:21:39 AM Edgar Feruandez, Consultant, WaterSmart (waives in support)  
10:21:51 AM Sen. Dean  
10:22:11 AM Hand\*  
10:22:36 AM Sen. Altman  
10:24:32 AM Sen. Hays  
10:24:40 AM Frank Matthews, Attorney, Florida Farm Bureau  
10:26:01 AM Sen. Hays  
10:26:18 AM Sen. Dean  
10:26:22 AM Sen. Hays  
10:26:38 AM  
10:26:49 AM Sen. Dean  
10:27:50 AM Sen. Hays  
10:27:58 AM S 918 (con't)

10:28:05 AM Sen. Altman  
10:28:27 AM Sen. Hays  
10:28:30 AM Roxanne Groover  
10:28:38 AM Eric Drapper  
10:29:09 AM Chris Scoonover, Everglades Foundation  
10:29:34 AM David Cullen, Sierra Club Florida  
10:31:34 AM Sen. Hays  
10:31:36 AM Stephanie Kunkel, Conservancy of Southwest Florida  
10:32:48 AM Sen. Hays  
10:32:53 AM Katie Kelly, Florida Chamber (waives in support)  
10:33:02 AM R. Groover, Executive Director  
10:35:03 AM Sen. Hays  
10:35:12 AM Sen. Simpson  
10:35:48 AM Sen. Hays  
10:35:57 AM Sen. Braynon  
10:36:17 AM Sen. Hays  
10:37:21 AM S 718  
10:37:23 AM Sen. Lee  
10:41:01 AM Sen. Hays  
10:41:10 AM Sen. Altman  
10:41:20 AM Sen. Lee  
10:42:20 AM Sen. Hays  
10:42:25 AM Sen. Altman  
10:42:30 AM Sen. Lee  
10:42:59 AM Sen. Hays  
10:43:30 AM S 1006  
10:43:46 AM Sen. Flores  
10:44:58 AM Sen. Hays  
10:45:00 AM Am. 527578  
10:45:09 AM Sen. Flores  
10:45:26 AM Sen. Hays  
10:45:29 AM Am. 977198  
10:45:42 AM Sen. Flores  
10:46:01 AM Sen. Hays  
10:46:04 AM Christine Ashburn, Vice President of Legislative and External Affairs, Citizen Property Insurance (waives in support)  
10:46:43 AM Sen. Simpson  
10:47:00 AM Sen. Lee  
10:48:40 AM Sen. Hays  
10:48:54 AM Sen. Braynon  
10:49:04 AM Sen. Flores  
10:49:41 AM Sen. Hays  
10:49:44 AM Christine Ashburn, Vice President of Legislative and External Affairs, Citizen Property Insurance (waives in support)  
10:49:58 AM Laura Pearce, General Counsel, Florida Association of Insurance Agents (waives in support)  
10:50:05 AM Christian Camara, State Director, R. Street Institute  
10:50:52 AM Corey Matthews, CEO, Professional Insurance Agents of Florida (waives in support)  
10:51:01 AM Sen. Braynon  
10:51:31 AM Sen. Hays  
10:51:37 AM Sen. Flores  
10:53:00 AM Sen. Hays  
10:53:43 AM S 1284  
10:53:48 AM Christine Byron, Sen. Soto's aide  
10:54:50 AM Sen. Hays  
10:54:57 AM Daniel Nordby, Florida Bar - Administrative Law Section (waives in support)  
10:55:08 AM Bob Cohen, Director and Chief Judge, Division of Administrative Hearings (waives in support)  
10:55:48 AM Sen. Hays  
10:55:57 AM S 798  
10:56:00 AM Sen. Lee  
11:00:10 AM Sen. Hays  
11:00:12 AM Am. 949376  
11:00:38 AM Sen. Lee



11:02:05 AM Sen. Hays  
11:02:09 AM Chad Faison, Director of Communication, Florida Movers and Warehousemen's Association (waives in support)  
11:02:30 AM S 798 (con't)  
11:02:36 AM Jonathan Rees, Deputy Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services (waives in support)  
11:03:21 AM Sen. Hays  
11:03:23 AM S 1402  
11:03:32 AM Sen. Lee  
11:05:12 AM Sen. Hays  
11:05:15 AM Am. 504836  
11:05:20 AM Sen. Lee  
11:05:52 AM Sen. Hays  
11:06:05 AM S 1402 (con't)  
11:06:12 AM Elizabeth Boyd, Legislative Affairs Director, CFO Atwater  
11:06:52 AM S 314  
11:07:04 AM Sen. Hays  
11:07:06 AM Am. 497664  
11:07:11 AM Sen. Simpson  
11:08:27 AM Sen. Hays  
11:08:38 AM Am. 873724  
11:08:54 AM Sen. Simpson  
11:09:01 AM Sen. Hays  
11:09:18 AM Am. 956250  
11:09:33 AM Sen. Simpson  
11:09:54 AM Sen. Hays  
11:10:22 AM S 413 (con't)  
11:10:54 AM Mike Scaringella, Florida Resident  
11:12:39 AM Sen. Hays  
11:12:52 AM Phil Leary, Lobbyist, Florida Ground Water Association  
11:12:56 AM Natalie King, Vice President, Environmental Professional of Florida  
11:13:30 AM Randy Miller, Florida Retail Federation/Florida Petroleum Marketers Association (waives in support)  
11:13:37 AM Sen. Hays  
11:14:16 AM S 1126  
11:14:24 AM Sen. Altman  
11:14:33 AM Am. 557990  
11:14:36 AM Sen. Altman  
11:14:45 AM Sen. Hays  
11:15:03 AM Am. 764909  
11:15:07 AM Sen. Altman  
11:15:17 AM Sen. Hays  
11:15:32 AM S 1126 (con't)  
11:15:41 AM Beta Vecchioli, Senior Policy Director, Leading in Age Florida (waives in support)  
11:15:58 AM Bob Asztalos, Chief Lobbyist, Florida Health Care Association (waives in support)  
11:16:06 AM Sen. Altman  
11:16:35 AM Sen. Hays