Tab 1	**CS/SB 918** by **EP, Dean (CO-INTRODUCERS) Margolis**; (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

Tab 2	**CS/SB 314** by **EP, Simpson**; (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

Tab 3	**SB 718** by **Lee**; (Similar to CS/CS/CS/1ST ENG/H 0435) Administrative Procedures

Tab 4	**CS/SB 798** by **CM, Lee**; (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

Tab 5	**CS/SB 1006** by **BI, Flores (CO-INTRODUCERS) Margolis**; (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

Tab 6	**CS/SB 1032** by **RI, Richter (CO-INTRODUCERS) Diaz de la Portilla, Braynon**; (Similar to H 0763) Point-of-sale Terminals

Tab 7	**CS/SB 1126** by **BI, Altman**; (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

Tab 8	**SB 1138** by **Brandes**; (Similar to H 0887) Unclaimed Property

Tab 9	**CS/SB 1190** by **BI, Lee**; (Similar to H 1085) Insurer Solvency

Tab 10	**CS/SB 1284** by **GO, Soto**; (Similar to CS/H 0985) Maintenance of Agency Final Orders

Tab 11	**CS/SB 1402** by **BI, Lee**; (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	**CS/SB 918** 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	**CS/SB 314** 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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 718** 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	**CS/SB 798** 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	**CS/SB 1006** 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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**CS/SB 1032** 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	**CS/SB 1126** 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	**SB 1138** 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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**CS/SB 1190** 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	**CS/SB 1284** 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	**CS/SB 1402** 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.)

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

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.	Hinton	Uchino	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

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 (NWFWMD) 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.[1]

[1] 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 20th century. The American railroad industry was deregulated by the Staggers Rail Act of 1980, providing Florida with an immediate abundance of abandoned rail corridors.[2] 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.[3] 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.[4] 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).[5] 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.[6] 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;

[2] Pub. Law No. 96-448, H.R. 72365, 96th Cong. (Oct. 14, 1980).
[3] Pub. Law No. 102–240, H.R. 2950, 102nd Cong. (Dec. 18, 1991).
[4] 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 (last visited Mar. 11, 2015).
[5] Chapter 95-260, Laws of Fla.
[6] *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.[7]

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

[7] 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 (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.[8]

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.[9]

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.[10] 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.[11]

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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[8] 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 (last visited Mar. 5, 2015).

[9] 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* (last visited Mar. 19, 2015).

[10] 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.

[11] DEP, *The Coast to Coast Connector*, http://www.dep.state.fl.us/gwt/FGTS_Plan/Long%20Distance%20Corridors/Coast_to_Coast_Connector.htm (last visited Mar. 19, 2015).

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

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.[15]

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.[16]

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

[12] *Id.*
[13]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).
[14] *See* ETM, *St. Johns River-to-Sea Loop Trail Status Update* (Sept. 2011), *available at* http://www.etminc.com/SJR2C/sg_userfiles/SJR2C_Summary_Report_09-19-11.pdf (last visited Mar. 11, 2015).
[15] 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).
[16] *Id.* at 7

property value increase over a 25-year period of $121 million to $282 million.[17] 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.[18] 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."[19]

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.[20] 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.[21] 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.[22]

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.[23]

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[17] 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).

[18] 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).

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

[20] 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 (last visited Mar. 11, 2015).

[21] 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).

[22] 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).

[23] *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 (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.[24]

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.[25]

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.[26]

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.[27]

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

[24] 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).
[25] 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 (last visited Mar. 5, 2015).
[26] *Supra* note 21, at 70.
[27] 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

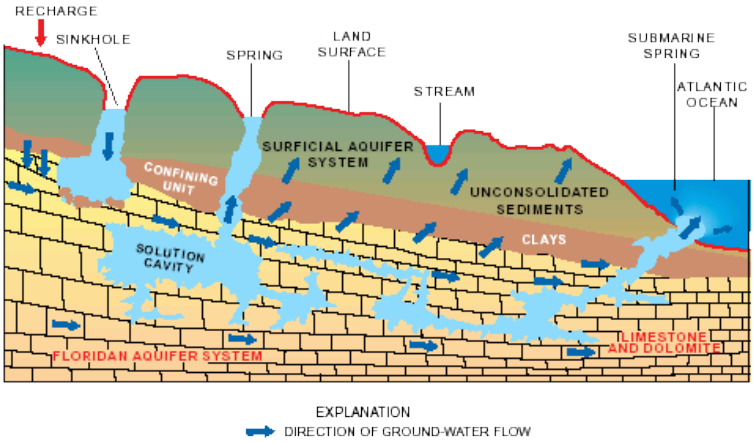
Florida's springs are unique and beautiful resources. The historically crystal clear waters provide not only a variety of recreational opportunities and habitats, but also great economic value for recreation and tourism. Springs are major sources of stream flow in a number of rivers such as the Rainbow, Chassahowitzka, Homosassa, and Ichetucknee.[28] 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

[28] 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.[29]

The Water Cycle – Springs[30]



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.[31]

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.[32]

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[29] *Id*. at 3-1 to 3-2.
[30] U.S. Environmental Protection Agency, *The Water Cycle: Springs*, http://water.usgs.gov/edu/watercyclesprings.html (last visited Mar. 5, 2015).
[31] 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).
[32] 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 (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.[33]

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

[33] *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.[34]

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.[35]

In 1999, the Legislature passed the Florida Watershed Restoration Act,[36] which codified the establishment of TMDLs for pollutants of waterbodies as required by the CWA.[37] 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.[38] 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. [39]

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

[34] 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).
[35] 33 U.S.C. s. 1313(c)(2)(A) (2014); 40 C.F.R. ss. 131.6 and 131.10-131.12.
[36] Chapter 99-223, Laws of Fla.
[37] Section 403.067, F.S.
[38] *Id*.
[39] 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;[40]
- Public works, including capital facilities; and
- Land acquisition.[41]

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.[42] 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.[43]

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.[44]

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.[45] A nonpoint source discharger may be subject to enforcement action by the DEP or a WMD based upon a failure to implement these requirements.[46]

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[40] 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.
[41] Section 403.067(7)(b), F.S.
[42] Section 403.067(7), F.S.
[43] DEP, *Basin Management Action Plans (BMAPs)*, http://www.dep.state.fl.us/central/Home/Watershed/BMAP.htm (last visited Mar. 5, 2015).
[44] Section 403.067(7)(a)5., F.S.
[45] BMPs for agriculture, for example, include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.
[46] 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.[47]

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.[48]

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.[49]

Agricultural Operations

Only lands that are used primarily for bona fide agricultural purposes are classified as agricultural in Florida.[50] 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, reforesting, 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.[51]

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.[52] Industrial wastewater that

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[47] 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).
[48] *Id*.
[49] *Id*.
[50] Section 193.461(3)(b), F.S.
[51] *Id*.
[52] 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.[53]

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.[54]

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.[55]

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.[56]

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

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

[53] *Id*.

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

[55] *Id*.

[56] 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.[57] 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.[58] 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.[59]

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.[60] The Bureau also licenses over 700 septic tank contractors and oversees 2.6 million onsite wastewater systems in Florida. [61]

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."[62] 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.[63]

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.[64] Approximately 100,000 septic tanks are pumped each year, generating 100 million gallons of septage requiring treatment and disposal.[65] 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

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[57] DEP, *Wastewater: Septic Systems*, http://www.dep.state.fl.us/water/wastewater/dom/septic.htm (last visited Mar. 5, 2015).
[58] EPA, *Primer for Municipal Wastewater Treatment Systems*, 22 (2004), *available at* http://water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf (last visited Mar. 5, 2015).
[59] *See* Fla. Admin. Code R. 64E-6.003 (2013) and R. 64E-6.004 (2010).
[60] 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.
[61] 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).
[62] 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 (last visited Mar. 26, 2015).
[63] 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).
[64] Section 381.0065(2)(n), F.S.
[65] 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 (last visited Mar. 5, 2015).

or to a pH of 12.5 for 30 minutes.[66] The treated septage is then spread over land at DOH-regulated land application sites.[67] 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.[68]

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.[69]

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.[70]

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.[71]

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,

[66] Fla. Admin. Code R. 64E-6.010(7)(a) (2013).
[67] See Fla. Admin. Code R. 64E-6.010 (2013).
[68] *Supra* note 65, at 2.
[69] *Supra* note 65, at 2.
[70] *Supra* note 65, at 2.
[71] *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.[72]

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.[73] 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.[74]

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.[75]

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

[72] 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).
[73] 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).
[74] 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).
[75] 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.[76]

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.[77] The performance standard was to reduce post-development stormwater pollutant loading of total suspended solids[78] by 80 percent, or by 95 percent for Outstanding Florida Waters.[79]

In 1990, the DEP developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).[80] 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."[81]

The DEP and the WMDs jointly administer the Environmental Resource Permitting (ERP) program for activities that alter surface water flows.[82] 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.[83]

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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[76] *Id*.
[77] *Id*.
[78] 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.
[79] 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.
[80] *Supra* note 75. *See generally* Fla. Admin. Code R. 62-40.
[81] *Supra* note 75.
[82] 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).
[83] 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.[84]

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)[85] and 20 mg/L total suspended solids (TSS)[86], or 90 percent removal of each from the wastewater influent, whichever is more stringent.[87] 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.[88]

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.[89] They may be used beneficially or disposed of in landfills.[90]

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.[91] 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

[84] *Id*.
[85] For more information on CBOD5, see Fla. Admin. Code R. 62-601.200(5) (1996).
[86] For more information on TSS, see Fla. Admin. Code R. 62-601.200(54) (1996).
[87] Fla. Admin. Code R. 62-600.420 (1993).
[88] Section 403.086(4), F.S.
[89] 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).
[90] *Id*.
[91] *Id*.

concentration limits for nine different elements.[92] 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.[93]

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.[94] 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.[95] Consumptive uses of water draw down water levels and reduce pressure in the aquifer.[96] 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.[97]

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.[98]

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

[92] Fla. Admin. Code R. 62-640.200(9) (2010).
[93] *Supra* note 89.
[94] SJRWMD, *Water Supply: An Overview of Minimum Flows and Levels*, http://www.sjrwmd.com/minimumflowsandlevels/ (last visited Mar. 5, 2015).
[95] DEP, *Minimum Flows and Levels*, http://www.dep.state.fl.us/water/waterpolicy/mfl.htm (last visited Mar. 5, 2015).
[96] *Supra* note 28, at 3-5.
[97] 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).
[98] *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.[99]

Prior to the passage of the Water Resources Act in 1972,[100] 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.[101]

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.[102]

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.[103]

The report must contain:

[99] *Supra* note 94.
[100] Chapter 72-299, Laws of Fla.
[101] Section 373.081, F.S. (1971).
[102] *Supra* note 100.
[103] Section 373.036(7)(a), F.S.

- A district water management plan annual report. Alternatively, it may contain the annual work plan report,[104] which details the implementation of the strategic plan for the previous fiscal year, addressing success indicators, deliverables, and milestones;[105]
- 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.[106]

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.[107]

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:[108]
  - 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;

[104] Section 373.036(7)(b)1., F.S.
[105] Section 373.036(2)(e)4., F.S.
[106] Section 373.036(7), F.S.
[107] Section 288.0656(2)(d), F.S.
[108] Section 288.0656(2)(e), F.S.

- High poverty levels compared to the state average; and
- A lack of year-round stable employment opportunities.[109]

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,[110] 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.[111]

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.[112]

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.[113]

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

[109] Section 288.0656(2)(c), F.S.
[110] Chapter 2007-253, LAWS of Fla.
[111] 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 (last visited Mar. 26, 2015).
[112] *Id.* at 8-10.
[113] *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.[114]

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.[115]

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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[114] 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).

[115] 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.[116] 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).[117]

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.[118]

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.[119] 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.[120]

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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[116] 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 (last visited Mar. 26, 2015).

[117] Central Florida Water Initiative, *An Overview*, http://cfwiwater.com/pdfs/2012/06-28/CFWI_Overview_fact_sheet.pdf (last accessed Mar. 16, 2015).

[118] *Id.*

[119] 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 (last visited Mar. 26, 2015).

[120] *Id.*

- Assessment of environmental impacts and groundwater sustainability; and
- Development of water use rules and permitting criteria.[121]

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.[122]

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.[123] 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.[124]

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.[125]

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

[121] *Id.*
[122] *Id.* at 3.
[123] *Id.* at 3.
[124] *Id.* at 5.
[125] *Id.* at 5

- A coordinated regional water supply plan, including any needed recovery and prevention strategies.[126]

Works of the District Permits

The Works of the District rule[127] 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.[128] It contains tens of thousands of acres of lakes and wetlands and is at the headwaters of the Ocklawaha River.[129]

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.[130]

The council's duties are to:

[126] *Id*. at 5
[127] Fla. Admin. Code R. 40E-61.
[128] 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).
[129] *Id*.
[130] 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.[131]

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.[132]

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.

[131] *Id.*
[132] *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 Tail, 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 (NWFWMD), 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 is 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 measureable 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 BMPA 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 (NWFWMD), $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 NWFWMD) 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 NWFWMD, 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, measureable 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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access to conservation lands, as defined in s. 253.034(2)(c), the department shall publish, update, and maintain a database of such lands where public access is compatible with conservation and recreation purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....

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

~~1. Florida Keys Overseas Heritage Trail.~~

~~2. Blackwater Heritage Trail.~~

~~3. Tallahassee-St. Marks Historic Railroad State Trail.~~

~~4. Nature Coast State Trail.~~

~~5. Withlacoochee State Trail.~~

~~6. General James A. Van Fleet State Trail.~~

~~7. Palatka-Lake Butler State Trail.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....~~

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

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

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

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

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

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

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

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

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

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

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

339.81 Florida Shared-Use Nonmotorized Trail Network.—

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

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

(2) The Florida Shared-Use Nonmotorized Trail Network is created as a component of the Florida Greenways and Trails System established in chapter 260. The statewide network consists of multiuse trails or shared-use paths physically separated from motor vehicle traffic and constructed with asphalt, concrete, or another hard surface which, by virtue of design, location, extent of connectivity or potential connectivity, and allowable uses, provides nonmotorized transportation opportunities for bicyclists and pedestrians statewide between and within a wide range of 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, and other personal business, as well as social, recreational, and personal fitness purposes.

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

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

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are signed and marked for nonmotorized use; or

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

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

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

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

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

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

339.82 Shared-Use Nonmotorized Trail Network Plan.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

339.83 Sponsorship of Shared-Use Nonmotorized Trails.—

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

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

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

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

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

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

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

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

...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....

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

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

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

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or this section.

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

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

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

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

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

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

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

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

373.036 Florida water plan; district water management plans.—

(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

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

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

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

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

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

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

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

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

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

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

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

c. The estimated cost for each listed project;

d. The estimated completion date for each listed project;

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

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

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

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waterbody, or water segment.

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

373.042 Minimum flows and minimum water levels.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) ESTABLISHMENT.—

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

(b) *Exclusions.*—

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

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on its historical condition is not appropriate.

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

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

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

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

(a) Achieve recovery to the established minimum flow or

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minimum water level as soon as practicable; or

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

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

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

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

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

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

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

373.0465 Central Florida Water Initiative.-

(1) The Legislature finds that:

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

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

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

(c) The Central Florida Water Initiative is a collaborative process involving the Department of Environmental Protection, the St. Johns River Water Management District, the South Florida Water Management District, the Southwest Florida Water Management District, the Department of Agriculture and Consumer Services, regional public water supply utilities, and other stakeholders. As set forth in the Central Florida Water Initiative Guiding Document of January 30, 2015, the initiative 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.

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

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

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

1. Provide for a continuation of the collaborative process

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

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

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

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

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

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

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

3. Consider existing recovery or prevention strategies;

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

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

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

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

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

3. A single process for permit reviews;

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

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

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

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

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

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

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

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

373.1501 South Florida Water Management District as local sponsor.—

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

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

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

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

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

(d) Act as local sponsor for project components.

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

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

373.219 Permits required.—

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

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

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

373.223 Conditions for a permit.—

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

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

373.2234 Preferred water supply sources.—

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

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

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

(b) The governing board of a water management district shall 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. Identification of preferred water supply sources for such water users must be consistent with s. 373.016.

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

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

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

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

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

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

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

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

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

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

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

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

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

373.233 Competing applications.—

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

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

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

373.4591 Improvements on private agricultural lands.—

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

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

(b) Provide critical ground water recharge; or

(c) Provide for changes in land use to activities that minimize nutrient loads and maximize water conservation.

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(2)(a) When an agreement is entered into between the department, a water management district, or the Department of Agriculture and Consumer Services and a private landowner to establish ~~such~~ a public-private partnership that may create or impact wetlands or other surface waters, a baseline condition determining the extent of wetlands and other surface waters on the property shall be established and documented in the agreement before improvements are constructed.

(b) When an agreement is entered into between the Department of Agriculture and Consumer Services and a private landowner to implement best management practices pursuant to s. 403.067(7)(c), a baseline condition determining the extent of wetlands and other surface water on the property may be established at the option and expense of the private landowner and documented in the agreement before improvements are constructed. The Department of Agriculture and Consumer Services shall submit the landowner's proposed baseline condition documentation to the lead agency for review and approval, and the agency shall use its best efforts to complete the review within 45 days.

(3) The Department of Agriculture and Consumer Services, the department, and the water management districts shall provide a process for reviewing these requests in the timeframe specified. The determination of a baseline condition shall be conducted using the methods set forth in the rules adopted pursuant to s. 373.421. The baseline condition documented in an agreement shall be considered the extent of wetlands and other surface waters on the property for the purpose of regulation under this chapter for the duration of the agreement and after

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its expiration.

Section 19. Paragraph (h) of subsection (1) and subsections (2) through (7) of section 373.4595, Florida Statutes, are amended, and present subsections (8) through (13) of that section are redesignated as subsections (9) through (14), respectively, and a new subsection (8) is added to that section, to read:

373.4595 Northern Everglades and Estuaries Protection Program.—

(1) FINDINGS AND INTENT.—

(h) The Legislature finds that the expeditious implementation of the Lake Okeechobee Watershed Protection Program, the Caloosahatchee River Watershed Protection Program, ~~Plan~~ and the St. Lucie River Watershed Protection Program ~~Plans~~ is needed to improve the quality, quantity, timing, and distribution of water in the northern Everglades ecosystem and that this section, in conjunction with s. 403.067, including the implementation of the plans developed and approved pursuant to subsections (3) and (4), and any related basin management action plan developed and implemented pursuant to s. 403.067(7)(a), provide a reasonable means of achieving the total maximum daily load requirements and achieving and maintaining compliance with state water quality standards.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Best management practice" means a practice or combination of practices determined by the coordinating agencies, based on research, field-testing, and expert review, to be the most effective and practicable on-location means, including economic and technological considerations, for

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improving water quality in agricultural and urban discharges. Best management practices for agricultural discharges shall reflect a balance between water quality improvements and agricultural productivity.

(b) "Biosolids" means the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as "domestic wastewater residuals" or "residuals," and includes products and treated material from biosolids treatment facilities and septage management facilities regulated by the department. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.

(c) ~~(b)~~ "Caloosahatchee River watershed" means the Caloosahatchee River, its tributaries, its estuary, and the area within Charlotte, Glades, Hendry, and Lee Counties from which surface water flow is directed or drains, naturally or by constructed works, to the river, its tributaries, or its estuary.

(d) ~~(c)~~ "Coordinating agencies" means the Department of Agriculture and Consumer Services, the Department of Environmental Protection, and the South Florida Water Management District.

(e) ~~(d)~~ "Corps of Engineers" means the United States Army Corps of Engineers.

(f) ~~(e)~~ "Department" means the Department of Environmental

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Protection.

(g) ~~(f)~~ "District" means the South Florida Water Management District.

~~(g) "District's WOD program" means the program implemented pursuant to rules adopted as authorized by this section and ss. 373.016, 373.044, 373.085, 373.086, 373.109, 373.113, 373.118, 373.451, and 373.453, entitled "Works of the District Basin."~~

(h) "Lake Okeechobee Watershed Construction Project" means the construction project developed pursuant to this section ~~paragraph (3)(b)~~.

(i) "Lake Okeechobee Watershed Protection Plan" means the Lake Okeechobee Watershed Construction Project and the Lake Okeechobee Watershed Research and Water Quality Monitoring Program ~~plan developed pursuant to this section and ss. 373.451-373.459~~.

(j) "Lake Okeechobee watershed" means Lake Okeechobee, its tributaries, and the area within which surface water flow is directed or drains, naturally or by constructed works, to the lake or its tributaries.

~~(k) "Lake Okeechobee Watershed Phosphorus Control Program" means the program developed pursuant to paragraph (3)(c).~~

(k) ~~(l)~~ "Northern Everglades" means the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed.

(l) ~~(m)~~ "Project component" means any structural or operational change, resulting from the Restudy, to the Central and Southern Florida Project as it existed and was operated as of January 1, 1999.

(m) ~~(n)~~ "Restudy" means the Comprehensive Review Study of

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the Central and Southern Florida Project, for which federal participation was authorized by the Federal Water Resources Development Acts of 1992 and 1996 together with related Congressional resolutions and for which participation by the South Florida Water Management District is authorized by s. 373.1501. The term includes all actions undertaken pursuant to the aforementioned authorizations which will result in recommendations for modifications or additions to the Central and Southern Florida Project.

(n) ~~(o)~~ "River Watershed Protection Plans" means the Caloosahatchee River Watershed Protection Plan and the St. Lucie River Watershed Protection Plan developed pursuant to this section.

(o) "Soil amendment" means any substance or mixture of substances sold or offered for sale for soil enriching or corrective purposes, intended or claimed to be effective in promoting or stimulating plant growth, increasing soil or plant productivity, improving the quality of crops, or producing any chemical or physical change in the soil, except amendments, conditioners, additives, and related products that are derived solely from inorganic sources and that contain no recognized plant nutrients.

(p) "St. Lucie River watershed" means the St. Lucie River, its tributaries, its estuary, and the area within Martin, Okeechobee, and St. Lucie Counties from which surface water flow is directed or drains, naturally or by constructed works, to the river, its tributaries, or its estuary.

(q) "Total maximum daily load" means the sum of the individual wasteload allocations for point sources and the load

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allocations for nonpoint sources and natural background adopted pursuant to s. 403.067. Before ~~Prior to~~ determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

(3) LAKE OKEECHOBEE WATERSHED PROTECTION PROGRAM.—The Lake Okeechobee Watershed Protection Program shall consist of the Lake Okeechobee Watershed Protection Plan, the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067, the Lake Okeechobee Exotic Species Control Program, and the Lake Okeechobee Internal Phosphorus Management Program. The Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 shall be the component of the Lake Okeechobee Watershed Protection ~~A protection~~ Program ~~for Lake Okeechobee~~ that achieves phosphorus load reductions for Lake Okeechobee ~~shall be immediately implemented as specified in this subsection~~. As provided in s. 403.067(7)(a)5., the Lake Okeechobee Basin Management Action Plan 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 department shall develop a schedule to establish 5-, 10-, and 15-year measurable milestones and a target for achieving water quality improvement consistent with this section. The schedule shall be used to provide guidance for planning and funding purposes and is exempt from s. 120.54(l)(a). An assessment of progress toward these milestones shall be conducted every 5 years and revisions to the plan shall

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be made, as appropriate, as a result of each 5-year review. The assessment shall 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, measureable milestones, and a target for achieving water quality improvement consistent with the provisions of this section shall be adopted into the plan. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies must follow the procedures set forth in s. 403.067(7)(c)4. Revised basin management action plans must be adopted pursuant to s. 403.067(7)(a)4. The Lake Okeechobee Watershed Protection Program shall address the reduction of phosphorus loading to the lake from both internal and external sources. Phosphorus load reductions shall be achieved through a phased program of implementation. ~~Initial implementation actions shall be technology-based, based upon a consideration of both the availability of appropriate technology and the cost of such technology, and shall include phosphorus reduction measures at both the source and the regional level. The initial phase of phosphorus load reductions shall be based upon the district's Technical Publication 81-2 and the district's WOD program, with subsequent phases of phosphorus load reductions based upon the total maximum daily loads established in accordance with s. 403.067.~~ In the development and administration of the Lake Okeechobee Watershed Protection Program, the coordinating agencies shall maximize opportunities provided by federal cost-sharing programs and opportunities for partnerships with the private sector.

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(a) *Lake Okeechobee Watershed Protection Plan.*—In order to protect and restore surface water resources, the district, in cooperation with the other coordinating agencies, shall complete a Lake Okeechobee Watershed Protection Plan in accordance with this section and ss. 373.451-373.459. Beginning March 1, 2020, and every 5 years thereafter, the district shall update the Lake Okeechobee Watershed Protection Plan to ensure that it is consistent with the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. The Lake Okeechobee Watershed Protection Plan shall identify the geographic extent of the watershed, be coordinated with the plans developed pursuant to paragraphs (4)(a) and (c) ~~(b)~~, and include the Lake Okeechobee Watershed Construction Project and the Lake Okeechobee Watershed Research and Water Quality Monitoring Program ~~contain an implementation schedule for subsequent phases of phosphorus load reduction consistent with the total maximum daily loads established in accordance with s. 403.067~~. The plan shall consider and build upon a review and analysis of ~~the following~~:

~~1.~~ the performance of projects constructed during Phase I and Phase II of the Lake Okeechobee Watershed Construction Project, pursuant to subparagraph 1.; ~~paragraph (b).~~

~~2.~~ relevant information resulting from the Lake Okeechobee Basin Management Action Plan ~~Watershed Phosphorus Control Program~~, pursuant to paragraph (b); ~~(c).~~

~~3.~~ relevant information resulting from the Lake Okeechobee Watershed Research and Water Quality Monitoring Program, pursuant to subparagraph 2.; ~~paragraph (d).~~

~~4.~~ relevant information resulting from the Lake Okeechobee Exotic Species Control Program, pursuant to paragraph (c); and

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~~(e).~~

~~5.~~ relevant information resulting from the Lake Okeechobee Internal Phosphorus Management Program, pursuant to paragraph (d) ~~(f)~~.

1.~~(b)~~ *Lake Okeechobee Watershed Construction Project.*—To improve the hydrology and water quality of Lake Okeechobee and downstream receiving waters, including the Caloosahatchee and St. Lucie Rivers and their estuaries, the district, in cooperation with the other coordinating agencies, shall design and construct the Lake Okeechobee Watershed Construction Project. The project shall include:

a.~~1.~~ Phase I.—Phase I of the Lake Okeechobee Watershed Construction Project shall consist of a series of project features consistent with the recommendations of the South Florida Ecosystem Restoration Working Group's Lake Okeechobee Action Plan. Priority basins for such projects include S-191, S-154, and Pools D and E in the Lower Kissimmee River. In order to obtain phosphorus load reductions to Lake Okeechobee as soon as possible, the following actions shall be implemented:

(I)~~a.~~ The district shall serve as a full partner with the Corps of Engineers in the design and construction of the Grassy Island Ranch and New Palm Dairy stormwater treatment facilities as components of the Lake Okeechobee Water Retention/Phosphorus Removal Critical Project. The Corps of Engineers shall have the lead in design and construction of these facilities. Should delays be encountered in the implementation of either of these facilities, the district shall notify the department and recommend corrective actions.

(II)~~b.~~ The district shall obtain permits and complete

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construction of two of the isolated wetland restoration projects that are part of the Lake Okeechobee Water Retention/Phosphorus Removal Critical Project. The additional isolated wetland projects included in this critical project shall further reduce phosphorus loading to Lake Okeechobee.

(III)~~c.~~ The district shall work with the Corps of Engineers to expedite initiation of the design process for the Taylor Creek/Nubbins Slough Reservoir Assisted Stormwater Treatment Area, a project component of the Comprehensive Everglades Restoration Plan. The district shall propose to the Corps of Engineers that the district take the lead in the design and construction of the Reservoir Assisted Stormwater Treatment Area and receive credit towards the local share of the total cost of the Comprehensive Everglades Restoration Plan.

b.~~2.~~ Phase II technical plan and construction.~~ By February 1, 2008,~~ The district, in cooperation with the other coordinating agencies, shall develop a detailed technical plan for Phase II of the Lake Okeechobee Watershed Construction Project which provides the basis for the Lake Okeechobee Basin Management Action Plan adopted by the department pursuant to s. 403.067. The detailed technical plan shall include measures for the improvement of the quality, quantity, timing, and distribution of water in the northern Everglades ecosystem, including the Lake Okeechobee watershed and the estuaries, and for facilitating the achievement of water quality standards. Use of cost-effective biologically based, hybrid wetland/chemical and other innovative nutrient control technologies shall be incorporated in the plan where appropriate. The detailed technical plan shall also include a Process Development and

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Engineering component to finalize the detail and design of Phase II projects and identify additional measures needed to increase the certainty that the overall objectives for improving water quality and quantity can be met. Based on information and recommendations from the Process Development and Engineering component, the Phase II detailed technical plan shall be periodically updated. Phase II shall include construction of additional facilities in the priority basins identified in sub-subparagraph a. ~~subparagraph 1.~~, as well as facilities for other basins in the Lake Okeechobee watershed. ~~This detailed technical plan will require legislative ratification pursuant to paragraph (i).~~ The technical plan shall:

(I)~~a.~~ Identify Lake Okeechobee Watershed Construction Project facilities designed to contribute to achieving all applicable total maximum daily loads established pursuant to s. 403.067 within the Lake Okeechobee watershed.

(II)~~b.~~ Identify the size and location of all such Lake Okeechobee Watershed Construction Project facilities.

(III)~~c.~~ Provide a construction schedule for all such Lake Okeechobee Watershed Construction Project facilities, including the sequencing and specific timeframe for construction of each Lake Okeechobee Watershed Construction Project facility.

(IV)~~d.~~ Provide a schedule for the acquisition of lands or sufficient interests necessary to achieve the construction schedule.

(V)~~e.~~ Provide a detailed schedule of costs associated with the construction schedule.

(VI)~~f.~~ Identify, to the maximum extent practicable, impacts on wetlands and state-listed species expected to be associated

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with construction of such facilities, including potential alternatives to minimize and mitigate such impacts, as appropriate.

(VII) ~~g.~~ Provide for additional measures, including voluntary water storage and quality improvements on private land, to increase water storage and reduce excess water levels in Lake Okeechobee and to reduce excess discharges to the estuaries.

(VIII) ~~The technical plan shall also~~ Develop the appropriate water quantity storage goal to achieve the desired Lake Okeechobee range of lake levels and inflow volumes to the Caloosahatchee and St. Lucie estuaries while meeting the other water-related needs of the region, including water supply and flood protection.

(IX) ~~h.~~ Provide for additional source controls needed to enhance performance of the Lake Okeechobee Watershed Construction Project facilities. Such additional source controls shall be incorporated into the Lake Okeechobee Basin Management Action Plan ~~Watershed Phosphorous Control Program~~ pursuant to paragraph (b) ~~(c)~~.

c. ~~3.~~ Evaluation. ~~—~~Within 5 years after the adoption of the Lake Okeechobee Basin Management Action Plan pursuant to s. 403.067 and every 5 ~~By January 1, 2004, and every 3~~ years thereafter, the department ~~district~~, in cooperation with the other coordinating agencies, shall conduct an evaluation of the Lake Okeechobee Watershed Construction Project and identify any further load reductions necessary to achieve compliance with the ~~all~~ Lake Okeechobee ~~watershed~~ total maximum daily loads established pursuant to s. 403.067. ~~Additionally,~~ The district

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shall identify modifications to facilities of the Lake Okeechobee Watershed Construction Project as appropriate to meet the total maximum daily loads. Modifications to the Lake Okeechobee Watershed Construction Project resulting from this evaluation shall be incorporated into the Lake Okeechobee Basin Management Action Plan and ~~The evaluation shall be~~ included in the applicable annual progress report submitted pursuant to subsection (6).

d.~~4.~~ Coordination and review.—To ensure the timely implementation of the Lake Okeechobee Watershed Construction Project, the design of project facilities shall be coordinated with the department and other interested parties, including affected local governments, to the maximum extent practicable. Lake Okeechobee Watershed Construction Project facilities shall be reviewed and commented upon by the department before ~~prior to~~ the execution of a construction contract by the district for that facility.

2. Lake Okeechobee Watershed Research and Water Quality Monitoring Program.—The coordinating agencies shall implement a Lake Okeechobee Watershed Research and Water Quality Monitoring Program. Results from the program shall be used by the department, in cooperation with the other coordinating agencies, to make modifications to the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067, as appropriate. The program shall:

a. 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

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changes, including water quality for total phosphorus, and measure compliance with water quality standards for total phosphorus, including any applicable total maximum daily load for the Lake Okeechobee watershed as established pursuant to s. 403.067. Beginning March 1, 2020, and every 5 years thereafter, the department shall reevaluate water quality and quantity data to ensure that the appropriate projects are being designated and incorporated into the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. The district shall implement a total phosphorus monitoring program at appropriate structures owned or operated by the district and within the Lake Okeechobee watershed.

b. Develop a Lake Okeechobee water quality model that reasonably represents the phosphorus dynamics of Lake Okeechobee and incorporates an uncertainty analysis associated with model predictions.

c. Determine the relative contribution of phosphorus from all identifiable sources and all primary and secondary land uses.

d. Conduct an assessment of the sources of phosphorus from the Upper Kissimmee Chain-of-Lakes and Lake Istokpoga, and their relative contribution to the water quality of Lake Okeechobee. The results of this assessment shall be used by the coordinating agencies as part of the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 to develop interim measures, best management practices, or regulations, as applicable.

e. Assess current water management practices within the Lake Okeechobee watershed and develop recommendations for structural and operational improvements. Such recommendations

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shall balance water supply, flood control, estuarine salinity, maintenance of a healthy lake littoral zone, and water quality considerations.

f. Evaluate the feasibility of alternative nutrient reduction technologies, including sediment traps, canal and ditch maintenance, fish production or other aquaculture, bioenergy conversion processes, and algal or other biological treatment technologies and include any alternative nutrient reduction technologies determined to be feasible in the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067.

g. 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.

(b) ~~(c)~~ *Lake Okeechobee Basin Management Action Plan* ~~*Watershed Phosphorus Control Program*~~.—The Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 shall be the watershed phosphorus control component for Lake Okeechobee. The Lake Okeechobee Basin Management Action Plan shall be ~~Program is designed to be~~ a multifaceted approach designed to achieve the total maximum daily load ~~reducing phosphorus loads~~ by improving the management of phosphorus sources within the Lake Okeechobee watershed through implementation of regulations and best management practices, continued development and continued implementation of improved best management practices, improvement and restoration of the hydrologic function of natural and managed systems, and use ~~utilization~~ of alternative technologies for nutrient reduction. The plan must include an

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implementation schedule pursuant to this subsection for pollutant load reductions consistent with the adopted total maximum daily load. The department shall 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 shall be used to provide guidance for planning and funding purposes and is exempt from the provisions of s. 120.54(l)(a). If achieving the adopted total maximum daily load within 20 years is not practicable, the schedule shall contain an explanation of the constraints that prevent achieving the total maximum daily load within 20 years and an estimate of the time needed to achieve the total maximum daily load and additional 5-year measurable milestones, as necessary. The coordinating agencies shall develop an interagency agreement pursuant to ss. 373.046 and 373.406 which is consistent with the department taking the lead on water quality protection measures through the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067; the district taking the lead on hydrologic improvements pursuant to paragraph (a); and the Department of Agriculture and Consumer Services taking the lead on agricultural interim measures, best management practices, and other measures adopted pursuant to s. 403.067. The interagency agreement shall specify how best management practices for nonagricultural nonpoint sources are developed and how all best management practices are implemented and verified consistent with s. 403.067 and this section. The interagency agreement shall address measures to be taken by the coordinating agencies during any best management practice reevaluation performed pursuant to subparagraphs 5. and 10. The


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department shall use best professional judgment in making the initial determination of best management practice effectiveness. The coordinating agencies may develop an intergovernmental agreement with local governments to implement nonagricultural nonpoint source best management practices within their respective geographic boundaries. The coordinating agencies shall facilitate the application of federal programs that offer opportunities for water quality treatment, including preservation, restoration, or creation of wetlands on agricultural lands.

1. Agricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Watershed Protection Program as part of a phased approach of management strategies within the Lake Okeechobee Basin Management Action Plan, shall be implemented on an expedited basis. ~~The coordinating agencies shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the coordinating agencies during any best management practice reevaluation performed pursuant to sub-subparagraph d. The department shall use best professional judgment in making the initial determination of best management practice effectiveness.~~

2.~~a.~~ As provided in s. 403.067~~(7)(c)~~, the Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall initiate

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rule development for interim measures, best management practices, conservation plans, nutrient management plans, or other measures necessary for Lake Okeechobee watershed total maximum daily load reduction. The rule shall include thresholds for requiring conservation and nutrient management plans and criteria for the contents of such plans. Development of agricultural nonpoint source best management practices shall initially focus on those priority basins listed in sub-subparagraph (a)1.a. ~~subparagraph (b)1.~~ The Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall conduct an ongoing program for improvement of existing and development of new agricultural nonpoint source interim measures and ~~or~~ best management practices. The Department of Agriculture and Consumer Services shall adopt ~~for the purpose of adoption of~~ such practices by rule. The Department of Agriculture and Consumer Services shall work with the University of Florida ~~Florida's~~ Institute of Food and Agriculture Sciences to review and, where appropriate, develop revised nutrient application rates for all agricultural soil amendments in the watershed.

3.~~b.~~ As provided in s. 403.067, where agricultural nonpoint source best management practices or interim measures have been adopted by rule of the Department of Agriculture and Consumer Services, the owner or operator of an agricultural nonpoint source addressed by such rule shall either implement interim measures or best management practices or demonstrate compliance with state water quality standards addressed by the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 ~~the district's WOD program~~ by conducting monitoring

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prescribed by the department or the district. Owners or operators of agricultural nonpoint sources who implement interim measures or best management practices adopted by rule of the Department of Agriculture and Consumer Services shall be subject to ~~the provisions of~~ s. 403.067~~(7)~~. ~~The Department of Agriculture and Consumer Services, in cooperation with the department and the district, shall provide technical and financial assistance for implementation of agricultural best management practices, subject to the availability of funds.~~

4.~~c.~~ The district or department shall conduct monitoring at representative sites to verify the effectiveness of agricultural nonpoint source best management practices.

5.~~d.~~ Where water quality problems are detected for agricultural nonpoint sources despite the appropriate implementation of adopted best management practices, ~~the Department of Agriculture and Consumer Services, in consultation with the other coordinating agencies and affected parties, shall institute~~ a reevaluation of the best management practices shall be conducted pursuant to s. 403.067(7)(c)4. Should the reevaluation determine that the best management practices or other measures require modification, the rule shall be revised to require implementation of the modified practice within a reasonable time period as specified in the rule ~~and make appropriate changes to the rule adopting best management practices~~.

6.~~2.~~ As provided in s. 403.067, nonagricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Watershed Protection Program as part of a phased

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approach of management strategies within the Lake Okeechobee Basin Management Action Plan, shall be implemented on an expedited basis. ~~The department and the district shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the department and the district during any best management practice reevaluation performed pursuant to sub-subparagraph d.~~

7.~~a.~~ The department and the district are directed to work with the University of Florida ~~Florida's~~ Institute of Food and Agricultural Sciences to develop appropriate nutrient application rates for all nonagricultural soil amendments in the watershed. As provided in s. 403.067 ~~s. 403.067(7)(c)~~, the department, in consultation with the district and affected parties, shall develop nonagricultural nonpoint source interim measures, best management practices, or other measures necessary for Lake Okeechobee watershed total maximum daily load reduction. Development of nonagricultural nonpoint source best management practices shall initially focus on those priority basins listed in sub-subparagraph (a)1.a. ~~subparagraph (b)1.~~ The department, the district, and affected parties shall conduct an ongoing program for improvement of existing and development of new interim measures and ~~or~~ best management practices. The department or the district shall adopt such practices by rule ~~The district shall adopt technology-based standards under the district's WOD program for nonagricultural nonpoint sources of phosphorus~~. ~~Nothing in this sub-subparagraph shall affect the~~

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~~authority of the department or the district to adopt basin-specific criteria under this part to prevent harm to the water resources of the district.~~

8.~~b.~~ Where nonagricultural nonpoint source best management practices or interim measures have been developed by the department and adopted by the district, the owner or operator of a nonagricultural nonpoint source shall implement interim measures or best management practices and be subject to ~~the provisions of~~ s. 403.067~~(7)~~. ~~The department and district shall provide technical and financial assistance for implementation of nonagricultural nonpoint source best management practices, subject to the availability of funds.~~

9.~~c.~~ As provided in s. 403.067, the district or the department shall conduct monitoring at representative sites to verify the effectiveness of nonagricultural nonpoint source best management practices.

10.~~d.~~ Where water quality problems are detected for nonagricultural nonpoint sources despite the appropriate implementation of adopted best management practices, ~~the department and the district shall institute~~ a reevaluation of the best management practices shall be conducted pursuant to s. 403.067(7)(c)4. Should the reevaluation determine that the best management practices or other measures require modification, the rule shall be revised to require implementation of the modified practice within a reasonable time period as specified in the rule.

11.~~3.~~ ~~The provisions of~~ Subparagraphs ~~1. and~~ 2. and 7. do ~~may~~ not preclude the department or the district from requiring compliance with water quality standards or with current best

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management practices requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. ~~Additionally,~~ Subparagraphs ~~1. and~~ 2. and 7. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

12. The program of agricultural best management practices set forth in the Everglades Program of the district, meets the requirements of this paragraph and s. 403.067(7) for the Lake Okeechobee watershed. An entity in compliance with best management practices set forth in the Everglades Program of the district, may elect to use that permit in lieu of the requirements of this paragraph. The provisions of s. 373.4595(3)(b)5. apply to this subparagraph. This subparagraph does not alter any requirement under s. 373.4592.

13. The Department of Agriculture and Consumer Services, in cooperation with the department and the district, shall provide technical and financial assistance for implementation of agricultural best management practices, subject to the availability of funds. The department and district shall provide technical and financial assistance for implementation of nonagricultural nonpoint source best management practices, subject to the availability of funds.

14.~~4.~~ Projects that reduce the phosphorus load originating from domestic wastewater systems within the Lake Okeechobee watershed shall be given funding priority in the department's revolving loan program under s. 403.1835. The department shall coordinate and provide assistance to those local governments seeking financial assistance for such priority projects.

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15.~~5.~~ Projects that make use of private lands, or lands held in trust for Indian tribes, to reduce nutrient loadings or concentrations within a basin by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, increasing aquifer recharge, or protecting range and timberland from conversion to development, are eligible for grants available under this section from the coordinating agencies. For projects of otherwise equal priority, special funding priority will be given to those projects that make best use of the methods outlined above that involve public-private partnerships or that obtain federal match money. Preference ranking above the special funding priority will be given to projects located in a rural area of opportunity designated by the Governor. Grant applications may be submitted by any person or tribal entity, and eligible projects may include, but are not limited to, the purchase of conservation and flowage easements, hydrologic restoration of wetlands, creating treatment wetlands, development of a management plan for natural resources, and financial support to implement a management plan.

16.~~6.a.~~ The department shall require all entities disposing of domestic wastewater biosolids ~~residuals~~ within the Lake Okeechobee watershed and the remaining areas of Okeechobee, Glades, and Hendry Counties to develop and submit to the department an agricultural use plan that limits applications based upon phosphorus loading consistent with the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. ~~By July 1, 2005, phosphorus concentrations originating from these application sites may not exceed the limits~~

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~~established in the district's WOD program. After December 31, 2007,~~ The department may not authorize the disposal of domestic wastewater biosolids ~~residuals~~ within the Lake Okeechobee watershed unless the applicant can affirmatively demonstrate that the phosphorus in the biosolids ~~residuals~~ will not add to phosphorus loadings in Lake Okeechobee or its tributaries. This demonstration shall be based on achieving a net balance between phosphorus imports relative to exports on the permitted application site. Exports shall include only phosphorus removed from the Lake Okeechobee watershed through products generated on the permitted application site. This prohibition does not apply to Class AA biosolids ~~residuals~~ that are marketed and distributed as fertilizer products in accordance with department rule.

17.~~b.~~ Private and government-owned utilities within Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Okeechobee, Highlands, Hendry, and Glades Counties that dispose of wastewater biosolids ~~residual~~ sludge from utility operations and septic removal by land spreading in the Lake Okeechobee watershed may use a line item on local sewer rates to cover wastewater biosolids ~~residual~~ treatment and disposal if such disposal and treatment is done by approved alternative treatment methodology at a facility located within the areas designated by the Governor as rural areas of opportunity pursuant to s. 288.0656. This additional line item is an environmental protection disposal fee above the present sewer rate and may not be considered a part of the present sewer rate to customers, notwithstanding provisions to the contrary in chapter 367. The fee shall be established by the county

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commission or its designated assignee in the county in which the alternative method treatment facility is located. The fee shall be calculated to be no higher than that necessary to recover the facility's prudent cost of providing the service. Upon request by an affected county commission, the Florida Public Service Commission will provide assistance in establishing the fee. Further, for utilities and utility authorities that use the additional line item environmental protection disposal fee, such fee may not be considered a rate increase under the rules of the Public Service Commission and shall be exempt from such rules. Utilities using ~~the provisions of~~ this section may immediately include in their sewer invoicing the new environmental protection disposal fee. Proceeds from this environmental protection disposal fee shall be used for treatment and disposal of wastewater biosolids ~~residuals~~, including any treatment technology that helps reduce the volume of biosolids ~~residuals~~ that require final disposal, but such proceeds may not be used for transportation or shipment costs for disposal or any costs relating to the land application of biosolids ~~residuals~~ in the Lake Okeechobee watershed.

18.~~c.~~ No less frequently than once every 3 years, the Florida Public Service Commission or the county commission through the services of an independent auditor shall perform a financial audit of all facilities receiving compensation from an environmental protection disposal fee. The Florida Public Service Commission or the county commission through the services of an independent auditor shall also perform an audit of the methodology used in establishing the environmental protection disposal fee. The Florida Public Service Commission or the

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county commission shall, within 120 days after completion of an audit, file the audit report with the President of the Senate and the Speaker of the House of Representatives and shall provide copies to the county commissions of the counties set forth in subparagraph 17. ~~sub-subparagraph b.~~ The books and records of any facilities receiving compensation from an environmental protection disposal fee shall be open to the Florida Public Service Commission and the Auditor General for review upon request.

19.~~7.~~ The Department of Health shall require all entities disposing of septage within the Lake Okeechobee watershed to develop and submit to that agency an agricultural use plan that limits applications based upon phosphorus loading consistent with the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. ~~By July 1, 2005, phosphorus concentrations originating from these application sites may not exceed the limits established in the district's WOD program.~~

20.~~8.~~ The Department of Agriculture and Consumer Services shall initiate rulemaking requiring entities within the Lake Okeechobee watershed which land-apply animal manure to develop resource management system level conservation plans, according to United States Department of Agriculture criteria, which limit such application. Such rules shall ~~may~~ 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.

21. The district shall revise chapter 40E-61, Florida Administrative Code, to be consistent with this section and s. 403.067; provide for a monitoring program for nonpoint source


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dischargers required to monitor water quality by s. 403.067; and provide for the results of such monitoring to be reported to the coordinating agencies.

~~9. The district, the department, or the Department of Agriculture and Consumer Services, as appropriate, shall implement those alternative nutrient reduction technologies determined to be feasible pursuant to subparagraph (d)6.~~

~~(d) *Lake Okeechobee Watershed Research and Water Quality Monitoring Program.*—The district, in cooperation with the other coordinating agencies, shall establish a Lake Okeechobee Watershed Research and Water Quality Monitoring Program that builds upon the district's existing Lake Okeechobee research program. The program shall:~~

~~1. 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, including water quality for total phosphorus, and measure compliance with water quality standards for total phosphorus, including any applicable total maximum daily load for the Lake Okeechobee watershed as established pursuant to s. 403.067. Every 3 years, the district shall reevaluate water quality and quantity data to ensure that the appropriate projects are being designated and implemented to meet the water quality and storage goals of the plan. The district shall also implement a total phosphorus monitoring program at appropriate structures owned or operated by the South Florida Water Management District and within the Lake Okeechobee watershed.~~

~~2. Develop a Lake Okeechobee water quality model that~~

~~reasonably represents phosphorus dynamics of the lake and incorporates an uncertainty analysis associated with model predictions.~~

~~3. Determine the relative contribution of phosphorus from all identifiable sources and all primary and secondary land uses.~~

~~4. Conduct an assessment of the sources of phosphorus from the Upper Kissimmee Chain-of-Lakes and Lake Istokpoga, and their relative contribution to the water quality of Lake Okeechobee. The results of this assessment shall be used by the coordinating agencies to develop interim measures, best management practices, or regulation, as applicable.~~

~~5. Assess current water management practices within the Lake Okeechobee watershed and develop recommendations for structural and operational improvements. Such recommendations shall balance water supply, flood control, estuarine salinity, maintenance of a healthy lake littoral zone, and water quality considerations.~~

~~6. Evaluate the feasibility of alternative nutrient reduction technologies, including sediment traps, canal and ditch maintenance, fish production or other aquaculture, bioenergy conversion processes, and algal or other biological treatment technologies.~~

~~7. 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.~~

(c) ~~(e)~~ *Lake Okeechobee Exotic Species Control Program.*—The coordinating agencies shall identify the exotic species that

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threaten the native flora and fauna within the Lake Okeechobee watershed and develop and implement measures to protect the native flora and fauna.

(d) ~~(f)~~ *Lake Okeechobee Internal Phosphorus Management Program.*—The district, in cooperation with the other coordinating agencies and interested parties, shall evaluate the feasibility of ~~complete a~~ Lake Okeechobee internal phosphorus load removal projects ~~feasibility study~~. The evaluation ~~feasibility study~~ shall be based on technical feasibility, as well as economic considerations, and shall consider ~~address~~ all reasonable methods of phosphorus removal. If projects ~~methods~~ are found to be feasible, the district shall immediately pursue the design, funding, and permitting for implementing such projects ~~methods~~.

(e) ~~(g)~~ *Lake Okeechobee Watershed Protection Program ~~Plan~~ implementation.*—The coordinating agencies shall be jointly responsible for implementing the Lake Okeechobee Watershed Protection Program ~~Plan~~, consistent with the statutory authority and responsibility of each agency. Annual funding priorities shall be jointly established, and the highest priority shall be assigned to programs and projects that address sources that have the highest relative contribution to loading and the greatest potential for reductions needed to meet the total maximum daily loads. In determining funding priorities, the coordinating agencies shall also consider the need for regulatory compliance, the extent to which the program or project is ready to proceed, and the availability of federal matching funds or other nonstate funding, including public-private partnerships. Federal and other nonstate funding shall be maximized to the greatest extent


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practicable.

(f) ~~(h)~~ *Priorities and implementation schedules.*—The coordinating agencies are authorized and directed to establish priorities and implementation schedules for the achievement of total maximum daily loads, compliance with the requirements of s. 403.067, and compliance with applicable water quality standards within the waters and watersheds subject to this section.

~~(i) *Legislative ratification.*—The coordinating agencies shall submit the Phase II technical plan developed pursuant to paragraph (b) to the President of the Senate and the Speaker of the House of Representatives prior to the 2008 legislative session for review. If the Legislature takes no action on the plan during the 2008 legislative session, the plan is deemed approved and may be implemented.~~

(4) CALOOSAHATCHEE RIVER WATERSHED PROTECTION PROGRAM AND ST. LUCIE RIVER WATERSHED PROTECTION PROGRAM.—A protection program shall be developed and implemented as specified in this subsection. In order to protect and restore surface water resources, the program shall address the reduction of pollutant loadings, restoration of natural hydrology, and compliance with applicable state water quality standards. The program shall be achieved through a phased program of implementation. In addition, pollutant load reductions based upon adopted total maximum daily loads established in accordance with s. 403.067 shall serve as a program objective. In the development and administration of the program, the coordinating agencies shall maximize opportunities provided by federal and local government cost-sharing programs and opportunities for partnerships with

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the private sector and local government. The program ~~plan~~ shall include a goal for salinity envelopes and freshwater inflow targets for the estuaries based upon existing research and documentation. The goal may be revised as new information is available. This goal shall seek to reduce the frequency and duration of undesirable salinity ranges while meeting the other water-related needs of the region, including water supply and flood protection, while recognizing the extent to which water inflows are within the control and jurisdiction of the district.

(a) *Caloosahatchee River Watershed Protection Plan.* ~~No later than January 1, 2009,~~ The district, in cooperation with the other coordinating agencies, Lee County, and affected counties and municipalities, shall complete a River Watershed Protection Plan in accordance with this subsection. The Caloosahatchee River Watershed Protection Plan shall identify the geographic extent of the watershed, be coordinated as needed with the plans developed pursuant to paragraph (3)(a) and paragraph (c) ~~(b)~~ of this subsection, and ~~contain an implementation schedule for pollutant load reductions consistent with any adopted total maximum daily loads and compliance with applicable state water quality standards. The plan shall~~ include the Caloosahatchee River Watershed Construction Project and the Caloosahatchee River Watershed Research and Water Quality Monitoring Program.~~:~~

1. Caloosahatchee River Watershed Construction Project.—To improve the hydrology, water quality, and aquatic habitats within the watershed, the district shall, no later than January 1, 2012, plan, design, and construct the initial phase of the Watershed Construction Project. In doing so, the district shall:

a. Develop and designate the facilities to be constructed to achieve stated goals and objectives of the Caloosahatchee River Watershed Protection Plan.

b. Conduct scientific studies that are necessary to support the design of the Caloosahatchee River Watershed Construction Project facilities.

c. Identify the size and location of all such facilities.

d. Provide a construction schedule for all such facilities, including the sequencing and specific timeframe for construction of each facility.

e. Provide a schedule for the acquisition of lands or sufficient interests necessary to achieve the construction schedule.

f. Provide a schedule of costs and benefits associated with each construction project and identify funding sources.

g. To ensure timely implementation, coordinate the design, scheduling, and sequencing of project facilities with the coordinating agencies, Lee County, other affected counties and municipalities, and other affected parties.

2. Caloosahatchee River Watershed Research and Water Quality Monitoring Program.—The district, in cooperation with the other coordinating agencies and local governments, shall implement a Caloosahatchee 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 Caloosahatchee River watershed and their

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relative contributions to the timing and volume of water delivered to the estuary.

(b)~~2.~~ *Caloosahatchee River Watershed* Basin Management *Action Plans* ~~Pollutant Control Program.~~ The basin management action plans adopted pursuant to s. 403.067 for the Caloosahatchee River watershed shall be the Caloosahatchee River Watershed Pollutant Control Program. The plans shall be ~~is~~ designed to be a multifaceted approach to reducing pollutant loads by improving the management of pollutant sources within the Caloosahatchee 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 utilization of alternative technologies for pollutant reduction, such as cost-effective biologically based, hybrid wetland/chemical and other innovative nutrient control technologies. The plans shall contain an implementation schedule for pollutant load reductions consistent with the adopted total maximum daily load. As provided in s. 403.067(7)(a)5., the Caloosahatchee River Watershed Basin Management Action Plan 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 department shall develop a schedule to establish 5-, 10-, and 15-year measurable milestones and a target for achieving water quality improvement consistent with the provisions of this section. The schedule shall be used to provide guidance for planning and funding purposes and is

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exempt from the provisions of s. 120.54(l)(a). An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made, as appropriate, as a result of each 5-year review. The assessment shall 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, measureable milestones, and a target for achieving water quality improvement consistent with the provisions of this section shall be adopted into the plan revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies must follow the procedures set forth in s. 403.067(7)(c)4. Revised basin management action plans must be adopted pursuant to s. 403.067(7)(a)4. 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.

1.~~a.~~ Nonpoint source best management practices consistent with s. 403.067 ~~paragraph (3)(c)~~, designed to achieve the objectives of the Caloosahatchee 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.

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

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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.

3.~~c.~~ 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 harmful discharges by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, or increasing aquifer recharge, are eligible for grants available under this section from the coordinating agencies.

4.~~d.~~ The Caloosahatchee River Watershed Basin Management Action Plans ~~Pollutant Control Program~~ shall require assessment of current water management practices within the watershed and shall require development of recommendations for structural, nonstructural, and operational improvements. Such recommendations shall consider and balance water supply, flood control, estuarine salinity, aquatic habitat, and water quality considerations.

5.~~e.~~ ~~After December 31, 2007,~~ The department may not authorize the disposal of domestic wastewater biosolids ~~residuals~~ within the Caloosahatchee River watershed unless the applicant can affirmatively demonstrate that the nutrients in the biosolids ~~residuals~~ will not add to nutrient loadings in the watershed. This demonstration shall be based on achieving a net balance between nutrient imports relative to exports on the

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permitted application site. Exports shall include only nutrients removed from the watershed through products generated on the permitted application site. This prohibition does not apply to Class AA biosolids ~~residuals~~ that are marketed and distributed as fertilizer products in accordance with department rule.

6.~~f.~~ The Department of Health shall require all entities disposing of septage within the Caloosahatchee River watershed to develop and submit to that agency an agricultural use plan that limits applications based upon nutrient loading consistent with any basin management action plan adopted pursuant to s. 403.067. ~~By July 1, 2008, nutrient concentrations originating from these application sites may not exceed the limits established in the district's WOD program.~~

7.~~g.~~ The Department of Agriculture and Consumer Services shall require ~~initiate rulemaking requiring~~ entities within the Caloosahatchee River watershed which land-apply animal manure to develop a resource management system level conservation plan, according to United States Department of Agriculture criteria, which limit such application. Such rules shall ~~may~~ 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.

8. The district shall initiate rulemaking to provide for a monitoring program for nonpoint source dischargers required to monitor water quality pursuant to s. 403.067(7)(b)2.g. or s. 403.067(7)(c)3. The results of such monitoring must be reported to the coordinating agencies.

~~3. Caloosahatchee River Watershed Research and Water~~

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~~Quality Monitoring Program.—The district, in cooperation with the other coordinating agencies and local governments, shall establish a Caloosahatchee 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 the Lake Okeechobee and Caloosahatchee River watersheds and their relative contributions to the timing and volume of water delivered to the estuary.~~

(c)~~(b)~~ *St. Lucie River Watershed Protection Plan.*—~~No later than January 1, 2009,~~ The district, in cooperation with the other coordinating agencies, Martin County, and affected counties and municipalities shall complete a plan in accordance with this subsection. The St. Lucie River Watershed Protection Plan shall identify the geographic extent of the watershed, be coordinated as needed with the plans developed pursuant to paragraph (3)(a) and paragraph (a) of this subsection, and ~~contain an implementation schedule for pollutant load reductions consistent with any adopted total maximum daily loads and compliance with applicable state water quality standards. The plan shall~~ include the St. Lucie River Watershed Construction Project and St. Lucie River Watershed Research and Water Quality Monitoring Program.~~:~~

1. St. Lucie River Watershed Construction Project.—To improve the hydrology, water quality, and aquatic habitats within the watershed, the district shall, no later than January 1, 2012, plan, design, and construct the initial phase of the

Watershed Construction Project. In doing so, the district shall:

a. Develop and designate the facilities to be constructed to achieve stated goals and objectives of the St. Lucie River Watershed Protection Plan.

b. Identify the size and location of all such facilities.

c. Provide a construction schedule for all such facilities, including the sequencing and specific timeframe for construction of each facility.

d. Provide a schedule for the acquisition of lands or sufficient interests necessary to achieve the construction schedule.

e. Provide a schedule of costs and benefits associated with each construction project and identify funding sources.

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.

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.

(d) ~~2.~~ *St. Lucie River Watershed Basin Management Action*

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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 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. As provided in 403.067(7)(a)5., the St. Lucie Watershed Basin Management Action Plan 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 department shall develop a schedule to establish 5-, 10-, and 15-year measurable milestones and a target for achieving water quality improvement consistent with the provisions of this section. The schedule shall be used to provide guidance for planning and funding purposes and is exempt from the provisions of s. 120.54(l)(a). An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made, as appropriate, as a result of each 5-year review. The assessment shall be

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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, measureable milestones, and a target for achieving water quality improvement consistent with the provisions of this section shall be adopted into the plan. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies must follow the procedures set forth in s. 403.067(7)(c)4. Revised basin management action plans must be adopted pursuant to s. 403.067(7)(a)4. 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.

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.

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

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department or district which are necessary to maintain a federally delegated or approved program.

3.~~c.~~ 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 harmful discharges by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, or increasing aquifer recharge, are eligible for grants available under this section from the coordinating agencies.

4.~~d.~~ The St. Lucie River Watershed Basin Management Action Plans ~~Pollutant Control Program~~ shall require assessment of current water management practices within the watershed and shall require development of recommendations for structural, nonstructural, and operational improvements. Such recommendations shall consider and balance water supply, flood control, estuarine salinity, aquatic habitat, and water quality considerations.

5.~~e.~~ ~~After December 31, 2007,~~ The department may not authorize the disposal of domestic wastewater biosolids ~~residuals~~ within the St. Lucie River watershed unless the applicant can affirmatively demonstrate that the nutrients in the biosolids ~~residuals~~ will not add to nutrient loadings in the watershed. This demonstration shall be based on achieving a net balance between nutrient imports relative to exports on the permitted application site. Exports shall include only nutrients removed from the St. Lucie River watershed through products generated on the permitted application site. This prohibition does not apply to Class AA biosolids ~~residuals~~ that are marketed

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and distributed as fertilizer products in accordance with department rule.

6.~~f.~~ The Department of Health shall require all entities disposing of septage within the St. Lucie River watershed to develop and submit to that agency an agricultural use plan that limits applications based upon nutrient loading consistent with any basin management action plan adopted pursuant to s. 403.067. ~~By July 1, 2008, nutrient concentrations originating from these application sites may not exceed the limits established in the district's WOD program.~~

7.~~g.~~ The Department of Agriculture and Consumer Services shall initiate rulemaking requiring entities within the St. Lucie River watershed which land-apply animal manure to develop a resource management system level conservation plan, according to United States Department of Agriculture criteria, which limit such application. Such rules shall ~~may~~ 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.

8. The district shall initiate rulemaking to provide for a monitoring program for nonpoint source dischargers required to monitor water quality pursuant to s. 403.067(7)(b)2.g. or s. 403.067(7)(c)3. The results of such monitoring must be reported to the coordinating agencies.

~~3. 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~~

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~~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 the Lake Okeechobee and St. Lucie River watersheds and their relative contributions to the timing and volume of water delivered to the estuary.~~

(e) ~~(c)~~ *River Watershed Protection Plan implementation.*—The coordinating agencies shall be jointly responsible for implementing the River Watershed Protection Plans, consistent with the statutory authority and responsibility of each agency. Annual funding priorities shall be jointly established, and the highest priority shall be assigned to programs and projects that have the greatest potential for achieving the goals and objectives of the plans. In determining funding priorities, the coordinating agencies shall also consider the need for regulatory compliance, the extent to which the program or project is ready to proceed, and the availability of federal or local government matching funds. Federal and other nonstate funding shall be maximized to the greatest extent practicable.

(f) ~~(d)~~ *Evaluation.*—Beginning ~~By~~ March 1, 2020 ~~2012~~, and every 5 ~~3~~ years thereafter, concurrent with the updates of the basin management action plans adopted pursuant to s. 403.067, the department, ~~district~~ in cooperation with the other coordinating agencies, shall 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 ~~Plans~~. ~~Additionally,~~ The district shall identify modifications to facilities of the River Watershed Construction Projects, as appropriate, or any other elements of

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the River Watershed Protection Programs ~~Plans~~. The evaluation shall be included in the annual progress report submitted pursuant to this section.

(g) ~~(e)~~ *Priorities and implementation schedules.*—The coordinating agencies are authorized and directed to establish priorities and implementation schedules for the achievement of total maximum daily loads, the requirements of s. 403.067, and compliance with applicable water quality standards within the waters and watersheds subject to this section.

~~(f) *Legislative ratification.*—The coordinating agencies shall submit the River Watershed Protection Plans developed pursuant to paragraphs (a) and (b) to the President of the Senate and the Speaker of the House of Representatives prior to the 2009 legislative session for review. If the Legislature takes no action on the plan during the 2009 legislative session, the plan is deemed approved and may be implemented.~~

(5) ADOPTION AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS AND DEVELOPMENT OF BASIN MANAGEMENT ACTION PLANS.—The department is directed to expedite development and adoption of total maximum daily loads for the Caloosahatchee River and estuary. The department is further directed to~~, no later than December 31, 2008,~~ propose for final agency action total maximum daily loads for nutrients in the tidal portions of the Caloosahatchee River and estuary. The department shall initiate development of basin management action plans for Lake Okeechobee, the Caloosahatchee River watershed and estuary, and the St. Lucie River watershed and estuary as provided in s. 403.067 ~~s. 403.067(7)(a)~~ as follows:

(a) Basin management action plans shall be developed as

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soon as practicable as determined necessary by the department to achieve the total maximum daily loads established for the Lake Okeechobee watershed and the estuaries.

(b) The Phase II technical plan development pursuant to paragraph (3)(a) ~~(3)(b)~~, and the River Watershed Protection Plans developed pursuant to paragraphs (4)(a) and (c)~~(b)~~, shall provide the basis for basin management action plans developed by the department.

(c) As determined necessary by the department in order to achieve the total maximum daily loads, additional or modified projects or programs that complement those in the legislatively ratified plans may be included during the development of the basin management action plan.

(d) As provided in s. 403.067, management strategies and pollution reduction requirements set forth in a basin management action plan subject to permitting by the department under subsection (7) must be completed pursuant to the schedule set forth in the basin management action plan, as amended. The implementation schedule may extend beyond the 5-year permit term.

(e) As provided in s. 403.067, management strategies and pollution reduction requirements set forth in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a department or district issued permit or a permit modification issued in accordance with subsection (7).

~~(d) Development of basin management action plans that implement the provisions of the legislatively ratified plans~~

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~~shall be initiated by the department no later than September 30 of the year in which the applicable plan is ratified. Where a total maximum daily load has not been established at the time of plan ratification, development of basin management action plans shall be initiated no later than 90 days following adoption of the applicable total maximum daily load.~~

(6) ANNUAL PROGRESS REPORT.—Each March 1 the district, in cooperation with the other coordinating agencies, shall report on implementation of this section as part of the consolidated annual report required in s. 373.036(7). The annual report shall include a summary of the conditions of the hydrology, water quality, and aquatic habitat in the northern Everglades based on the results of the Research and Water Quality Monitoring Programs, the status of the Lake Okeechobee Watershed Construction Project, the status of the Caloosahatchee River Watershed Construction Project, and the status of the St. Lucie River Watershed Construction Project. In addition, the report shall contain an annual accounting of the expenditure of funds from the Save Our Everglades Trust Fund. At a minimum, the annual report shall provide detail by program and plan, including specific information concerning the amount and use of funds from federal, state, or local government sources. In detailing the use of these funds, the district shall indicate those designated to meet requirements for matching funds. The district shall prepare the report in cooperation with the other coordinating agencies and affected local governments. The department shall report on the status of the Lake Okeechobee Basin Management Action Plan, the Caloosahatchee River Watershed Basin Management Action Plan, and the St. Lucie River Watershed

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Basin Management Action Plan. The Department of Agriculture and Consumer Services shall report on the status of the implementation of the agricultural nonpoint source best management practices, including an implementation assurance report summarizing survey responses and response rates, site inspections, and other methods used to verify implementation of and compliance with best management practices in the Lake Okeechobee, Caloosahatchee and St. Lucie watersheds.

(7) LAKE OKEECHOBEE PROTECTION PERMITS.—

(a) The Legislature finds that the Lake Okeechobee Watershed Protection Program will benefit Lake Okeechobee and downstream receiving waters and is in ~~consistent with~~ the public interest. The Lake Okeechobee Watershed Construction Project and structures discharging into or from Lake Okeechobee shall be constructed, operated, and maintained in accordance with this section.

(b) Permits obtained pursuant to this section are in lieu of all other permits under this chapter or chapter 403, except those issued under s. 403.0885, if applicable. ~~No~~ Additional permits are not required for the Lake Okeechobee Watershed Construction Project, or structures discharging into or from Lake Okeechobee, if such project or structures are permitted under this section. Construction activities related to implementation of the Lake Okeechobee Watershed Construction Project may be initiated before ~~prior to~~ final agency action, or notice of intended agency action, on any permit from the department under this section.

(c)1. ~~Within 90 days of completion of the diversion plans set forth in Department Consent Orders 91-0694, 91-0707, 91-~~

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~~0706, 91-0705, and RT50-205564,~~ Owners or operators of existing structures which discharge into or from Lake Okeechobee that were subject to Department Consent Orders 91-0694, 91-0705, 91-0706, 91-0707, and RT50-205564 and that are subject to ~~the provisions of~~ s. 373.4592(4)(a) do not require a permit under this section and shall be governed by permits issued under ~~apply for a permit from the department to operate and maintain such structures. By September 1, 2000, owners or operators of all other existing structures which discharge into or from Lake Okeechobee shall apply for a permit from the department to operate and maintain such structures. The department shall issue one or more such permits for a term of 5 years upon the demonstration of reasonable assurance that schedules and strategies to achieve and maintain compliance with water quality standards have been provided for, to the maximum extent practicable, and that operation of the structures otherwise complies with provisions of~~ ss. 373.413 and 373.416 and the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067.

~~1. Permits issued under this paragraph shall also contain reasonable conditions to ensure that discharges of waters through structures:~~

~~a. Are adequately and accurately monitored;~~

~~b. Will not degrade existing Lake Okeechobee water quality and will result in an overall reduction of phosphorus input into Lake Okeechobee, as set forth in the district's Technical Publication 81-2 and the total maximum daily load established in accordance with s. 403.067, to the maximum extent practicable;~~ ~~and~~

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~~c. Do not pose a serious danger to public health, safety, or welfare.~~

2. For the purposes of this paragraph, owners and operators of existing structures which are subject to ~~the provisions of~~ s. 373.4592(4)(a) and which discharge into or from Lake Okeechobee shall be deemed in compliance with this paragraph ~~the term "maximum extent practicable"~~ if they are in full compliance with the conditions of permits under chapter ~~chapters 40E-61 and~~ 40E-63, Florida Administrative Code.

3. By January 1, 2016 ~~2004~~, the district shall submit to the department a complete application for a permit modification to the Lake Okeechobee structure permits to incorporate proposed changes necessary to ensure that discharges through the structures covered by this permit are consistent with the basin management action plan adopted pursuant to ~~achieve state water quality standards, including the total maximum daily load established in accordance with~~ s. 403.067. ~~These changes shall be designed to achieve such compliance with state water quality standards no later than January 1, 2015.~~

(d) The department shall require permits for district regional projects that are part of the Lake Okeechobee Watershed Construction Project ~~facilities~~. However, projects ~~identified in sub-subparagraph (3)(b)1.b.~~ that qualify as exempt pursuant to s. 373.406 do ~~shall~~ not require ~~need~~ permits under this section. Such permits shall be issued for a term of 5 years upon the demonstration of reasonable assurances that:

1. District regional projects that are part of the Lake Okeechobee Watershed Construction Project shall ~~facility, based upon the conceptual design documents and any subsequent detailed~~

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~~design documents developed by the district, will~~ achieve the design objectives for phosphorus required in subparagraph (3)(a)1. ~~paragraph (3)(b)~~;

2. For water quality standards other than phosphorus, the quality of water discharged from the facility is of equal or better quality than the inflows;

3. Discharges from the facility do not pose a serious danger to public health, safety, or welfare; and

4. Any impacts on wetlands or state-listed species resulting from implementation of that facility of the Lake Okeechobee Construction Project are minimized and mitigated, as appropriate.

(e) At least 60 days before ~~prior to~~ the expiration of any permit issued under this section, the permittee may apply for a renewal thereof for a period of 5 years.

(f) Permits issued under this section may include any standard conditions provided by department rule which are appropriate and consistent with this section.

(g) Permits issued under ~~pursuant to~~ this section may be modified, as appropriate, upon review and approval by the department.

Section 20. Paragraphs (a) and (b) of subsection (6) of section 373.536, Florida Statutes, are amended to read:

373.536 District budget and hearing thereon.—

(6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN; WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

(a) Each district must, by the date specified for each item, furnish copies of the following documents to the Governor, the President of the Senate, the Speaker of the House of

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Representatives, the chairs of all legislative committees and subcommittees having substantive or fiscal jurisdiction over the districts, as determined by the President of the Senate or the Speaker of the House of Representatives as applicable, the secretary of the department, and the governing board of each county in which the district has jurisdiction or derives any funds for the operations of the district:

1. The adopted budget, to be furnished within 10 days after its adoption.

2. A financial audit of its accounts and records, to be furnished within 10 days after its acceptance by the governing board. The audit must be conducted in accordance with s. 11.45 and the rules adopted thereunder. In addition to the entities named above, the district must provide a copy of the audit to the Auditor General within 10 days after its acceptance by the governing board.

3. A 5-year capital improvements plan, to be included in the consolidated annual report required by s. 373.036(7). The plan must include expected sources of revenue for planned improvements and must be prepared in a manner comparable to the fixed capital outlay format set forth in s. 216.043.

4. A 5-year water resource development work program to be furnished within 30 days after the adoption of the final budget. The program must describe the district's implementation strategy and include an annual funding plan for each of the 5 years included in the plan for the water resource and~~,~~ water supply~~,~~ development components, including ~~and~~ alternative water supply development, ~~components~~ of each approved regional water supply plan developed or revised under s. 373.709. The work program

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must address all the elements of the water resource development component in the district's approved regional water supply plans, as well as the water supply projects proposed for district funding and assistance. The annual funding plan shall 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 for consideration for state funding pursuant to s. 403.0616 shall be identified separately. The work program ~~and~~ must identify projects in the work program which will provide water; explain how each water resource and~~,~~ water supply~~, and alternative water supply development~~ project will produce additional water available for consumptive uses; estimate the quantity of water to be produced by each project; ~~and~~ provide an assessment of the contribution of the district's regional water supply plans in supporting the implementation of minimum flows and minimum water levels and water reservations; and ensure ~~providing~~ sufficient water is available ~~needed~~ to timely meet the water supply needs of existing and future reasonable-beneficial uses for a 1-in-10-year drought event and to avoid the adverse effects of competition for water supplies.

(b) Within 30 days after its submittal, the department shall review the proposed work program and submit its findings, questions, and comments to the district. The review must include a written evaluation of the program's consistency with the furtherance of the district's approved regional water supply plans, and the adequacy of proposed expenditures. As part of the review, the department shall post the work program on its website and give interested parties the opportunity to provide

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written comments on each district's proposed work program. Within 45 days after receipt of the department's evaluation, the governing board shall state in writing to the department which of the changes recommended in the evaluation it will incorporate into its work program submitted as part of the March 1 consolidated annual report required by s. 373.036(7) or specify the reasons for not incorporating the changes. The department shall include the district's responses in a final evaluation report and shall submit a copy of the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 21. Subsection (9) of section 373.703, Florida Statutes, is amended to read:

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

(9) May join with one or more other water management districts, counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, regional water supply authorities, <u>private landowners,</u> or self-suppliers for the purpose of carrying out its powers, and may contract with such other entities to finance acquisitions, construction, operation, and maintenance, provided that such contracts are consistent with the public interest. The contract may provide for contributions to be made by each party to the contract for the division and apportionment of the expenses of acquisitions, construction, operation, and maintenance, and for the division and

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apportionment of resulting benefits, services, and products. The contracts may contain other covenants and agreements necessary and appropriate to accomplish their purposes.

Section 22. Paragraph (b) of subsection (2), subsection (3), and paragraph (b) of subsection (4) of section 373.705, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

373.705 Water resource development; water supply development.—

(2) It is the intent of the Legislature that:

(b) Water management districts take the lead in identifying and implementing water resource development projects, and be responsible for securing necessary funding for regionally significant water resource development projects, including 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 a minimum flow or minimum water level, implement a recovery or prevention strategy or water reservation.

(3)(a) The water management districts shall fund and implement water resource development as defined in s. 373.019. The water management districts are encouraged to implement water resource development as expeditiously as possible in areas subject to regional water supply plans.

(b) Each governing board shall include in its annual budget submittals required under this chapter:

1. The amount of funds for each project in the annual funding plan developed pursuant to s. 373.536(6)(a)4.;

2. The total amount needed for the fiscal year to implement

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water resource development projects, as prioritized in its regional water supply plans; and

3. The amount of funds requested for each project submitted for consideration for state funding pursuant to s. 403.0616.

(4)

(b) Water supply development projects that meet the criteria in paragraph (a) and that meet one or more of the following additional criteria shall be given first consideration for state or water management district funding assistance:

1. The project brings about replacement of existing sources in order to help implement a minimum flow or minimum water level; ~~or~~

2. The project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9); or

3. The project reduces or eliminates the adverse effects of competition between legal users and the natural system.

(5) The water management districts shall 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.

Section 23. Paragraph (f) of subsection (3), paragraph (a) of subsection (6), and paragraph (e) of subsection (8) of section 373.707, Florida Statutes, are amended to read:

373.707 Alternative water supply development.—

(3) The primary roles of the water management districts in water resource development as it relates to supporting alternative water supply development are:

(f) The provision of technical and financial assistance to

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local governments and publicly owned and privately owned water utilities for alternative water supply projects and for self-suppliers for alternative water supply projects to the extent assistance for self-suppliers promotes the policies in paragraph (1)(f).

(6)(a) Where state ~~The statewide~~ funds are provided through specific appropriation for a priority project of the water resources work program pursuant to s. 403.0616, or pursuant to the Water Protection and Sustainability Program, such funds serve to supplement existing water management district or basin board funding for alternative water supply development assistance and should not result in a reduction of such funding. For each project identified in the annual funding plans prepared pursuant to s. 373.536(6)(a)4. ~~Therefore~~, the water management districts shall include in the annual tentative and adopted budget submittals required under this chapter the amount of funds allocated for water resource development that supports alternative water supply development and the funds allocated for alternative water supply projects ~~selected for inclusion in the Water Protection and Sustainability Program~~. It shall be the goal of each water management district and basin boards that the combined funds allocated annually for these purposes be, at a minimum, the equivalent of 100 percent of the state funding provided to the water management district for alternative water supply development. If this goal is not achieved, the water management district shall provide in the budget submittal an explanation of the reasons or constraints that prevent this goal from being met, an explanation of how the goal will be met in future years, and affirmation of match is required during the

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budget review process as established under s. 373.536(5). The Suwannee River Water Management District and the Northwest Florida Water Management District shall not be required to meet the match requirements of this paragraph; however, they shall try to achieve the match requirement to the greatest extent practicable.

(8)

(e) Applicants for projects that may receive funding assistance pursuant to the Water Protection and Sustainability Program shall, at a minimum, be required to pay 60 percent of the project's construction costs. The water management districts may, at their discretion, totally or partially waive this requirement for projects sponsored by:

1. Financially disadvantaged small local governments as defined in former s. 403.885(5); or

2. Water users for projects determined by a water management district governing board to be in the public interest pursuant to paragraph (1)(f), if the projects are not otherwise financially feasible.

The water management districts or basin boards may, at their discretion, use ad valorem or federal revenues to assist a project applicant in meeting the requirements of this paragraph.

Section 24. Paragraph (a) of subsection (2) and paragraphs (a) and (e) of subsection (6) of section 373.709, Florida Statutes, are amended to read:

373.709 Regional water supply planning.—

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

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be limited to:

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

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

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

b. Agricultural demand projections used for determining the needs of agricultural self-suppliers must be based upon the best available data. In determining the best available data for agricultural self-supplied water needs, the district shall consider the data indicative of future water supply demands provided by the Department of Agriculture and Consumer Services pursuant to s. 570.93 and agricultural demand projection data

and analysis submitted by a local government pursuant to the public workshop described in subsection (1), if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the data provided by the Department of Agriculture and Consumer Services must be fully described, and the original data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options that are technically and financially feasible, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of alternative water supply projects. If such users propose a project to be listed as an alternative water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan must exceed the needs identified in subparagraph 1. and take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and minimum water levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be

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permittable and financially and technically feasible. The list of water supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

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

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

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

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

d. Identification of the entity that should implement each project option and the current status of project implementation.

(6) Annually and in conjunction with the reporting requirements of s. 373.536(6)(a)4., the department shall submit to the Governor and the Legislature a report on the status of regional water supply planning in each district. The report shall include:

(a) A compilation of the estimated costs ~~of~~ and an analysis of the sufficiency of potential sources of funding from all sources for water resource development and water supply development projects as identified in the water management district regional water supply plans.

(e) An overall assessment of the progress being made to develop water supply in each district, including, but not

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limited to, an explanation of how each project in the 5-year water resource development work program developed pursuant to s. 373.536(6)(a)4., either alternative or traditional, will produce, contribute to, or account for additional water being made available for consumptive uses, minimum flows and minimum water levels, or water reservations; an estimate of the quantity of water to be produced by each project;, and an assessment of the contribution of the district's regional water supply plan in providing sufficient water to meet the needs of existing and future reasonable-beneficial uses for a 1-in-10-year drought event, as well as the needs of the natural systems.

Section 25. Part VIII of chapter 373, Florida Statutes, consisting of sections 373.801, 373.802, 373.803, 373.805, 373.807, 373.811, and 373.813, Florida Statutes, is created and entitled the "Florida Springs and Aquifer Protection Act."

Section 26. Section 373.801, Florida Statutes, is created to read:

373.801 Legislative findings and intent.—

(1) The Legislature finds that springs are a unique part of this state's scenic beauty. Springs provide critical habitat for plants and animals, including many endangered or threatened species. Springs also provide immeasurable natural, recreational, economic, and inherent value. Springs are of great scientific importance in understanding the diverse functions of aquatic ecosystems. Water quality of springs is an indicator of local conditions of the Floridan Aquifer, which is a source of drinking water for many residents of this state. Water flows in springs may reflect regional aquifer conditions. In addition, springs provide recreational opportunities for swimming,

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canoeing, wildlife watching, fishing, cave diving, and many other activities in this state. These recreational opportunities and the accompanying tourism they provide are a benefit to local economies and the economy of the state as a whole.

(2) The Legislature finds that the water quantity and water quality in springs may be related. For regulatory purposes, the department has primary responsibility for water quality; the water management districts have primary responsibility for water quantity; and the Department of Agriculture and Consumer Services has primary responsibility for the development and implementation of agricultural best management practices. Local governments have primary responsibility for providing wastewater services and stormwater management. The foregoing responsible entities must coordinate to restore and maintain the water quantity and water quality of the Outstanding Florida Springs.

(3) The Legislature recognizes that:

(a) Springs are only as healthy as their springsheds. The groundwater that supplies springs is derived from water that recharges the aquifer system in the form of seepage from the land surface and through direct conduits, such as sinkholes. Springs may be adversely affected by polluted runoff from urban and agricultural lands; discharges resulting from inadequate wastewater and stormwater management practices; stormwater runoff; and reduced water levels of the Floridan Aquifer. As a result, the hydrologic and environmental conditions of a spring or spring run are directly influenced by activities and land uses within a springshed and by water withdrawals from the Floridan Aquifer.

(b) Springs, whether found in urban or rural settings, or

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on public or private lands, may be threatened by actual or potential flow reductions and declining water quality. Many of this state's springs are demonstrating signs of significant ecological imbalance, increased nutrient loading, and declining flow. Without effective remedial action, further declines in water quality and water quantity may occur.

(c) Springshed boundaries and areas of high vulnerability within a springshed need to be identified and delineated using the best available data.

(d) Springsheds typically cross water management district boundaries and local government jurisdictional boundaries, so a coordinated statewide springs protection plan is needed.

(e) The aquifers and springs of this state are complex systems affected by many variables and influences.

(4) The Legislature recognizes that action is urgently needed and, as additional data is acquired, action must be modified.

Section 27. Section 373.802, Florida Statutes, is created to read:

373.802 Definitions.—As used in this part, the term:

(1) "Department" means the Department of Environmental Protection, which includes the Florida Geological Survey or its successor agencies.

(2) "Local government" means a county or municipal government the jurisdictional boundaries of which include an Outstanding Florida Spring or any part of a springshed or delineated priority focus area of an Outstanding Florida Spring.

(3) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound

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drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land on which the owner has the legal right to install such system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(4) "Outstanding Florida Spring" includes all historic first magnitude springs, as determined by the department using the most recent Florida Geological Survey springs bulletin, and the following additional springs and associated spring runs:

(a) De Leon Springs;

(b) Peacock Springs;

(c) Poe Springs;

(d) Rock Springs;

(e) Wekiwa Springs; and

(f) Gemini Springs.

The term does not include submarine springs.

(5) "Priority focus area" means 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

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Outstanding Florida Spring, as determined by the department in consultation with the appropriate water management districts, and delineated in a basin management action plan.

(6) "Springshed" means the areas within the groundwater and surface water basins which contribute, based upon all relevant facts, circumstances, and data, to the discharge of a spring as defined by potentiometric surface maps and surface watershed boundaries.

(7) "Spring run" means a body of flowing water that originates from a spring or whose primary source of water is a spring or springs under average rainfall conditions.

(8) "Spring vent" means a location where groundwater flows out of a natural, discernible opening in the ground onto the land surface or into a predominantly fresh surface water body.

Section 28. Section 373.803, Florida Statutes, is created to read:

373.803 Delineation of priority focus areas for Outstanding Florida Springs.—Using the best data available from the water management districts and other credible sources, the department, in coordination with the water management districts, shall delineate priority focus areas for each Outstanding Florida Spring or group of springs that contains one or more Outstanding Florida Springs and is identified as impaired in accordance with s. 373.807. In delineating priority focus areas, the department shall consider groundwater travel time to the spring, hydrogeology, nutrient load, and any other factors that may lead to degradation of an Outstanding Florida Spring. The delineation of priority focus areas must be completed by July 1, 2018, and shall be effective upon incorporation in a basin management

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action plan.

Section 29. Section 373.805, Florida Statutes, is created to read:

373.805 Minimum flows and minimum water levels for Outstanding Florida Springs.—

(1) At the time a minimum flow or minimum water level is adopted pursuant to s. 373.042 for an Outstanding Florida Spring, if the spring is below or is projected within 20 years to fall below the minimum flow or minimum water level, a water management district or the department shall concurrently adopt a recovery or prevention strategy.

(2) When a minimum flow or minimum water level for an Outstanding Florida Spring is revised pursuant to s. 373.0421(3), if the spring is below or is projected within 20 years to fall below the minimum flow or minimum water level, a water management district or the department shall concurrently adopt a recovery or prevention strategy or modify an existing recovery or prevention strategy. A district or the department may adopt the revised minimum flow or minimum water level before the adoption of a recovery or prevention strategy if the revised minimum flow or minimum water level is less constraining on existing or projected future consumptive uses.

(3) For an Outstanding Florida Spring without an adopted recovery or prevention strategy, if a district or the department determines the spring has fallen below, or is projected within 20 years to fall below, the adopted minimum flow or minimum water level, a water management district or the department shall expeditiously adopt a recovery or prevention strategy.

(4) The recovery or prevention strategy for each

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Outstanding Florida Spring must, at a minimum, include:

(a) A listing of all specific projects identified for implementation of the plan;

(b) A priority listing of each project;

(c) For each listed project, the estimated cost of and the estimated date of completion;

(d) The source and amount of financial assistance to be made available by the water management district for each listed project, which may not be less than 25 percent of the total project cost unless a specific funding source or sources are identified which will provide more than 75 percent of the total project cost. The Northwest Florida Water Management District and the Suwannee River Water Management District are not required to provide matching funds pursuant to this paragraph;

(e) An estimate of each listed project's benefit to an Outstanding Florida Spring; and

(f) An implementation plan designed with a target to achieve the adopted minimum flow or minimum water level no more than 20 years after the adoption of a recovery or prevention strategy. The implementation plan must include a schedule of 5-, 10-, and 15-year measureable milestones intended to achieve the adopted minimum flow or minimum water level. The schedule is not a rule but is intended to provide guidance for planning and funding purposes and is exempt from the provisions of s. 120.54(1)(a).

(5) A local government may apply to the department for an extension of up to 5 years for any project in an adopted recovery or prevention strategy. The department may grant the extension if the local government provides to the department

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sufficient evidence that an extension is in the best interest of the public. For a local government in a rural area of opportunity, as defined in s. 288.0656, the department may grant an extension of up to 10 years.

Section 30. Section 373.807, Florida Statutes, is created to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2015, the department shall initiate assessment, pursuant to s. 403.067(3), of each Outstanding Florida Spring for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(1)(a) Concurrently with the adoption of a nutrient total maximum daily load for an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan, as specified in s. 403.067. For an Outstanding Florida Spring with a nutrient total maximum daily load adopted before July 1, 2015, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan by July 1, 2015. During the development of a basin management action plan, if the department identifies onsite sewage treatment and disposal systems as contributors of at least 20 percent of nonpoint source nutrient pollution which need to be addressed within local government jurisdictions, the basin management action plan shall include an onsite sewage treatment and disposal system remediation plan pursuant to subsection (3) for those systems identified as requiring remediation.

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(b) A basin management action plan for an Outstanding Florida Spring shall be adopted within 2 years after its initiation and must include, at a minimum:

1. A list of all specific projects and programs identified to implement a nutrient total maximum daily load;

2. A list of all specific projects identified in any incorporated onsite sewage treatment and disposal system remediation plan, if applicable;

3. A priority rank for each listed project;

4. For each listed project, a planning level cost estimateand the estimated date of completion;

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

6. An estimate of each listed project’s nutrient load reduction;

7. Identification of each point source or category of nonpoint sources, including, but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources; and

8. An implementation plan designed with a target to achieve the adopted nutrient total maximum daily load no more than 20 years after the adoption of a basin management action plan. The plan must include a schedule of 5-, 10-, and 15-year measureable milestones intended to achieve the adopted nutrient total maximum daily load. The schedule is not a rule but is intended

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to provide guidance for planning and funding purposes and is exempt from the provisions of s. 120.54(1)(a).

(c) For a basin management action plan adopted before July 1, 2015, which addresses an Outstanding Florida Spring, the department or the department in conjunction with a water management district must revise the plan if necessary to comply with this section to this section by July 1, 2018.

(d) Upon approval of an onsite sewage treatment and disposal system remediation plan by the department, the plan shall be deemed incorporated as part of the appropriate basin management action plan pursuant to s. 403.067(7).

(e) A local government may apply to the department for an extension of up to 5 years for any project in an adopted basin management action plan. A local government in a rural area of opportunity, as defined in s. 288.0656, may apply for an extension of up to 10 years for such a project. The department may grant the extension if the local government provides to the department sufficient evidence that an extension is in the best interest of the public.

(2) Within 12 months after the adoption of a basin management action plan containing a priority focus area or areas of an Outstanding Florida Spring that is fully or partially within the jurisdiction of a local government, the local government must develop, enact, and implement an ordinance that meets or exceeds the requirements of the department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. The department shall revise the model ordinance to require that, within a priority focus area of an Outstanding Florida Spring with an adopted nutrient total maximum daily

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load, the nitrogen application rate of any fertilizer applied to turf or landscape plants may not exceed the lowest basic maintenance rate of the most recent recommendations by the Institute of Food and Agricultural Sciences.

(3) As part of a basin management action plan that includes an Outstanding Florida Spring, the department, in consultation with the Department of Health, relevant local governments, and relevant local public and private wastewater utilities, shall develop an onsite sewage treatment and disposal system remediation plan for a spring for which the department determines onsite sewage treatment and disposal systems within a priority focus area contribute at least 20 percent of nonpoint source nutrient pollution. This plan shall be completed and adopted as part of the basin management action plan no later than the first 5-year milestone required by s. 373.807(2)(b)8. In preparing this plan, the department shall:

(a) Collect and evaluate credible scientific information on the effect of nutrients, particularly forms of nitrogen, on springs and springs systems;

(b) Develop and implement a public education plan to provide area residents with reliable, understandable information about onsite sewage treatment and disposal systems and springs; and

(c) Develop projects necessary to reduce the nutrient impacts from onsite sewage treatment and disposal systems.

The plan shall include options for repair, upgrade, replacement, drainfield modification, addition of effective nitrogen reducing features, connection to a central sewerage system or other

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action for systems or groups of systems within a priority focus area which contribute at least 20 percent of nonpoint source nutrient pollution. The department shall include in the plan a priority ranking for each system or group of systems that require remediation and shall award funds to implement the remediation projects identified in the basin management action plan contingent on specific appropriation 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 department may consider expected nutrient reduction benefit per unit cost, size and scope of project, relative local financial contribution to the project, financial impact on property owners and the community. The department may waive matching funding requirements for proposed projects within an area designated as a rural area of opportunity under s. 288.0656.

(4) The department shall provide notice to a local government of all permit applicants under s. 403.814(12) in a priority focus area of an Outstanding Florida Spring over which the local government has full or partial jurisdiction.

Section 31. Section 373.811, Florida Statutes, is created to read:

373.811 Prohibited activities within a priority focus area.—The following activities are prohibited within a priority focus area in effect for an Outstanding Florida Spring:

(1) New domestic wastewater disposal facilities, including rapid infiltration basins, with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet

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an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, expressed as N, on an annual permitted basis, or a more stringent treatment standard if the department determines the more stringent standard is necessary to attain a total maximum daily load for the Outstanding Florida Spring.

(2) New onsite sewage treatment and disposal systems on lots of less than 1 acre, if the addition of the specific systems conflicts with an onsite treatment and disposal system remediation plan incorporated into a basin management action plan in accordance with s. 373.807(3).

(3) New facilities for the disposal of hazardous waste.

(4) The land application of Class A or Class B domestic wastewater biosolids not in accordance with a department 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.

(5) New agriculture operations that do not implement best management practices, measures necessary to achieve pollution reduction levels established by the department, or groundwater monitoring plans approved by a water management district or the department.

Section 32. Section 373.813, Florida Statutes, is created to read:

373.813 Rules.—

(1) The department shall adopt rules to improve water quantity and water quality to administer this part, as applicable.

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(2)(a) The Department of Agriculture and Consumer Services is the lead agency coordinating the reduction of agricultural nonpoint sources of pollution for the protection of Outstanding Florida Springs. The Department of Agriculture and Consumer Services and the department, pursuant to s. 403.067(7)(c)4., shall study new or revised agricultural best management practices for improving and protecting Outstanding Florida Springs and, if necessary, in cooperation with applicable local governments and stakeholders, initiate rulemaking to require the implementation of such practices within a reasonable period.

(b) The department, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences shall cooperate in conducting the necessary research and demonstration projects to develop improved or additional nutrient management tools, including the use of controlled release fertilizer that can be used by agricultural producers as part of an agricultural best management practices program. The development of such tools must reflect a balance between water quality improvement and agricultural productivity and, if applicable, must be incorporated into the revised agricultural best management practices adopted by rule by the Department of Agriculture and Consumer Services.

Section 33. Subsections (25) and (29) of section 403.061, Florida Statutes, are amended, and subsection (45) is added to that section, to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and

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promulgated by it and, for this purpose, to:

(25)(a) Establish and administer a program for the restoration and preservation of bodies of water within the state. The department shall have the power to acquire lands, to cooperate with other applicable state or local agencies to enhance existing public access to such bodies of water, and to adopt all rules necessary to accomplish this purpose.

(b) Create a consolidated water resources work plan, in consultation with state agencies, water management districts, regional water supply authorities, and local governments, which provides a geographic depiction of the total inventory of water resources projects and regionally significant water supply projects currently under construction, completed in the previous 5 years, or planned to begin construction in the next 5 years. The consolidated work plan must include for each project a description of the project, the total cost of the project, and identification of the governmental entity financing the project. This information together with the information provided pursuant to paragraph (45)(a) is intended to facilitate the ability of the Florida Water Resources Advisory Council, the Legislature, and the public to consider the projects contained in the tentative water resources work program developed pursuant to s. 403.0616 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 department may adopt rules to accomplish this purpose.

(29)(a) Adopt by rule special criteria to protect Class II and Class III shellfish harvesting waters. Such rules may include special criteria for approving docking facilities that

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have 10 or fewer slips if the construction and operation of such facilities will not result in the closure of shellfish waters.

(b) Adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply. These designated surface waters shall have the same water quality criteria protections as waters designated for fish consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife, and shall be free from discharged substances at a concentration that, alone or in combination with other discharged substances, would require significant alteration of permitted treatment processes at the permitted treatment facility or that would otherwise prevent compliance with applicable state drinking water standards in the treated water. 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 to the potable water supply classification.

(45)(a) Create and maintain a web-based, interactive map that includes, at a minimum:

1. All watersheds and each water body within those watersheds;

2. The county or counties in which the watershed or water body is located;

3. The water management district or districts in which the watershed or water body is located;

4. Whether a minimum flow or minimum water level has been adopted for the water body, and if such minimum flow or minimum water level has not been adopted, the anticipated adoption date;

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5. Whether a recovery or prevention strategy has been adopted for the watershed or water body and, if such a plan has not been adopted, the anticipated adoption date;

6. The impairment status of each watershed or water body;

7. Whether a total maximum daily load has been adopted if the watershed or water body is listed as impaired and, if such total maximum daily load has not been adopted, the anticipated adoption date;

8. Whether a basin management action plan has been adopted for the watershed and, if such a plan has not been adopted, the anticipated adoption date;

9. Each project listed on the 5-year water resources work program developed pursuant to s. 373.036(7);

10. The agency or agencies and local sponsor, if any, responsible for overseeing the project;

11. The estimated cost and completion date of each project and the financial contribution of each entity;

12. The quantitative estimated benefit to the watershed or water body; and

13. The water projects completed within the last 5 years within the watershed or water body.

(b) The department and each water management district shall prominently display on their respective websites a hyperlink to the interactive map required by this subsection.

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

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Section 34. Section 403.0616, Florida Statutes, is created to read:

403.0616 Florida Water Resources Advisory Council.—

(1) The Florida Water Resources Advisory Council is hereby created within the department for the purpose of evaluating water resource projects prioritized and submitted by state agencies, water management districts, regional water supply authorities, or local governments. The council shall evaluate and recommend projects that are eligible for state funding as priority projects of statewide, regional, or critical local importance under this chapter or chapter 373. The council must review and evaluate all water resource projects that are prioritized and reported by state agencies or water management districts pursuant to s. 373.036(7)(b)8.c., or by local governments, or regional supply projects, if applicable, in order to provide the Legislature with recommendations for projects that improve or restore the water resources of this state. The council is also responsible for submitting a prioritization of 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 as provided in s. 403.0617.

(2) The Florida Water Resources Advisory Council consists of five voting members and five ex officio, nonvoting members as follows:

(a) 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

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Commission; one member with expertise in a scientific discipline related to water resources, appointed by the President of the Senate; and one member with expertise in a scientific discipline related to water resources, appointed by the Speaker of the House of Representatives, all of whom shall be voting members.

(b) The executive directors of each of the five water management districts, all of whom shall be nonvoting members.

(3) Members appointed by the President of the Senate and Speaker of the House of Representatives shall serve 2-year terms but may not serve more than a total of 6 years. 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.

(4) If a member of the council is disqualified from serving because he or she no longer holds the position required to serve under this section, the interim head of the agency shall serve as the agency representative.

(5) The two appointed council members shall receive reimbursement for expenses and per diem for travel to attend council meetings authorized pursuant to s. 112.061 while in the performance of their duties.

(6) The council shall hold periodic meetings at the request of the chair but must hold at least two public meetings, separately noticed, each year in which the public has the opportunity to participate and comment. Unless otherwise provided by law, notice for each meeting must be published in a newspaper of general circulation in the area where the meeting is to be held at least 5 days but no more than 15 days before the meeting date.

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(a) By July 15 of each year, the council shall release a tentative water resources work program containing legislative recommendations for water resource projects. The public has 30 days to submit comments regarding the tentative program.

(b) The council shall adopt the tentative work program containing its legislative recommendations and submit it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by August 31 of each year. An affirmative vote of three members of the council is required to adopt the tentative work program.

(7) The department shall provide primary staff support to the council and shall ensure that council meetings are electronically recorded. Such recordings must be preserved pursuant to chapters 119 and 257.

(8) The council shall recommend rules for adoption by the department to competitively evaluate, select, and rank projects for the tentative water resources work program. The council shall develop specific criteria for the evaluation, selection, and ranking of projects, including a preference for projects that will have a significant, measurable impact on improving water quantity or water quality; projects in areas of greatest impairment; projects of state or regional significance; projects recommended by multiple districts or multiple local governments cooperatively; projects with a significant monetary commitment by the local project sponsor or sponsors; projects in rural areas of opportunity as defined in s. 288.0656; projects that may be funded through appropriate loan programs; and projects that have significant private contributions of time or money.

(9) The department, in consultation with the Department of

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Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, and the water management districts, shall adopt rules to implement this section.

Section 35. Section 403.0617, Florida Statutes, is created to read:

403.0617 Innovative nutrient and sediment reduction and conservation pilot project program.—

(1) By December 31, 2015, the department shall adopt rules to competitively evaluate and rank projects for selection and prioritization by the Water Resources Advisory Council, pursuant to s. 403.0616, for submission to the Legislature for funding. These pilot 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 in the water bodies of the state. The department must include in the evaluation criteria a determination by the department that the pilot project will not be harmful to the ecological resources in the study area.

(2) In developing these rules, the department shall give preference to the projects that will result in the greatest improvement to water quality and water quantity for the dollars to be expended for the project. At a minimum, the department shall consider all of the following:

(a) The level of nutrient impairment of the waterbody, watershed, or water segment in which the project is located.

(b) The quantity of pollutants, particularly total nitrogen, which the project is estimated to remove from a water body, watershed, or water segment with an adopted nutrient total maximum daily load.

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(c) The potential for the project to provide a cost-effective solution to pollution caused by onsite sewage treatment and disposal systems.

(d) The flow necessary to restore a water resource to its adopted minimum flow or minimum water level.

(e) The anticipated impact the project will have on restoring or increasing flow or water level.

(f) The amount of matching funds for the project which will be provided by the entities responsible for implementing the project.

(g) Whether the project is located in a rural area of opportunity, as defined in s. 288.0656, with preference given to the local government responsible for implementing the project.

(h) For multiple-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project.

(i) The cost of the project and the length of time it will take to complete relative to its expected benefits.

(j) 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 36. Section 403.0623, Florida Statutes, is amended to read:

403.0623 Environmental data; quality assurance.—

(1) The department must establish, by rule, appropriate quality assurance requirements for environmental data submitted to the department and the criteria by which environmental data may be rejected by the department. The department may adopt and

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enforce rules to establish data quality objectives and specify requirements for training of laboratory and field staff, sample collection methodology, proficiency testing, and audits of laboratory and field sampling activities. Such rules may be in addition to any laboratory certification provisions under ss. 403.0625 and 403.863.

(2)(a) The department, in coordination with the water management districts and regional water supply authorities, shall establish 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 water management districts shall submit such data collected after June 30, 2015, to the department for analysis. The department shall analyze the data to ensure statewide consistency. The department shall maintain a centralized database for all testing results and analyses, which must be accessible by the water management districts.

(b) To the extent practicable, the department shall coordinate with federal agencies to ensure that its collection and analysis of water quality, water quantity, and related data, which may be used by any state agency, water management district, or local government, is consistent with this subsection.

(c) In order to receive state funds for the acquisition of lands or the financing of a water resource project, state agencies and water management districts must use the department's testing results and analysis, if available, as a prerequisite for any such request for funding.

(d) The department and the water management districts may

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adopt rules to implement this subsection.

Section 37. Subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, where appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For

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nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). Where appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies not less than 5 days nor more than 15 days before the public meeting. A basin management action plan

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does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan shall include:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

b. A description of best management practices adopted by rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;

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

e. A planning-level estimate of each listed project's expected load reduction, if applicable.

5.~~4.~~ The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement the provisions of this section.

6.~~5.~~ The basin management action plan 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. An assessment of


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progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures set forth in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 4.

7.~~6.~~ In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8.~~7.~~ The provisions of the department’s rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded

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activities or discharges has been adopted under this section.

(b) *Total maximum daily load implementation.*—

1. The department shall be the lead agency in coordinating the implementation of the total maximum daily loads through existing water quality protection programs. Application of a total maximum daily load by a water management district must be consistent with this section and does not require the issuance of an order or a separate action pursuant to s. 120.536(1) or s. 120.54 for the adoption of the calculation and allocation previously established by the department. Such programs may include, but are not limited to:

a. Permitting and other existing regulatory programs, including water-quality-based effluent limitations;

b. Nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(21), and public education;

c. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts or basin management action plans developed pursuant to this subsection;

d. Trading of water quality credits or other equitable economically based agreements;

e. Public works including capital facilities; or

f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent

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limits set forth for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES permit must allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan may not exceed 5 years. Upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, and permit conditions consistent with the plan must be established. Notwithstanding the other provisions of this subparagraph, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification may establish individual allocations before the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer system permits and other stormwater sources, implementation of a total maximum daily load or basin management action plan must be achieved, to the maximum extent practicable, through the use of best management practices or other management measures.

c. The basin management action plan does not relieve the discharger from any requirement to obtain, renew, or modify an NPDES permit or to abide by other requirements of the permit.

d. Management strategies set forth in a basin management

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action plan to be implemented by a discharger subject to permitting by the department must be completed pursuant to the schedule set forth in the basin management action plan. This implementation schedule may extend beyond the 5-year term of an NPDES permit.

e. Management strategies and pollution reduction requirements set forth in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to other state, regional, or local water quality programs, the pollutant reduction actions adopted in a basin management action plan must be implemented to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate compliance with the pollutant reductions established under subsection (6) by implementing the appropriate best management practices established pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by

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the department or a water management district based upon a failure to implement the responsibilities set forth in sub-subparagraph g.

i. A landowner, discharger, or other responsible person who is implementing applicable management strategies specified in an adopted basin management action plan may not be required by permit, enforcement action, or otherwise to implement additional management strategies, including water quality credit trading, to reduce pollutant loads to attain the pollutant reductions established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This subparagraph does not limit the authority of the department to amend a basin management action plan as specified in subparagraph (a)6. ~~(a)5.~~

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction

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established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b) ~~(13)(b)~~. These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12)(b) ~~(13)(b)~~ must be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, where applicable, must notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the

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adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from the provisions of s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of

best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3. and 4. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

6. The provisions of subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict

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with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

(d) *Enforcement and verification of basin management action plans and management strategies.*—

1. Basin management action plans are enforceable pursuant to this section and ss. 403.121, 403.141, and 403.161. Management strategies, including best management practices and water quality monitoring, are enforceable under this chapter.

2. No later than January 1, 2016:

a. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of water quality monitoring required in lieu of implementation of best management practices or other measures pursuant to s. 403.067(7)(b)2.g.;

b. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim measures, best management practices, or other measures adopted by rule pursuant to s. 403.067(7)(c)1.; and

c. The Department of Agriculture and Consumer Services, in consultation with the water management districts and the department, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, best management practices, or other measures adopted by rule pursuant to s. 403.067(7)(c)2.

The above rules shall include enforcement procedures applicable

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to the landowner, discharger, or other responsible person required to implement applicable management strategies, including best management practices, or water quality monitoring as a result of noncompliance.

Section 38. Section 403.0675, Florida Statutes, is created to read:

403.0675 Progress reports.—

(1) On or before July 1, beginning July 1, 2017:

(a) The department, in conjunction with the water management districts, shall submit progress reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of each total maximum daily load, basin management action plan, minimum flow or minimum water level, and recovery or prevention strategy adopted pursuant to s. 403.067 or parts I and VIII of chapter 373. The report must include the status of each project identified to achieve an adopted total maximum daily load or an adopted or minimum flow or minimum water level, as applicable. If a report indicates that any of the 5-, 10-, or 15-year milestones, or the 20-year target date, if applicable, for achieving a total maximum daily load or a minimum flow or minimum water level 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 total maximum daily load or the minimum flow or minimum water level by the target date.

(b) The Department of Agriculture and Consumer Services shall report to the Governor, the President of the Senate, and

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the Speaker of the House of Representatives on the status of the implementation of the agricultural nonpoint source best management practices including an implementation assurance report summarizing survey responses and response rates, site inspections and other methods used to verify implementation of and compliance with best management practices pursuant to basin management action plans.

Section 39. Subsection (21) is added to section 403.861, Florida Statutes, to read:

403.861 Department; powers and duties.—The department shall have the power and the duty to carry out the provisions and purposes of this act and, for this purpose, to:

(21)(a) Upon issuance of a construction permit to construct a new public water system drinking water treatment facility to provide potable water supply 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 department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(29)(b).

(b) For existing public water system drinking water treatment facilities that use a surface water of the state as a treated potable water supply, which surface water classification does not include potable water as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(29)(b).

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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network plan for the Florida Shared-Use Nonmotorized Trail Network; creating s. 339.83, F.S.; authorizing the department to enter into concession agreements with not-for-profit or private sector entities for certain commercial sponsorship signs, markings, and exhibits; authorizing the department to contract for the provision of certain services related to the trail sponsorship program; authorizing the department to adopt rules; amending s. 373.019, F.S.; revising the definition of the term "water resource development" to include technical assistance to self-suppliers under certain circumstances; amending s. 373.036, F.S.; requiring certain information to be included in the consolidated annual report for all projects related to water quality or water quantity; amending s. 373.042, F.S.; requiring the Department of Environmental Protection or the governing board of a water management district to adopt a minimum flow or minimum water level for an Outstanding Florida Spring using emergency rulemaking authority; requiring collaboration in the development and implementation of recovery or prevention strategies under certain circumstances; authorizing the department to use emergency rulemaking procedures under certain circumstances; amending s. 373.0421, F.S.; directing the department or water management district governing boards to adopt and implement certain recovery or prevention strategies concurrent with the adoption of minimum flows and minimum water levels; providing

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criteria for such recovery or prevention strategies; requiring certain amendments to regional water supply plans to be concurrent with relevant portions of the recovery or prevention strategy; directing water management districts to notify the department when water use permit applications are denied for a specified reason; providing for the review and update of regional water supply plans in such cases; conforming cross-references; creating s. 373.0465, F.S.; providing legislative intent; defining the term "Central Florida Water Initiative Area"; requiring the department, the St. Johns River Water Management District, the South Florida Water Management District, the Southwest Florida Water Management District, and the Department of Agriculture and Consumer Services to develop and implement a multidistrict regional water supply plan; providing plan criteria and requirements; providing applicability; requiring the department to adopt rules; amending s. 373.1501, F.S.; specifying authority of the South Florida Water Management District to allocate quantities of, and assign priorities for the use of, water within its jurisdiction; directing the district to provide recommendations to the United States Army Corps of Engineers when developing or implementing certain water control plans or regulation schedules; amending s. 373.218, F.S.; requiring the department to adopt a uniform definition of the term "harmful to the water resources"; amending s. 373.223, F.S.; requiring

consumptive use permits authorizing over a certain amount to be monitored on a specified basis; amending s. 373.2234, F.S.; directing water management district governing boards to consider the identification of preferred water supply sources for certain water users; amending s. 373.227, F.S.; prohibiting water management districts from modifying permitted allocation amounts under certain circumstances; requiring the water management districts to adopt rules to promote water conservation incentives; amending s. 373.233, F.S.; providing conditions under which the department and water management district governing boards are directed to give preference to certain applications; amending s. 373.4591, F.S.; providing priority consideration to certain public-private partnerships for water storage, groundwater recharge, and water quality improvements on private agricultural lands; amending s. 373.4595, F.S.; revising and providing definitions relating to the Northern Everglades and Estuaries Protection Program; clarifying provisions of the Lake Okeechobee Watershed Protection Program; directing the South Florida Water Management District to revise certain rules and provide for a watershed research and water quality monitoring program; revising provisions for the Caloosahatchee River Watershed Protection Program and the St. Lucie River Watershed Protection Program; revising permitting and annual reporting requirements relating to the Northern Everglades and Estuaries

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Protection Program; providing enforcement provisions for certain basin management action plans; amending s. 373.536, F.S.; requiring a water management district to include an annual funding plan in the water resource development work program; directing the department to post the work program on its website; amending s. 373.703, F.S.; authorizing water management districts to join with private landowners for the purpose of carrying out its powers; amending s. 373.705, F.S.; requiring governing boards to include certain information in their annual budget submittals; providing first consideration for funding assistance to certain water supply development projects; requiring water management districts to promote expanded cost-share criteria for additional conservation practices; amending s. 373.707, F.S.; authorizing water management districts to provide technical and financial assistance to certain self-suppliers and to waive certain construction costs of alternative water supply development projects sponsored by certain water users; amending s. 373.709, F.S.; requiring regional water supply plans to include traditional and alternative water supply project options that are technically and financially feasible; directing the department to include certain funding analyses and project explanations in regional water supply planning reports; creating part VIII of ch. 373, F.S., entitled the "Florida Springs and Aquifer Protection Act"; creating s. 373.801, F.S.; providing

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legislative findings and intent; creating s. 373.802, F.S.; defining terms; creating s. 373.803, F.S.; requiring the department to delineate a priority focus area for each Outstanding Florida Spring by a certain date; creating s. 373.805, F.S.; requiring a water management district or the department to adopt or revise various recovery or prevention strategies under certain circumstances by a certain date; providing minimum requirements for recovery or prevention strategies for Outstanding Florida Springs; authorizing local governments to apply for an extension for projects in an adopted recovery or prevention strategy; creating s. 373.807, F.S.; requiring the department to initiate assessments of Outstanding Florida Springs by a certain date; requiring the department to develop basin management action plans; authorizing local governments to apply for an extension for projects in an adopted basin management action plan; requiring local governments to adopt an urban fertilizer ordinance by a certain date; requiring the department, the Department of Health, and local governments to identify onsite sewage treatment and disposal systems within each priority focus area; requiring local governments to develop onsite sewage treatment and disposal system remediation plans; prohibiting property owners with identified onsite sewage treatment and disposal systems from being required to pay certain costs; creating s. 373.811, F.S.; specifying prohibited


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activities within a priority focus area of an Outstanding Florida Spring; creating s. 373.813, F.S.; providing rulemaking authority; amending s. 403.061, F.S.; requiring the department to create a consolidated water resources work plan; directing the department to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply; providing criteria for such rule; authorizing the reclassification of surface waters used for treated potable water supply notwithstanding such rule; requiring the department to create and maintain a web-based interactive map; creating s. 403.0616, F.S.; creating the Florida Water Resources Advisory Council to provide the Legislature with recommendations for projects submitted by governmental entities; requiring the council to consolidate various reports to enhance the water resources of this state; requiring the department to adopt rules; creating s. 403.0617, F.S.; requiring the department to adopt rules to fund certain pilot projects; amending s. 403.0623, F.S.; requiring the department to establish certain standards to ensure statewide consistency; requiring the department to maintain a centralized database for testing results and analysis of water quantity and quality data; requiring state agencies and water management districts to use the department’s testing results and analysis in order to receive certain funding; amending s. 403.067, F.S.; providing requirements for new or

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revised best management action plans; requiring the department adopt rules relating to the enforcement and verification of best management action plans and management strategies; creating s. 403.0675, F.S.; requiring the department to submit annual reports; amending s. 403.861, F.S.; directing the department to add treated potable water supply as a designated use of a surface water segment under certain 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:

Senate Amendment to Amendment (322890) (with title amendment)

Between lines 446 and 447
insert:

Section 9. Section 373.037, Florida Statutes, is created to read:

373.037 Pilot program for alternative water supply development in restricted allocation areas.—

(1) As used in this section, the term:

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(a) "Central Florida Water Initiative Area" means all of Orange, Osceola, Polk, and Seminole Counties, and southern Lake County, as designated by the Central Florida Water Initiative Guiding Document of January 30, 2015.

(b) "Lower East Coast Regional Water Supply Planning Area" means the areas withdrawing surface and groundwater from Water Conservation Areas 1, 2A, 2B, 3A, and 3B, Grassy Waters Preserve/Water Catchment Area, Pal Mar, J.W. Corbett Wildlife Management Area, Loxahatchee Slough, Loxahatchee River, Riverbend Park, Dupuis Reserve, Jonathan Dickinson State Park, Kitching Creek, Moonshine Creek, Cypress Creek, Hobe Grove Ditch, the Holey Land and Rotenberger Wildlife Management Areas, and the freshwater portions of the Everglades National Park, as designated by the South Florida Water Management District.

(c) "Restricted allocation area" means an area within a water supply planning region of the Southwest Florida Water Management District, the South Florida Water Management District, or the St. Johns River Water Management District where the governing board of the water management district has determined that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for the planning period pursuant to ss. 373.036 and 373.709 and where the governing board of the water management district has applied allocation restrictions with regard to the use of specific sources of water. For the purposes of this section, the term includes the Central Florida Water Initiative Area, the Lower East Coast Regional Water Supply Planning Area, the Southern Water Use Caution Area, and the Upper East Coast


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Regional Water Supply Planning Area.

(d) "Southern Water Use Caution Area" means all of Desoto, Hardee, Manatee, and Sarasota Counties and parts of Charlotte, Highlands, Hillsborough, and Polk Counties, as designated by the Southwest Florida Water Management District.

(e) "Upper East Coast Regional Water Supply Planning Area" means the areas withdrawing surface and groundwater from the Central and Southern Florida canals or the Floridan Aquifer, as designated by the South Florida Water Management District.

(2) The Legislature finds that:

(a) Local governments, regional water supply authorities, and government-owned and privately owned water utilities face significant challenges in securing funds for implementing large-scale alternative water supply projects in certain restricted allocation areas due to a variety of factors, such as the magnitude of the water resource challenges, the large number of water users, the difficulty of developing multijurisdictional solutions across district, county, and municipal boundaries, and the expense of developing large-scale alternative water supply projects identified in the regional water supply plans pursuant to s. 373.709.

(b) These challenges have resulted in some cases in failure to achieve minimum flows and minimum water levels, to mitigate and avoid harm to the water resource and related natural systems, to provide adequate water supply for all existing and projected reasonable-beneficial uses, and to sustain the water resources and related natural systems within certain restricted allocation areas.

(c) These factors make it necessary for the Southwest

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Florida Water Management District, the South Florida Water Management District, and the St. Johns River Water Management District 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.

(d) The traditional role of local governments, regional water supply authorities, and government-owned and privately owned water utilities will be maintained by requiring the water management districts 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.

(e) The development and implementation of one alternative water supply project each by the Southwest Florida Water Management District, the South Florida Water Management District, and the St. Johns River Water Management District within a restricted allocation area as a pilot project 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. Consideration shall be given to projects that provide reductions in damaging discharges to tide or are part of a recovery or prevention strategy for minimum flows and minimum water levels.

(3) The Southwest Florida Water Management District, the South Florida Water Management District, and the St. Johns River Water Management District shall each designate and implement an existing alternative water supply project, identified in its

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regional water supply plan, as its one pilot project or amend its regional water supply plan to add a new alternative water supply project as its one pilot project. The pilot project designation shall be made no later than July 1, 2016, and is not subject to the rulemaking requirements of chapter 120 or subject to legal challenge pursuant to ss. 120.569 and 120.57. Once designated, the pilot project shall 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). A water management district may designate an alternative water supply project located within another water management district if the project is located in a restricted allocation area designated by the other water management district and a substantial quantity of water provided by the alternative water supply project will be used within the designating water management district's boundaries.

(4) In addition to their other powers and duties under this chapter, the governing boards of the Southwest Florida Water Management District, the South Florida Water Management District, and the St. Johns River Water Management District have the following powers and are subject to the following restrictions in implementing their respective pilot projects pursuant to this section:

(a) 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.

(b) May not engage in local water supply distribution.

(c) 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 shall 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.

(d) 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 water management district's designation and implementation of the pilot project.

(e) In addition to the power to issue revenue bonds pursuant to s. 373.584, may issue revenue bonds for the purpose of paying the costs and expenses incurred in carrying out the purposes of this section or refunding obligations of the water management district issued pursuant to this section. All provisions of s. 373.584 relating to the issuance of revenue bonds which are not inconsistent with this section apply to the issuance of revenue bonds pursuant to this section. The water management districts may also issue bond anticipation notes in accordance with s. 373.584.

(f) May join with one or more other water management districts, counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, regional water supply authorities, self-

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suppliers, or other entities for the purpose of carrying out their powers, and may contract with any such other entities to finance or otherwise implement acquisitions, construction, and operation and maintenance, if such 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, operations and maintenance, benefits, services, and products. The contracts may contain other covenants and agreements necessary and appropriate to accomplish their purposes.

(5) The water management districts may provide up to 50 percent of funding assistance for the pilot project. If the pilot project selected by a water management district is the subject of a cooperative funding agreement, the water management district may not reduce the level of funding assistance previously committed.

(6) If the pilot project customers form a multijurisdictional water supply entity to implement and develop the pilot project selected by a water management district on or before July 1, 2017, and take substantive steps to develop and implement the project, such as 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 water management district is prohibited from proceeding with implementation and development of the selected pilot project. The water management district may designate a new pilot project within 1 year after


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the creation of the multijurisdictional entity and the completion of at least one substantive step by the multijurisdictional entity to implement the project.

(7) 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 water management district must transfer ownership and control of the pilot project to the pilot project customers upon repayment of any revenue bonds or other obligations issued by the water management district to develop and implement the pilot project and any outstanding expenses incurred by the water management district in constructing, operating, and maintaining the pilot project. Pilot project customers are not responsible for repayment of any cooperative funding provided by a water management district for the pilot project. In such an event, the water management district may develop and implement another pilot project within a restricted allocation area.

(8) No later than 3 years following designation of the pilot project pursuant to subsection (3), the Southwest Florida Water Management District, the South Florida Water Management District, and the St. Johns River Water Management District shall each submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the effectiveness of the pilot project, including the following information:

(a) A description of the alternative water supply project selected as a pilot project by the respective water management districts, including the quantity of water the project has

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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.

(b) 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.

(c) The capital and operation costs to be expended by the water management district in implementing the pilot project in comparison to other alternative water supply projects being developed and implemented in the restricted allocation area.

(d) The source of funds used or to be used by the water management district in developing and implementing the pilot project.

(e) 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.

(f) The benefits to the water resources and natural systems from implementation of the pilot project.

(g) A recommendation as to whether the traditional role of water management districts regarding the development and implementation of alternative water supply projects, as specified in ss. 373.705 and 373.707, should be revised and, if so, identification of the statutory changes necessary to expand the scope of the pilot program.

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

And the title is amended as follows:

Delete line 3853

and insert:

water quality or water quantity; creating s. 373.037, F.S.; defining terms; providing legislative findings; requiring certain water management districts to designate and implement certain pilot projects; providing powers and limitations for the governing boards of such water management districts; providing funding for certain pilot projects; requiring the districts to submit a report to the Governor and the Legislature on the effectiveness of the pilot program; amending s. 373.042,

152138

LEGISLATIVE ACTION

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

Senate Amendment to Amendment (322890) (with title amendment)

Between lines 2438 and 2439
insert:

Section 20. Paragraph (a) of subsection (1) and subsection (3) of section 373.467, Florida Statutes, are amended, to read:

373.467 The Harris Chain of Lakes Restoration Council.—There is created within the St. Johns River Water Management District, with assistance from the Fish and Wildlife

152138

Conservation Commission and the Lake County Water Authority, the Harris Chain of Lakes Restoration Council.

(1)(a) The council shall consist of nine voting members~~,~~ which shall include~~:~~ a representative of waterfront property owners, a representative of the sport fishing industry, a person with experience in ~~an~~ environmental science or regulation ~~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 the county who are ~~do~~ not required to meet any additional ~~of the other~~ qualifications for membership ~~enumerated in this paragraph~~, each to be appointed by the Lake County legislative delegation. The Lake County legislative delegation may waive the qualifications for membership on a case-by-case basis if good cause is shown. A ~~No~~ person serving on the council may not be appointed to a council, board, or commission of any council advisory group agency. The council members shall serve as advisors to the governing board of the St. Johns River Water Management District. The council is subject to ~~the provisions of~~ chapters 119 and 120.

(3) The council shall meet at the call of its chair, at the request of six of its members, or at the request of the chair of the governing board of the St. Johns River Water Management District. Resignation by a council member, or failure by a council member to attend three consecutive meetings without an excuse approved by the chair, results in a vacancy on the council.

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

And the title is amended as follows:

Between lines 3927 and 3928

insert:

373.467, F.S.; revising the qualifications for membership on the Harris Chain of Lakes Restoration Council; authorizing the Lake County legislative delegation to waive such membership qualifications for good cause; providing for council vacancies; amending s.

129140

LEGISLATIVE ACTION

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

Senate Amendment to Amendment (322890) (with directory and title amendments)

Delete lines 2537 - 2643
and insert:
(10) This section does not apply to the development and implementation of pilot projects pursuant to s. 373.037.
Section 22. Paragraph (b) of subsection (2) and subsections (3) and (4) of section 373.705, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

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373.705 Water resource development; water supply development.—

(2) It is the intent of the Legislature that:

(b) Water management districts take the lead in identifying and implementing water resource development projects, and be responsible for securing necessary funding for regionally significant water resource development projects, including regional 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 a minimum flow or minimum water level or to implement a recovery or prevention strategy or water reservation.

(3)(a) The water management districts shall fund and implement water resource development as defined in s. 373.019. The water management districts are encouraged to implement water resource development as expeditiously as possible in areas subject to regional water supply plans.

(b) Each governing board shall include in its annual budget submittals required under this chapter:

1. The amount of funds for each project in the annual funding plan developed pursuant to s. 373.536(6)(a)4.;

2. The total amount needed for the fiscal year to implement water resource development projects, as prioritized in its regional water supply plans; and

3. The amount of funds requested for each project submitted for consideration for state funding pursuant to s. 403.0616.

(4)(a) Water supply development projects that are consistent with the relevant regional water supply plans and that meet one or more of the following criteria shall receive

priority consideration for state or water management district funding assistance:

1. The project supports establishment of a dependable, sustainable supply of water which is not otherwise financially feasible;

2. 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

3. The project significantly implements reuse, storage, recharge, or conservation of water in a manner that contributes to the sustainability of regional water sources.

(b) Except for pilot projects identified in paragraph (c), water supply development projects that meet the criteria in paragraph (a) and that meet one or more of the following additional criteria shall be given first consideration for state or water management district funding assistance:

1. The project brings about replacement of existing sources in order to help implement a minimum flow or minimum water level; ~~or~~

2. The project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9); or

3. The project reduces or eliminates the adverse effects of competition between legal users and the natural system.

(c) First consideration for state or water management district funding for water supply development projects shall be given to pilot projects pursuant to s. 373.037 before consideration of water supply development projects identified in

129140

paragraphs (a) and (b) within the restricted allocation area where the pilot project is located.

(5) The water management districts shall 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.

Section 23. Paragraph (f) of subsection (3), paragraph (a) of subsection (6), and paragraphs (e) and (f) of subsection (8) of section 373.707, Florida Statutes, are amended to read:

373.707 Alternative water supply development.—

(3) The primary roles of the water management districts in water resource development as it relates to supporting alternative water supply development are:

(f) The provision of technical and financial assistance to local governments and publicly owned and privately owned water utilities for alternative water supply projects and for self-suppliers for alternative water supply projects to the extent assistance for self-suppliers promotes the policies in paragraph (1)(f).

(6)(a) Where state ~~The statewide~~ funds are provided through specific appropriation for a priority project of the water resources work program pursuant to s. 403.0616, or pursuant to the Water Protection and Sustainability Program, such funds serve to supplement existing water management district or basin board funding for alternative water supply development assistance and should not result in a reduction of such funding. For each project identified in the annual funding plans prepared pursuant to s. 373.536(6)(a)4. ~~Therefore~~, the water management districts shall include in the annual tentative and adopted

budget submittals required under this chapter the amount of funds allocated for water resource development that supports alternative water supply development and the funds allocated for alternative water supply projects ~~selected for inclusion in the Water Protection and Sustainability Program~~. It shall be the goal of each water management district and basin boards that the combined funds allocated annually for these purposes be, at a minimum, the equivalent of 100 percent of the state funding provided to the water management district for alternative water supply development. If this goal is not achieved, the water management district shall provide in the budget submittal an explanation of the reasons or constraints that prevent this goal from being met, an explanation of how the goal will be met in future years, and affirmation of match is required during the budget review process as established under s. 373.536(5). The Suwannee River Water Management District and the Northwest Florida Water Management District shall not be required to meet the match requirements of this paragraph; however, they shall try to achieve the match requirement to the greatest extent practicable.

(8)

(e) Applicants for projects that may receive funding assistance pursuant to the Water Protection and Sustainability Program shall, at a minimum, be required to pay 60 percent of the project's construction costs. The water management districts may, at their discretion, totally or partially waive this requirement for projects sponsored by:

1. Financially disadvantaged small local governments as defined in former s. 403.885(5); or

2. Water users for projects determined by a water management district governing board to be in the public interest pursuant to paragraph (1)(f), if the projects are not otherwise financially feasible.

The water management districts or basin boards may, at their discretion, use ad valorem or federal revenues to assist a project applicant in meeting the requirements of this paragraph.

(f) The governing boards shall determine those projects that will be selected for financial assistance. The governing boards may establish factors to determine project funding; however, significant weight shall be given to the following factors:

1. Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource impacts.

2. Whether the project reduces competition for water supplies.

3. Whether the project brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.

4. Whether the project will be implemented by a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.

5. The quantity of water supplied by the project as compared to its cost.

6. Projects in which the construction and delivery to end users of reuse water is a major component.

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7. Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority.

8. Whether the project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9).

9. 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.

10. Whether the project is a pilot project under s. 373.037.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

And the directory clause is amended as follows:

Delete lines 2516 - 2517

and insert:

Section 21. Subsection (9) of section 373.703, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

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

And the title is amended as follows:

Delete lines 3934 - 3946

and insert:

for the purpose of carrying out its powers; providing an exception for certain pilot projects; amending s. 373.705, F.S.; revising the legislative intent; requiring water management district governing boards


129140

to include certain information in their annual budget submittals; providing first consideration for funding assistance to certain water supply development projects; requiring water management districts to promote expanded cost-share criteria for additional conservation practices; amending s. 373.707, F.S.; authorizing water management districts to provide technical and financial assistance to certain self-suppliers and to waive certain construction costs of alternative water supply development projects sponsored by certain water users; requiring the governing board to give significant weight for project funding to whether the project is a pilot project; 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:

Senate Amendment to Amendment (322890) (with title amendment)

Between lines 3404 and 3405
insert:

Section 37. Subsection (17) is added to section 403.064, Florida Statutes, to read:

403.064 Reuse of reclaimed water.—

(17) The irrigation of edible crops that will not be peeled, skinned, cooked, or thermally processed before

869652

consumption and which allows for direct contact of reclaimed water on the crop is authorized for residential reclaimed water users.

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

And the title is amended as follows:

Delete line 4011

and insert:

analysis in order to receive certain funding; amending s. 403.064, F.S.; authorizing certain residents to reuse reclaimed water to irrigate specific edible crops; amending

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

592-02829B-15 2015918c1

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 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; creating s. 339.82, F.S.; requiring the department to develop a Shared-Use Nonmotorized Trail Network Plan; creating s. 339.83, F.S.; authorizing the department to enter into concession agreements with not-for-profit or private sector entities for certain commercial sponsorship signs, markings, and exhibits; authorizing the department to contract for the provision of certain

Florida Senate - 2015 (Corrected Copy) CS for SB 918

592-02829B-15 2015918c1

services related to the trail sponsorship program; authorizing the department to adopt rules; amending s. 373.019, F.S.; revising the definition of the term "water resource development" to include self-suppliers under certain circumstances; amending s. 373.036, F.S.; requiring certain information to be included in the consolidated annual report for each project related to water quality or water quantity; amending s. 373.042, F.S.; 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; requiring the establishment of interim minimum flows or minimum water levels if minimum flows or minimum levels have not been adopted; requiring the application of interim minimum flows or minimum water levels in water management districts that may affect an interim minimum flow or minimum water level established in another water management district; providing a deadline for development and implementation of recovery or prevention strategies under certain circumstances; authorizing the department to use emergency rulemaking procedures under certain circumstances; amending s. 373.0421, F.S.; directing the department and water management district governing boards to adopt and implement certain recovery or prevention strategies concurrent with the adoption of minimum flows and levels; providing criteria for such recovery or prevention

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

strategies; requiring amendments to regional water supply plans to be concurrent with relevant portions of the recovery or prevention strategy; directing water management districts to notify the department when water use permit applications are denied for a specified reason; providing for the review and update of regional water supply plans in such cases; conforming cross-references; creating s. 373.0465, F.S.; providing legislative intent; defining the term "Central Florida Water Initiative Area"; requiring the department, the St. Johns River Water Management District, the South Florida Water Management District, the Southwest Florida Water Management District, and the Department of Agriculture and Consumer Services to develop and implement a multidistrict regional water supply plan; providing plan criteria and requirements; providing applicability; requiring the department to adopt rules; amending s. 373.1501, F.S.; specifying authority of the South Florida Water Management District to allocate quantities of, and assign priorities for the use of, water within its jurisdiction; directing the district to provide recommendations to the United States Army Corps of Engineers when developing or implementing certain water control plans or regulation schedules; amending s. 373.223, F.S.; requiring consumptive use permits authorizing over a certain amount to be monitored on a specified basis; requiring the costs of monitoring to be borne by the permittee; amending s. 373.2234, F.S.;

directing water management district governing boards to consider the identification of preferred water supply sources for certain water users; amending s. 373.227, F.S.; prohibiting water management districts from modifying permitted allocation amounts under certain circumstances; requiring the water management districts to adopt rules to promote water conservation incentives; amending s. 373.233, F.S.; providing conditions under which the department and water management district governing boards are directed to give preference to certain applications; amending s. 373.4591, F.S.; providing priority consideration to certain public-private partnerships for water storage, groundwater recharge, and water quality improvements on private agricultural lands; amending s. 373.4595, F.S.; revising and providing definitions relating to the Northern Everglades and Estuaries Protection Program; clarifying provisions of the Lake Okeechobee Watershed Protection Program; directing the South Florida Water Management District to revise certain rules and provide for a watershed research and water quality monitoring program; revising provisions for the Caloosahatchee River Watershed Protection Program and the St. Lucie River Watershed Protection Program; revising permitting and annual reporting requirements relating to the Northern Everglades and Estuaries Protection Program; providing enforcement provisions for certain basin management action plans; amending s. 373.536, F.S.; requiring a water management district

to include an annual funding plan in the water resource development work program; directing the department to post the work program on its website; amending s. 373.703, F.S.; authorizing water management districts to contract with private landowners for water production; amending s. 373.705, F.S.; providing first consideration for funding assistance to certain water supply development projects; requiring governing boards to include certain information in their annual budget submittals; requiring water management districts to promote expanded cost-share criteria for additional conservation practices; amending s. 373.707, F.S.; authorizing water management districts to provide technical and financial assistance to self-suppliers and to waive certain construction costs of alternative water supply development projects by certain water users; amending s. 373.709, F.S.; requiring water supply plans to include traditional and alternative water supply project options that are technically and financially feasible; directing the department to include certain funding analyses and project explanations in regional water supply planning reports; creating part VIII of ch. 373, F.S., entitled the "Florida Springs and Aquifer Protection Act"; creating s. 373.801, F.S.; providing legislative findings and intent; creating s. 373.802, F.S.; defining terms; creating s. 373.803, F.S.; requiring the department to delineate a priority focus area for

each Outstanding Florida Spring by a certain date; creating s. 373.805, F.S.; requiring the department or a water management district to adopt or revise various recovery or prevention strategies under certain circumstances by a certain date; providing minimum requirements for recovery or prevention strategies for Outstanding Florida Springs; authorizing local governments to apply for an extension for projects in an adopted recovery or prevention strategy; creating s. 373.807, F.S.; requiring the department to initiate assessments of Outstanding Florida Springs by a certain date; requiring the department to develop basin management action plans; authorizing local governments to apply for an extension for projects in an adopted basin management action plan; requiring local governments to adopt an urban fertilizer ordinance by a certain date; requiring the department, the Department of Health, and local governments to identify onsite sewage treatment and disposal systems within each priority focus area; requiring local governments to develop onsite sewage treatment and disposal system remediation plans; prohibiting property owners with identified onsite sewage treatment and disposal systems from being required to pay certain costs; creating s. 373.811, F.S.; specifying prohibited activities within a priority focus area of an Outstanding Florida Spring; creating s. 373.813, F.S.; providing rulemaking authority; creating s. 373.815, F.S.; requiring the department to

submit annual reports; amending s. 403.061, F.S.; requiring the department to create a consolidated water resources work plan; directing the department to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply; providing criteria for such rule; authorizing the reclassification of surface waters used for treated potable water supply notwithstanding such rule; requiring the department to create and maintain a web-based interactive map; creating s. 403.0616, F.S.; creating the Florida Water Resources Advisory Council to provide the Legislature with recommendations for projects submitted by governmental entities; requiring the council to consolidate various reports to enhance the water resources of this state; requiring the department to adopt rules; creating s. 403.0617, F.S.; requiring the department to adopt rules to fund certain pilot projects; amending s. 403.0623, F.S.; requiring the department to establish certain standards to ensure statewide consistency; requiring the department to maintain a centralized database for testing results and analysis of water quantity and quality data; amending s. 403.861, F.S.; directing the department to add treated potable water supply as a designated use of a surface water segment under certain circumstances; providing an effective date.

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

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

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

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

3. The database and application must include information for all state conservation lands to which the public has a right of access for recreational purposes. Beginning January 1, 2018, to the greatest extent practicable, the database shall include similar information for lands owned by federal and local

government entities that allow access for recreational purposes.

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

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

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

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

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

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

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

2. One small sign or display, not to exceed 4 square feet

in area, may be located at each designated trail public access point.

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

(d) The department shall ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings, and contain only a logo selected by the sponsor and the following sponsorship wording:

...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....

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

~~1. Florida Keys Overseas Heritage Trail.~~

~~2. Blackwater Heritage Trail.~~

~~3. Tallahassee-St. Marks Historic Railroad State Trail.~~

~~4. Nature Coast State Trail.~~

~~5. Withlacoochee State Trail.~~

~~6. General James A. Van Fleet State Trail.~~

~~7. Palatka-Lake Butler State Trail.~~

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

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

(3) A concession agreement shall be for a minimum of 1 year, but may be for a longer period under a multiyear agreement, and may be terminated for just cause by the department upon 60 days' advance notice. Just cause for termination of a concession agreement includes, but is not limited to, violation of the terms of the concession agreement or any provision of this section.

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

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

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

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

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

(7) The department may adopt rules to administer this

section.

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

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

(3) The department, in cooperation with the Department of Environmental Protection, shall establish a statewide integrated system of bicycle and pedestrian ways in such a manner as to take full advantage of any such ways which are maintained by any governmental entity. ~~The department may enter into a concession agreement with a not-for-profit entity or private sector business or entity for commercial sponsorship displays on multiuse trails and related facilities and use any concession agreement revenues for the maintenance of the multiuse trails and related facilities. Commercial sponsorship displays are subject to the requirements of the Highway Beautification Act of 1965 and all federal laws and agreements, when applicable. For the purposes of this section, bicycle facilities may be established as part of or separate from the actual roadway and may utilize existing road rights-of-way or other rights-of-way or easements acquired for public use.~~

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

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

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

~~b. One small sign or display, not to exceed 4 square feet~~

~~in area, may be located at each designated trail public access point.~~

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

~~3. The department shall ensure that the size, color, materials, construction, and location of all signs are consistent with the management plan for the property and the standards of the department, do not intrude on natural and historic settings, and contain only a logo selected by the sponsor and the following sponsorship wording:~~

~~...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....~~

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

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

~~(4)(a) The department may use appropriated funds to support the establishment of a statewide system of interconnected multiuse trails and to pay the costs of planning, land acquisition, design, and construction of such trails and related~~

~~facilities. The department shall give funding priority to projects that:~~

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

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

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

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

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

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

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

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

339.81 Florida Shared-Use Nonmotorized Trail Network.—

(1) The Legislature finds that increasing demands continue to be placed on the state's transportation system by a growing economy, continued population growth, and increasing tourism. The Legislature also finds that significant challenges exist in providing additional capacity to the conventional transportation system and will require enhanced accommodation of alternative travel modes to meet the needs of residents and visitors. The Legislature further finds that improving bicyclist and pedestrian safety for both residents and visitors remains a high

priority. Therefore, the Legislature declares that the development of a nonmotorized trail network will increase mobility and recreational alternatives for residents and visitors of this state, enhance economic prosperity, enrich quality of life, enhance safety, and reflect responsible environmental stewardship. To that end, it is the intent of the Legislature that the department make use of its expertise in efficiently providing transportation projects to develop the Florida Shared-Use Nonmotorized Trail Network, consisting of a statewide network of nonmotorized trails which allows nonmotorized vehicles and pedestrians to access a variety of origins and destinations with limited exposure to motorized vehicles.

(2) The Florida Shared-Use Nonmotorized Trail Network is created as a component of the Florida Greenways and Trails System established in chapter 260. The statewide network consists of multiuse trails or shared-use paths physically separated from motor vehicle traffic and constructed with asphalt, concrete, or another hard surface which, by virtue of design, location, extent of connectivity or potential connectivity, and allowable uses, provides nonmotorized transportation opportunities for bicyclists and pedestrians statewide between and within a wide range of 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, and other personal business, as well as social, recreational, and personal fitness purposes.

(3) Network components do not include sidewalks, nature

trails, loop trails wholly within a single park or natural area, or on-road facilities, such as bicycle lanes or routes other than:

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

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

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

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

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

services on an individual network component.

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

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

339.82 Shared-Use Nonmotorized Trail Network Plan.—

(1) The department shall develop a Shared-Use Nonmotorized Trail Network Plan in coordination with the Department of Environmental Protection, metropolitan planning organizations, affected local governments and public agencies, and the Florida Greenways and Trails Council. The plan must be consistent with the Florida Greenways and Trails Plan developed under s. 260.014 and must be updated at least once every 5 years.

(2) The Shared-Use Nonmotorized Trail Network Plan must include all of the following:

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

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

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

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

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

(c) A map illustrating existing and planned facilities and identifying critical gaps between facilities.

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

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

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

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

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

339.83 Sponsorship of Shared-Use Nonmotorized Trails.—

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

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

(b)1. Signage, pavement markings, or exhibits erected pursuant to this section must comply with s. 337.407 and chapter

479 and are limited as follows:

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

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

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

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

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

...(Name of the sponsor)... proudly sponsors the costs of maintaining the ...(Name of the greenway or trail)....

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

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

concessionaire.

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

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

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

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

participants.

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

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

(24) "Water resource development" means the formulation and implementation of regional water resource management strategies, including the collection and evaluation of surface water and groundwater data; structural and nonstructural programs to protect and manage water resources; the development of regional water resource implementation programs; the construction, operation, and maintenance of major public works facilities to provide for flood control, surface and underground water storage, and groundwater recharge augmentation; and related technical assistance to local governments, ~~and to~~ government-owned and privately owned water utilities, and self-suppliers to the extent assistance to self-suppliers promotes the policies as set forth in s. 373.016.

Section 8. Paragraph (b) of subsection (7) of section 373.036, Florida Statutes, is amended, present paragraphs (d) and (e) of subsection (7) are redesignated as paragraphs (e) and (f), respectively, and a new paragraph (d) is added to that subsection, to read:

373.036 Florida water plan; district water management plans.—

(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

(b) The consolidated annual report shall contain the following elements, as appropriate to that water management

district:

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

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

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

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

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

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

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

(d) The consolidated annual report must contain information on all projects related to water quality or water quantity as part of a 5-year work program, including:

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

2. A grade for each watershed, water body, or water segment in which a project is located representing the level of impairment and violations of adopted or interim minimum flow or minimum water level. The grading system must reflect the severity of the impairment of the watershed, waterbody, or water segment;

3. A priority ranking for each listed project for which

state funding through the water resources work program is requested, which must be made available to the public for comment at least 30 days before submission of the consolidated annual report;

4. The estimated cost for each listed project;

5. The estimated completion date for each listed project;

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

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

Section 9. Subsection (1) and present subsections (2) and (6) of section 373.042, Florida Statutes, are amended, present subsections (2) through (6) of that section are redesignated as subsections (3) through (7), respectively, and a new subsection (2) is added to that section, to read:

373.042 Minimum flows and levels.—

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

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

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

area.

(c) Minimum flow or minimum water level for an Outstanding Florida Spring, as defined in s. 373.802. The minimum flow or minimum water level are the limit and level, respectively, at which further withdrawals would be harmful to the water resources or ecology of the area.

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

(2)(a) Until such time as a minimum flow or minimum water level is adopted for an Outstanding Florida Spring, the interim minimum flow or minimum water level for such spring shall be determined by using the best existing and available information. The interim minimum flow or minimum water level is the flow or water level exceeded 67 percent of the time based upon an analysis of estimated long-term conditions. By July 1, 2016, the districts shall use reasonable calculations to estimate the long-term median flow or water level and the flow or water level that would be exceeded 67 percent of the time. The analysis may include construction of a flow or water level duration curve, an analysis of the flow or water level at any point in the spring, and historic data to extrapolate the values or other statistical methods to estimate the long-term median flow or water level

that would be exceeded 67 percent of the time.

(b) If a minimum flow or minimum water level has been established but not yet adopted for an Outstanding Florida Spring, a water management district shall use the established minimum flow or minimum water level, instead of the minimum flow or minimum water level established by the procedure in paragraph (a), as the interim minimum flow or minimum water level until the adoption of a minimum flow or minimum water level. Long-term or short-term seasonal or annual variations in flows or water levels of an Outstanding Florida Spring due to factors other than water withdrawals are not considered violations of an interim minimum flow or minimum water level.

(c) For Outstanding Florida Springs identified on a water management district's priority list developed pursuant to subsection (3) which have the potential to be affected by withdrawals in an adjacent district, the interim minimum flow or minimum water level shall be applied by the adjacent district or districts. By July 1, 2017, the adjacent districts and the department shall collaboratively develop and implement a recovery or prevention strategy for an Outstanding Florida Spring not meeting an adopted or interim minimum flow or minimum water level.

(d) The Legislature finds that the failure to adopt minimum flows and minimum water levels or recovery or prevention strategies for Outstanding Florida Springs has resulted in an immediate danger to the public health, safety, and welfare and that immediate action must be taken to address the condition of Outstanding Florida Springs. The department may use emergency rulemaking provisions pursuant to s. 120.54(4) to adopt interim

minimum flows and minimum water levels under this subsection and recovery or prevention strategies concurrent with an interim minimum flow or minimum water level pursuant to s. 373.805(2)(b). For purposes of this section, an interim minimum flow or minimum water level and a recovery or prevention strategy shall remain in effect until January 1, 2018, and may not be renewable, except as otherwise provided in s. 120.54(4)(c).

(3) ~~(2)~~ By November 15, 1997, and annually thereafter, each water management district shall submit to the department for review and approval a priority list and schedule for the establishment of minimum flows and levels for surface watercourses, aquifers, and surface waters within the district. The priority list and schedule shall identify those listed water bodies for which the district will voluntarily undertake independent scientific peer review; any reservations proposed by the district to be established pursuant to s. 373.223(4); and those listed water bodies that have the potential to be affected by withdrawals in an adjacent district for which the department's adoption of a reservation pursuant to s. 373.223(4) or a minimum flow or level pursuant to subsection (1) may be appropriate. By March 1, 2006, and annually thereafter, each water management district shall include its approved priority list and schedule in the consolidated annual report required by s. 373.036(7). The priority list shall be based upon the importance of the waters to the state or region and the existence of or potential for significant harm to the water resources or ecology of the state or region, and shall include those waters which are experiencing or may reasonably be

expected to experience adverse impacts. Each water management district's priority list and schedule shall include all first magnitude springs, and all second magnitude springs within state or federally owned lands purchased for conservation purposes. The specific schedule for establishment of spring minimum flows and levels shall be commensurate with the existing or potential threat to spring flow from consumptive uses. Springs within the Suwannee River Water Management District, or second magnitude springs in other areas of the state, need not be included on the priority list if the water management district submits a report to the Department of Environmental Protection demonstrating that adverse impacts are not now occurring nor are reasonably expected to occur from consumptive uses during the next 20 years. The priority list and schedule is not subject to any proceeding pursuant to chapter 120. Except as provided in subsection (4) ~~(3)~~, the development of a priority list and compliance with the schedule for the establishment of minimum flows and levels pursuant to this subsection satisfies the requirements of subsection (1).

(7) ~~(6)~~ If a petition for administrative hearing is filed under chapter 120 challenging the establishment of a minimum flow or level, the report of an independent scientific peer review conducted under subsection (5) ~~(4)~~ is admissible as evidence in the final hearing, and the administrative law judge must render the order within 120 days after the filing of the petition. The time limit for rendering the order shall not be extended except by agreement of all the parties. To the extent that the parties agree to the findings of the peer review, they may stipulate that those findings be incorporated as findings of

fact in the final order.

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

373.0421 Establishment and implementation of minimum flows and levels.—

(1) ESTABLISHMENT.—

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

(b) *Exclusions.*—

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

2. The department or the governing board is not required to establish minimum flows or levels pursuant to s. 373.042 for surface water bodies less than 25 acres in area, unless the

water body or bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value.

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

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

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

(a) Achieve recovery to the established minimum flow or level as soon as practicable; or

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

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

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

(4) The water management district shall notify the department if an application for a water use permit is denied based upon the impact that the use will have on an adopted minimum flow or minimum water level. Upon receipt of such notice, the department shall, as soon as practicable and in cooperation with the water management district, conduct a review of the applicable regional water supply plan prepared pursuant to s. 373.709. Such review shall include an assessment by the department of the adequacy of the plan to meet the legislative intent of s. 373.705(2)(b) that sufficient water be available for all existing and future reasonable-beneficial uses and the

natural systems and that the adverse effects of competition for water supplies be avoided. If the department determines, based upon this review, that the regional water supply plan does not adequately address the legislative intent of s. 373.705(2)(b), the water management district shall immediately initiate an update of the plan consistent with s. 373.709.

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

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

373.0465 Central Florida Water Initiative.-

(1) The Legislature finds that:

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

(b) Because the boundaries of the St. Johns River Water Management District, the South Florida Water Management District, and the Southwest Florida Water Management District meet within the Central Florida Coordination Area, the three districts and the Department of Environmental Protection have worked cooperatively to determine that the Floridan Aquifer system is locally approaching the sustainable limits of use and are exploring the need to develop sources of water to meet the long-term water needs of the area.

(c) The Central Florida Water Initiative, a collaborative process involving the Department of Environmental Protection, the St. Johns River Water Management District, the South Florida

Water Management District, the Southwest Florida Water Management District, the Department of Agriculture and Consumer Services, regional public water supply utilities, and other stakeholders, has developed an initial framework, as set forth in the Central Florida Water Initiative Guiding Document of January 30, 2015, 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.

(d) 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 Central Florida Water Initiative.

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

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

1. Provide for a continuation of the collaborative process in the Central Florida Water Initiative Area among the state agencies, affected water management districts, regional public water supply utilities, and other stakeholders.

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

Central Florida Water Initiative participants.

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

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

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

1. Consider limitations on groundwater use together with opportunities for new, increased, or redistributed groundwater uses that are based on the conditions established under s. 373.223.

2. Establish a coordinated process for the identification of water resources requiring new or revised conditions established under s. 373.223.

3. Consider existing recovery or prevention strategies.

4. 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.

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

373.2234.

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

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

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

3. A single process for permit reviews;

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

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

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

The uniform rules shall include existing recovery strategies within the Central Florida Water Initiative Area adopted before July 1, 2015. The department 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.

(e) The department shall initiate rulemaking for the uniform rules by December 31, 2015. The department's uniform rules shall be applied by the water management districts only within the Central Florida Water Initiative Area. Upon adoption

of the rules, the water management districts shall implement the rules without further rulemaking pursuant to s. 120.54. The rules adopted by the department pursuant to this section are considered the rules of the water management districts.

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

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

373.1501 South Florida Water Management District as local sponsor.—

(4) The district is authorized to act as local sponsor of the project for those project features within the district as provided in this subsection and subject to the oversight of the department as further provided in s. 373.026. The district shall exercise the authority of the state to allocate quantities of water within its jurisdiction, including the water supply in relation to the project, and be responsible for allocating water and assigning priorities among the other water uses served by the project pursuant to state law. The district may:

(a) Act as local sponsor for all project features

previously authorized by Congress.~~;~~

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

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

(d) Act as local sponsor for project components.

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

Section 13. Subsection (6) is added to section 373.223, Florida Statutes, to read:

373.223 Conditions for a permit.—

(6) A consumptive use permit authorizing more than 100,000 gallons per day shall be monitored on a yearly basis, with the cost of such monitoring to be borne by the permittee.

Section 14. Section 373.2234, Florida Statutes, is amended to read:

373.2234 Preferred water supply sources.—

(1) The governing board of a water management district is authorized to adopt rules that identify preferred water supply sources for consumptive uses for which there is sufficient data to establish that a preferred source will provide a substantial new water supply to meet the existing and projected reasonable-

beneficial uses of a water supply planning region identified pursuant to s. 373.709(1), while sustaining existing water resources and natural systems. At a minimum, such rules must contain a description of the preferred water supply source and an assessment of the water the preferred source is projected to produce.

(2)(a) If an applicant proposes to use a preferred water supply source, that applicant's proposed water use is subject to s. 373.223(1), except that the proposed use of a preferred water supply source must be considered by a water management district when determining whether a permit applicant's proposed use of water is consistent with the public interest pursuant to s. 373.223(1)(c).

(b) The governing board of a water management district shall 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. Identification of preferred water supply sources for such water users must be consistent with s. 373.016.

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

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

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

2. Provide that permits issued for the use of a

nonpreferred water supply source must be issued for a duration of less than 20 years or that the use of a nonpreferred water supply source is not consistent with the public interest; or~~.~~

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

(b) Rules adopted by the governing board of a water management district to implement this section shall specify that the use of a preferred water supply source is not required and that the use of a nonpreferred water supply source is not restricted or prohibited.

Section 15. Present subsection (5) of section 373.227, Florida Statutes, is redesignated as subsection (7), and new subsections (5) and (6) are added to that section, to read:

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

(5) In order to incentivize water conservation, if actual water use is less than permitted water use due to documented implementation of water conservation measures, including, but not limited to, those measures identified in best management practices pursuant to s. 570.93, the permitted allocation may not be modified due to such water conservation during the term of the permit. In order to promote water conservation and the implementation of measures that produce significant water savings beyond that required in a consumptive use permit, each water management district shall adopt rules providing water conservation incentives, including permit extensions.

(6) For consumptive use permits for agricultural irrigation, if actual water use is less than permitted water use due to weather events, crop diseases, nursery stock availability, or changes in crop type, a district may not as a result reduce permitted allocation amounts during the term of the permit.

Section 16. Subsection (2) of section 373.233, Florida Statutes, is amended to read:

373.233 Competing applications.—

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

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

Section 17. Section 373.4591, Florida Statutes, is amended to read:

373.4591 Improvements on private agricultural lands.—

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

(a) Store or treat water on private lands for purposes of enhancing hydrologic improvement, improving water quality, or

assisting in water supply;

(b) Provide critical ground water recharge; or

(c) Provide for changes in land use to activities that minimize nutrient loads and maximize water conservation.

(2)(a) When an agreement is entered into between the department, a water management district, or the Department of Agriculture and Consumer Services and a private landowner to establish ~~such~~ a public-private partnership that may create or impact wetlands or other surface waters, a baseline condition determining the extent of wetlands and other surface waters on the property shall be established and documented in the agreement before improvements are constructed.

(b) When an agreement is entered into between the Department of Agriculture and Consumer Services and a private landowner to implement best management practices pursuant to s. 403.067(7)(c), a baseline condition determining the extent of wetlands and other surface water on the property may be established at the option and expense of the private landowner and documented in the agreement before improvements are constructed. The Department of Agriculture and Consumer Services shall submit the landowner's proposed baseline condition documentation to the lead agency for review and approval, and the agency shall use its best efforts to complete the review within 45 days.

(3) The Department of Agriculture and Consumer Services, the department, and the water management districts shall provide a process for reviewing these requests in the timeframe specified. The determination of a baseline condition shall be conducted using the methods set forth in the rules adopted

pursuant to s. 373.421. The baseline condition documented in an agreement shall be considered the extent of wetlands and other surface waters on the property for the purpose of regulation under this chapter for the duration of the agreement and after its expiration.

Section 18. Paragraph (h) of subsection (1) and subsections (2) through (7) of section 373.4595, Florida Statutes, are amended, and present subsections (8) through (13) are redesignated as subsections (9) through (14), respectively, and a new subsection (8) is added, to read:

373.4595 Northern Everglades and Estuaries Protection Program.—

(1) FINDINGS AND INTENT.—

(h) The Legislature finds that the expeditious implementation of the Lake Okeechobee Watershed Protection Program, the Caloosahatchee River Watershed Protection Program, ~~Plan~~ and the St. Lucie River Watershed Protection Program ~~Plans~~ is needed to improve the quality, quantity, timing, and distribution of water in the northern Everglades ecosystem and that this section, in conjunction with s. 403.067, including the implementation of the plans developed and approved pursuant to subsections (3) and (4), and any related basin management action plan developed and implemented pursuant to s. 403.067(7)(a), provide a reasonable means of achieving the total maximum daily load requirements and achieving and maintaining compliance with state water quality standards.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Best management practice" means a practice or combination of practices determined by the coordinating

agencies, based on research, field-testing, and expert review, to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality in agricultural and urban discharges. Best management practices for agricultural discharges shall reflect a balance between water quality improvements and agricultural productivity.

(b) "Biosolids" means the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as "domestic wastewater residuals" or "residuals," and includes products and treated material from biosolids treatment facilities and septage management facilities regulated by the department. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.

(c) ~~(b)~~ "Caloosahatchee River watershed" means the Caloosahatchee River, its tributaries, its estuary, and the area within Charlotte, Glades, Hendry, and Lee Counties from which surface water flow is directed or drains, naturally or by constructed works, to the river, its tributaries, or its estuary.

(d) ~~(c)~~ "Coordinating agencies" means the Department of Agriculture and Consumer Services, the Department of Environmental Protection, and the South Florida Water Management District.

(e) ~~(d)~~ "Corps of Engineers" means the United States Army Corps of Engineers.

(f) ~~(e)~~ "Department" means the Department of Environmental Protection.

(g) ~~(f)~~ "District" means the South Florida Water Management District.

~~(g) "District's WOD program" means the program implemented pursuant to rules adopted as authorized by this section and ss. 373.016, 373.044, 373.085, 373.086, 373.109, 373.113, 373.118, 373.451, and 373.453, entitled "Works of the District Basin."~~

(h) "Lake Okeechobee Watershed Construction Project" means the construction project developed pursuant to this section ~~paragraph (3)(b)~~.

(i) "Lake Okeechobee Watershed Protection Plan" means the Lake Okeechobee Watershed Construction Project and the Lake Okeechobee Watershed Research and Water Quality Monitoring Program ~~plan developed pursuant to this section and ss. 373.451-373.459~~.

(j) "Lake Okeechobee watershed" means Lake Okeechobee, its tributaries, and the area within which surface water flow is directed or drains, naturally or by constructed works, to the lake or its tributaries.

~~(k) "Lake Okeechobee Watershed Phosphorus Control Program" means the program developed pursuant to paragraph (3)(c).~~

(k) ~~(l)~~ "Northern Everglades" means the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed.

(l) ~~(m)~~ "Project component" means any structural or operational change, resulting from the Restudy, to the Central

and Southern Florida Project as it existed and was operated as of January 1, 1999.

(m) ~~(n)~~ "Restudy" means the Comprehensive Review Study of the Central and Southern Florida Project, for which federal participation was authorized by the Federal Water Resources Development Acts of 1992 and 1996 together with related Congressional resolutions and for which participation by the South Florida Water Management District is authorized by s. 373.1501. The term includes all actions undertaken pursuant to the aforementioned authorizations which will result in recommendations for modifications or additions to the Central and Southern Florida Project.

(n) ~~(o)~~ "River Watershed Protection Plans" means the Caloosahatchee River Watershed Protection Plan and the St. Lucie River Watershed Protection Plan developed pursuant to this section.

(o) "Soil amendment" means any substance or mixture of substances sold or offered for sale for soil enriching or corrective purposes, intended or claimed to be effective in promoting or stimulating plant growth, increasing soil or plant productivity, improving the quality of crops, or producing any chemical or physical change in the soil, except amendments, conditioners, additives, and related products that are derived solely from inorganic sources and that contain no recognized plant nutrients.

(p) "St. Lucie River watershed" means the St. Lucie River, its tributaries, its estuary, and the area within Martin, Okeechobee, and St. Lucie Counties from which surface water flow is directed or drains, naturally or by constructed works, to the

river, its tributaries, or its estuary.

(q) "Total maximum daily load" means the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background adopted pursuant to s. 403.067. Before ~~Prior to~~ determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

(3) LAKE OKEECHOBEE WATERSHED PROTECTION PROGRAM.—The Lake Okeechobee Watershed Protection Program shall consist of the Lake Okeechobee Watershed Protection Plan, the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067, the Lake Okeechobee Exotic Species Control Program, and the Lake Okeechobee Internal Phosphorus Management Program. The Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 shall be the component of the Lake Okeechobee Watershed Protection ~~A protection~~ Program ~~for Lake Okeechobee~~ that achieves phosphorus load reductions for Lake Okeechobee ~~shall be immediately implemented as specified in this subsection~~. The Lake Okeechobee Watershed Protection Program shall address the reduction of phosphorus loading to the lake from both internal and external sources. Phosphorus load reductions shall be achieved through a phased program of implementation. ~~Initial implementation actions shall be technology-based, based upon a consideration of both the availability of appropriate technology and the cost of such technology, and shall include phosphorus reduction measures at both the source and the regional level. The initial phase of phosphorus load reductions shall be based~~

~~upon the district's Technical Publication 81-2 and the district's WOD program, with subsequent phases of phosphorus load reductions based upon the total maximum daily loads established in accordance with s. 403.067.~~ In the development and administration of the Lake Okeechobee Watershed Protection Program, the coordinating agencies shall maximize opportunities provided by federal cost-sharing programs and opportunities for partnerships with the private sector.

(a) *Lake Okeechobee Watershed Protection Plan.*—In order to protect and restore surface water resources, the district, in cooperation with the other coordinating agencies, shall complete a Lake Okeechobee Watershed Protection Plan in accordance with this section and ss. 373.451-373.459. Beginning March 1, 2020, and every 5 years thereafter, the district shall update the Lake Okeechobee Watershed Protection Plan to ensure that it is consistent with the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. The Lake Okeechobee Watershed Protection Plan shall identify the geographic extent of the watershed, be coordinated with the plans developed pursuant to paragraphs (4)(a) and (c) ~~(b)~~, and include the Lake Okeechobee Watershed Construction Project and the Lake Okeechobee Watershed Research and Water Quality Monitoring Program ~~contain an implementation schedule for subsequent phases of phosphorus load reduction consistent with the total maximum daily loads established in accordance with s. 403.067~~. The plan shall consider and build upon a review and analysis of ~~the following~~:

~~1.~~ the performance of projects constructed during Phase I and Phase II of the Lake Okeechobee Watershed Construction Project, pursuant to subparagraph 1.; ~~paragraph (b).~~

~~2.~~ relevant information resulting from the Lake Okeechobee Basin Management Action Plan ~~Watershed Phosphorus Control Program~~, pursuant to paragraph (b); ~~(c).~~

~~3.~~ relevant information resulting from the Lake Okeechobee Watershed Research and Water Quality Monitoring Program, pursuant to subparagraph 2.; ~~paragraph (d).~~

~~4.~~ relevant information resulting from the Lake Okeechobee Exotic Species Control Program, pursuant to paragraph (c); and ~~(e).~~

~~5.~~ relevant information resulting from the Lake Okeechobee Internal Phosphorus Management Program, pursuant to paragraph (d) ~~(f)~~.

1.~~(b)~~ Lake Okeechobee Watershed Construction Project.—To improve the hydrology and water quality of Lake Okeechobee and downstream receiving waters, including the Caloosahatchee and St. Lucie Rivers and their estuaries, the district, in cooperation with the other coordinating agencies, shall design and construct the Lake Okeechobee Watershed Construction Project. The project shall include:

a.~~1.~~ Phase I.—Phase I of the Lake Okeechobee Watershed Construction Project shall consist of a series of project features consistent with the recommendations of the South Florida Ecosystem Restoration Working Group's Lake Okeechobee Action Plan. Priority basins for such projects include S-191, S-154, and Pools D and E in the Lower Kissimmee River. In order to obtain phosphorus load reductions to Lake Okeechobee as soon as possible, the following actions shall be implemented:

(I)~~a.~~ The district shall serve as a full partner with the Corps of Engineers in the design and construction of the Grassy

Island Ranch and New Palm Dairy stormwater treatment facilities as components of the Lake Okeechobee Water Retention/Phosphorus Removal Critical Project. The Corps of Engineers shall have the lead in design and construction of these facilities. Should delays be encountered in the implementation of either of these facilities, the district shall notify the department and recommend corrective actions.

(II)~~b.~~ The district shall obtain permits and complete construction of two of the isolated wetland restoration projects that are part of the Lake Okeechobee Water Retention/Phosphorus Removal Critical Project. The additional isolated wetland projects included in this critical project shall further reduce phosphorus loading to Lake Okeechobee.

(III)~~c.~~ The district shall work with the Corps of Engineers to expedite initiation of the design process for the Taylor Creek/Nubbins Slough Reservoir Assisted Stormwater Treatment Area, a project component of the Comprehensive Everglades Restoration Plan. The district shall propose to the Corps of Engineers that the district take the lead in the design and construction of the Reservoir Assisted Stormwater Treatment Area and receive credit towards the local share of the total cost of the Comprehensive Everglades Restoration Plan.

b.~~2.~~ Phase II technical plan and construction.~~ By February 1, 2008,~~ The district, in cooperation with the other coordinating agencies, shall develop a detailed technical plan for Phase II of the Lake Okeechobee Watershed Construction Project which provides the basis for the Lake Okeechobee Basin Management Action Plan adopted by the department pursuant to s. 403.067. The detailed technical plan shall include measures for

the improvement of the quality, quantity, timing, and distribution of water in the northern Everglades ecosystem, including the Lake Okeechobee watershed and the estuaries, and for facilitating the achievement of water quality standards. Use of cost-effective biologically based, hybrid wetland/chemical and other innovative nutrient control technologies shall be incorporated in the plan where appropriate. The detailed technical plan shall also include a Process Development and Engineering component to finalize the detail and design of Phase II projects and identify additional measures needed to increase the certainty that the overall objectives for improving water quality and quantity can be met. Based on information and recommendations from the Process Development and Engineering component, the Phase II detailed technical plan shall be periodically updated. Phase II shall include construction of additional facilities in the priority basins identified in sub-subparagraph a. ~~subparagraph 1.~~, as well as facilities for other basins in the Lake Okeechobee watershed. ~~This detailed technical plan will require legislative ratification pursuant to paragraph (i).~~ The technical plan shall:

(I)~~a.~~ Identify Lake Okeechobee Watershed Construction Project facilities designed to contribute to achieving all applicable total maximum daily loads established pursuant to s. 403.067 within the Lake Okeechobee watershed.

(II)~~b.~~ Identify the size and location of all such Lake Okeechobee Watershed Construction Project facilities.

(III)~~c.~~ Provide a construction schedule for all such Lake Okeechobee Watershed Construction Project facilities, including the sequencing and specific timeframe for construction of each

Lake Okeechobee Watershed Construction Project facility.

(IV)~~d.~~ Provide a schedule for the acquisition of lands or sufficient interests necessary to achieve the construction schedule.

(V)~~e.~~ Provide a detailed schedule of costs associated with the construction schedule.

(VI)~~f.~~ Identify, to the maximum extent practicable, impacts on wetlands and state-listed species expected to be associated with construction of such facilities, including potential alternatives to minimize and mitigate such impacts, as appropriate.

(VII)~~g.~~ Provide for additional measures, including voluntary water storage and quality improvements on private land, to increase water storage and reduce excess water levels in Lake Okeechobee and to reduce excess discharges to the estuaries.

(VIII) ~~The technical plan shall also~~ Develop the appropriate water quantity storage goal to achieve the desired Lake Okeechobee range of lake levels and inflow volumes to the Caloosahatchee and St. Lucie estuaries while meeting the other water-related needs of the region, including water supply and flood protection.

(IX)~~h.~~ Provide for additional source controls needed to enhance performance of the Lake Okeechobee Watershed Construction Project facilities. Such additional source controls shall be incorporated into the Lake Okeechobee Basin Management Action Plan ~~Watershed Phosphorous Control Program~~ pursuant to paragraph (b) ~~(c)~~.

c.~~3.~~ Evaluation.—Within 5 years after the adoption of the

Lake Okeechobee Basin Management Action Plan pursuant to s. 403.067 and every 5 ~~By January 1, 2004, and every 3~~ years thereafter, the department ~~district~~, in cooperation with the other coordinating agencies, shall conduct an evaluation of the Lake Okeechobee Watershed Construction Project and identify any further load reductions necessary to achieve compliance with the ~~all~~ Lake Okeechobee ~~watershed~~ total maximum daily loads established pursuant to s. 403.067. ~~Additionally,~~ The district shall identify modifications to facilities of the Lake Okeechobee Watershed Construction Project as appropriate to meet the total maximum daily loads. Modifications to the Lake Okeechobee Watershed Construction Project resulting from this evaluation shall be incorporated into the Lake Okeechobee Basin Management Action Plan and ~~The evaluation shall be~~ included in the applicable annual progress report submitted pursuant to subsection (6).

d.~~4.~~ Coordination and review.—To ensure the timely implementation of the Lake Okeechobee Watershed Construction Project, the design of project facilities shall be coordinated with the department and other interested parties, including affected local governments, to the maximum extent practicable. Lake Okeechobee Watershed Construction Project facilities shall be reviewed and commented upon by the department before ~~prior to~~ the execution of a construction contract by the district for that facility.

2. Lake Okeechobee Watershed Research and Water Quality Monitoring Program.—The coordinating agencies shall implement a Lake Okeechobee Watershed Research and Water Quality Monitoring Program. Results from the program shall be used by the

department, in cooperation with the other coordinating agencies, to make modifications to the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067, as appropriate. The program shall:

a. 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, including water quality for total phosphorus, and measure compliance with water quality standards for total phosphorus, including any applicable total maximum daily load for the Lake Okeechobee watershed as established pursuant to s. 403.067. Beginning March 1, 2020, and every 5 years thereafter, the department shall reevaluate water quality and quantity data to ensure that the appropriate projects are being designated and incorporated into the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. The district shall implement a total phosphorus monitoring program at appropriate structures owned or operated by the district and within the Lake Okeechobee watershed.

b. Develop a Lake Okeechobee water quality model that reasonably represents the phosphorus dynamics of Lake Okeechobee and incorporates an uncertainty analysis associated with model predictions.

c. Determine the relative contribution of phosphorus from all identifiable sources and all primary and secondary land uses.

d. Conduct an assessment of the sources of phosphorus from the Upper Kissimmee Chain-of-Lakes and Lake Istokpoga, and their

relative contribution to the water quality of Lake Okeechobee. The results of this assessment shall be used by the coordinating agencies as part of the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 to develop interim measures, best management practices, or regulations, as applicable.

e. Assess current water management practices within the Lake Okeechobee watershed and develop recommendations for structural and operational improvements. Such recommendations shall balance water supply, flood control, estuarine salinity, maintenance of a healthy lake littoral zone, and water quality considerations.

f. Evaluate the feasibility of alternative nutrient reduction technologies, including sediment traps, canal and ditch maintenance, fish production or other aquaculture, bioenergy conversion processes, and algal or other biological treatment technologies and include any alternative nutrient reduction technologies determined to be feasible in the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067.

g. 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.

(b) ~~(c)~~ *Lake Okeechobee Basin Management Action Plan* ~~*Watershed Phosphorus Control Program.*~~—The Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 shall be the watershed phosphorus control component for Lake Okeechobee and shall be ~~Program is~~ designed to be a multifaceted approach to reducing phosphorus loads by improving the management of

phosphorus sources within the Lake Okeechobee watershed through implementation of regulations and best management practices, continued development and continued implementation of improved best management practices, improvement and restoration of the hydrologic function of natural and managed systems, and use ~~utilization~~ of alternative technologies for nutrient reduction. The plan shall contain an implementation schedule for pollutant load reductions consistent with the adopted total maximum daily load. The coordinating agencies shall develop an interagency agreement pursuant to ss. 373.046 and 373.406 which is consistent with the department taking the lead on water quality protection measures through the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067; the district taking the lead on hydrologic improvements pursuant to paragraph (a); and the Department of Agriculture and Consumer Services taking the lead on agricultural interim measures, best management practices, and other measures adopted pursuant to s. 403.067. The interagency agreement shall specify how best management practices for nonagricultural nonpoint sources are developed and how all best management practices are implemented and verified consistent with s. 403.067 and this section. The interagency agreement shall address measures to be taken by the coordinating agencies during any best management practice reevaluation performed pursuant to subparagraphs 5. and 10. The department shall use best professional judgment in making the initial determination of best management practice effectiveness. The coordinating agencies may develop an intergovernmental agreement with local governments to implement nonagricultural nonpoint source best management practices within their respective

geographic boundaries. The coordinating agencies shall facilitate the application of federal programs that offer opportunities for water quality treatment, including preservation, restoration, or creation of wetlands on agricultural lands.

1. Agricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Watershed Protection Program as part of a phased approach of management strategies within the Lake Okeechobee Basin Management Action Plan, shall be implemented on an expedited basis. ~~The coordinating agencies shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the coordinating agencies during any best management practice reevaluation performed pursuant to sub-subparagraph d. The department shall use best professional judgment in making the initial determination of best management practice effectiveness.~~

2.~~a.~~ As provided in s. 403.067 ~~s. 403.067(7)(c)~~, the Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall initiate rule development for interim measures, best management practices, conservation plans, nutrient management plans, or other measures necessary for Lake Okeechobee watershed total maximum daily load reduction. The rule shall include thresholds for requiring conservation and nutrient management plans and

criteria for the contents of such plans. Development of agricultural nonpoint source best management practices shall initially focus on those priority basins listed in sub-subparagraph (a)1.a. ~~subparagraph (b)1~~. The Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall conduct an ongoing program for improvement of existing and development of new agricultural nonpoint source interim measures and ~~or~~ best management practices. The Department of Agriculture and Consumer Services shall adopt ~~for the purpose of adoption of~~ such practices by rule. The Department of Agriculture and Consumer Services shall work with the University of Florida ~~Florida's~~ Institute of Food and Agriculture Sciences to review and, where appropriate, develop revised nutrient application rates for all agricultural soil amendments in the watershed.

3.~~b.~~ As provided in s. 403.067, where agricultural nonpoint source best management practices or interim measures have been adopted by rule of the Department of Agriculture and Consumer Services, the owner or operator of an agricultural nonpoint source addressed by such rule shall either implement interim measures or best management practices or demonstrate compliance with state water quality standards addressed by the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 ~~the district's WOD program~~ by conducting monitoring prescribed by the department or the district. Owners or operators of agricultural nonpoint sources who implement interim measures or best management practices adopted by rule of the Department of Agriculture and Consumer Services shall be subject to ~~the provisions of~~ s. 403.067~~(7)~~. ~~The Department of~~

~~Agriculture and Consumer Services, in cooperation with the department and the district, shall provide technical and financial assistance for implementation of agricultural best management practices, subject to the availability of funds.~~

4.~~c.~~ The district or department shall conduct monitoring at representative sites to verify the effectiveness of agricultural nonpoint source best management practices.

5.~~d.~~ Where water quality problems are detected for agricultural nonpoint sources despite the appropriate implementation of adopted best management practices, ~~the Department of Agriculture and Consumer Services, in consultation with the other coordinating agencies and affected parties, shall institute~~ a reevaluation and revision of the best management practices shall be conducted pursuant to s. 403.067(7)(c)4. ~~and make appropriate changes to the rule adopting best management practices.~~

6.~~2.~~ As provided in s. 403.067, nonagricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Watershed Protection Program as part of a phased approach of management strategies within the Lake Okeechobee Basin Management Action Plan, shall be implemented on an expedited basis. ~~The department and the district shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the department and the district during any best management practice~~

~~reevaluation performed pursuant to sub-subparagraph d.~~

7.~~a.~~ The department and the district are directed to work with the University of Florida ~~Florida's~~ Institute of Food and Agricultural Sciences to develop appropriate nutrient application rates for all nonagricultural soil amendments in the watershed. As provided in s. 403.067 ~~s. 403.067(7)(c)~~, the department, in consultation with the district and affected parties, shall develop nonagricultural nonpoint source interim measures, best management practices, or other measures necessary for Lake Okeechobee watershed total maximum daily load reduction. Development of nonagricultural nonpoint source best management practices shall initially focus on those priority basins listed in sub-subparagraph (a)1.a. ~~subparagraph (b)1~~. The department, the district, and affected parties shall conduct an ongoing program for improvement of existing and development of new interim measures and ~~or~~ best management practices. The department or the district shall adopt such practices by rule ~~The district shall adopt technology-based standards under the district's WOD program for nonagricultural nonpoint sources of phosphorus. Nothing in this sub-subparagraph shall affect the authority of the department or the district to adopt basin-specific criteria under this part to prevent harm to the water resources of the district.~~

8.~~b.~~ Where nonagricultural nonpoint source best management practices or interim measures have been developed by the department and adopted by the district, the owner or operator of a nonagricultural nonpoint source shall implement interim measures or best management practices and be subject to ~~the provisions of~~ s. 403.067~~(7)~~. ~~The department and district shall~~

~~provide technical and financial assistance for implementation of nonagricultural nonpoint source best management practices, subject to the availability of funds.~~

9.~~c.~~ As provided in s. 403.067, the district or the department shall conduct monitoring at representative sites to verify the effectiveness of nonagricultural nonpoint source best management practices.

10.~~d.~~ Where water quality problems are detected for nonagricultural nonpoint sources despite the appropriate implementation of adopted best management practices, ~~the department and the district shall institute~~ a reevaluation and revision of the best management practices shall be conducted pursuant to s. 403.067(7)(c)4.

11.~~3.~~ ~~The provisions of~~ Subparagraphs ~~1. and~~ 2. and 7. do ~~may~~ not preclude the department or the district from requiring compliance with water quality standards or with current best management practices requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. ~~Additionally,~~ Subparagraphs ~~1. and~~ 2. and 7. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

12. The program of agricultural best management practices set forth in the Everglades Program of the district, meets the requirements of this paragraph and s. 403.067(7) for the Lake Okeechobee watershed. An entity in compliance with best management practices set forth in the Everglades Program of the district, may elect to use that permit in lieu of the requirements of this paragraph. The provisions of s.

373.4595(3)(b)5. apply to this subparagraph.

13. The Department of Agriculture and Consumer Services, in cooperation with the department and the district, shall provide technical and financial assistance for implementation of agricultural best management practices, subject to the availability of funds. The department and district shall provide technical and financial assistance for implementation of nonagricultural nonpoint source best management practices, subject to the availability of funds.

14.~~4.~~ Projects that reduce the phosphorus load originating from domestic wastewater systems within the Lake Okeechobee watershed shall be given funding priority in the department's revolving loan program under s. 403.1835. The department shall coordinate and provide assistance to those local governments seeking financial assistance for such priority projects.

15.~~5.~~ Projects that make use of private lands, or lands held in trust for Indian tribes, to reduce nutrient loadings or concentrations within a basin by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, increasing aquifer recharge, or protecting range and timberland from conversion to development, are eligible for grants available under this section from the coordinating agencies. For projects of otherwise equal priority, special funding priority will be given to those projects that make best use of the methods outlined above that involve public-private partnerships or that obtain federal match money. Preference ranking above the special funding priority will be given to projects located in a rural area of opportunity designated by

the Governor. Grant applications may be submitted by any person or tribal entity, and eligible projects may include, but are not limited to, the purchase of conservation and flowage easements, hydrologic restoration of wetlands, creating treatment wetlands, development of a management plan for natural resources, and financial support to implement a management plan.

16.~~6.a.~~ The department shall require all entities disposing of domestic wastewater biosolids ~~residuals~~ within the Lake Okeechobee watershed and the remaining areas of Okeechobee, Glades, and Hendry Counties to develop and submit to the department an agricultural use plan that limits applications based upon phosphorus loading consistent with the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. ~~By July 1, 2005, phosphorus concentrations originating from these application sites may not exceed the limits established in the district's WOD program. After December 31, 2007,~~ The department may not authorize the disposal of domestic wastewater biosolids ~~residuals~~ within the Lake Okeechobee watershed unless the applicant can affirmatively demonstrate that the phosphorus in the biosolids ~~residuals~~ will not add to phosphorus loadings in Lake Okeechobee or its tributaries. This demonstration shall be based on achieving a net balance between phosphorus imports relative to exports on the permitted application site. Exports shall include only phosphorus removed from the Lake Okeechobee watershed through products generated on the permitted application site. This prohibition does not apply to Class AA biosolids ~~residuals~~ that are marketed and distributed as fertilizer products in accordance with department rule.

17.~~b.~~ Private and government-owned utilities within Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Okeechobee, Highlands, Hendry, and Glades Counties that dispose of wastewater biosolids ~~residual~~ sludge from utility operations and septic removal by land spreading in the Lake Okeechobee watershed may use a line item on local sewer rates to cover wastewater biosolids ~~residual~~ treatment and disposal if such disposal and treatment is done by approved alternative treatment methodology at a facility located within the areas designated by the Governor as rural areas of opportunity pursuant to s. 288.0656. This additional line item is an environmental protection disposal fee above the present sewer rate and may not be considered a part of the present sewer rate to customers, notwithstanding provisions to the contrary in chapter 367. The fee shall be established by the county commission or its designated assignee in the county in which the alternative method treatment facility is located. The fee shall be calculated to be no higher than that necessary to recover the facility's prudent cost of providing the service. Upon request by an affected county commission, the Florida Public Service Commission will provide assistance in establishing the fee. Further, for utilities and utility authorities that use the additional line item environmental protection disposal fee, such fee may not be considered a rate increase under the rules of the Public Service Commission and shall be exempt from such rules. Utilities using ~~the provisions of~~ this section may immediately include in their sewer invoicing the new environmental protection disposal fee. Proceeds from this environmental protection disposal fee shall be used for treatment and disposal

of wastewater biosolids ~~residuals~~, including any treatment technology that helps reduce the volume of biosolids ~~residuals~~ that require final disposal, but such proceeds may not be used for transportation or shipment costs for disposal or any costs relating to the land application of biosolids ~~residuals~~ in the Lake Okeechobee watershed.

18.~~c.~~ No less frequently than once every 3 years, the Florida Public Service Commission or the county commission through the services of an independent auditor shall perform a financial audit of all facilities receiving compensation from an environmental protection disposal fee. The Florida Public Service Commission or the county commission through the services of an independent auditor shall also perform an audit of the methodology used in establishing the environmental protection disposal fee. The Florida Public Service Commission or the county commission shall, within 120 days after completion of an audit, file the audit report with the President of the Senate and the Speaker of the House of Representatives and shall provide copies to the county commissions of the counties set forth in subparagraph 17 ~~sub-subparagraph b~~. The books and records of any facilities receiving compensation from an environmental protection disposal fee shall be open to the Florida Public Service Commission and the Auditor General for review upon request.

19.~~7.~~ The Department of Health shall require all entities disposing of septage within the Lake Okeechobee watershed to develop and submit to that agency an agricultural use plan that limits applications based upon phosphorus loading consistent with the Lake Okeechobee Basin Management Action Plan adopted

pursuant to s. 403.067. ~~By July 1, 2005, phosphorus concentrations originating from these application sites may not exceed the limits established in the district's WOD program.~~

20.~~8.~~ The Department of Agriculture and Consumer Services shall initiate rulemaking requiring entities within the Lake Okeechobee watershed which land-apply animal manure to develop resource management system level conservation plans, according to United States Department of Agriculture criteria, which limit such application. Such rules may include criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, and recordkeeping requirements.

21. The district shall revise chapter 40E-61, Florida Administrative Code, to be consistent with this section and s. 403.067; provide for a monitoring program for nonpoint source dischargers required to monitor water quality by s. 403.067; and provide for the results of such monitoring to be reported to the coordinating agencies.

~~9. The district, the department, or the Department of Agriculture and Consumer Services, as appropriate, shall implement those alternative nutrient reduction technologies determined to be feasible pursuant to subparagraph (d)6.~~

~~(d) *Lake Okeechobee Watershed Research and Water Quality Monitoring Program.* The district, in cooperation with the other coordinating agencies, shall establish a Lake Okeechobee Watershed Research and Water Quality Monitoring Program that builds upon the district's existing Lake Okeechobee research program. The program shall:~~

~~1. 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, including water quality for total phosphorus, and measure compliance with water quality standards for total phosphorus, including any applicable total maximum daily load for the Lake Okeechobee watershed as established pursuant to s. 403.067. Every 3 years, the district shall reevaluate water quality and quantity data to ensure that the appropriate projects are being designated and implemented to meet the water quality and storage goals of the plan. The district shall also implement a total phosphorus monitoring program at appropriate structures owned or operated by the South Florida Water Management District and within the Lake Okeechobee watershed.~~

~~2. Develop a Lake Okeechobee water quality model that reasonably represents phosphorus dynamics of the lake and incorporates an uncertainty analysis associated with model predictions.~~

~~3. Determine the relative contribution of phosphorus from all identifiable sources and all primary and secondary land uses.~~

~~4. Conduct an assessment of the sources of phosphorus from the Upper Kissimmee Chain-of-Lakes and Lake Istokpoga, and their relative contribution to the water quality of Lake Okeechobee. The results of this assessment shall be used by the coordinating agencies to develop interim measures, best management practices, or regulation, as applicable.~~

~~5. Assess current water management practices within the Lake Okeechobee watershed and develop recommendations for~~

~~structural and operational improvements. Such recommendations shall balance water supply, flood control, estuarine salinity, maintenance of a healthy lake littoral zone, and water quality considerations.~~

~~6. Evaluate the feasibility of alternative nutrient reduction technologies, including sediment traps, canal and ditch maintenance, fish production or other aquaculture, bioenergy conversion processes, and algal or other biological treatment technologies.~~

~~7. 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.~~

(c) ~~(c)~~ *Lake Okeechobee Exotic Species Control Program.*—The coordinating agencies shall identify the exotic species that threaten the native flora and fauna within the Lake Okeechobee watershed and develop and implement measures to protect the native flora and fauna.

(d) ~~(f)~~ *Lake Okeechobee Internal Phosphorus Management Program.*—The district, in cooperation with the other coordinating agencies and interested parties, shall evaluate the feasibility of ~~complete a~~ Lake Okeechobee internal phosphorus load removal projects ~~feasibility study~~. The evaluation ~~feasibility study~~ shall be based on technical feasibility, as well as economic considerations, and shall consider ~~address~~ all reasonable methods of phosphorus removal. If projects ~~methods~~ are found to be feasible, the district shall immediately pursue the design, funding, and permitting for implementing such projects ~~methods~~.

(e) ~~(g)~~ *Lake Okeechobee Watershed Protection Program* ~~*Plan implementation*~~.—The coordinating agencies shall be jointly responsible for implementing the Lake Okeechobee Watershed Protection Program ~~Plan~~, consistent with the statutory authority and responsibility of each agency. Annual funding priorities shall be jointly established, and the highest priority shall be assigned to programs and projects that address sources that have the highest relative contribution to loading and the greatest potential for reductions needed to meet the total maximum daily loads. In determining funding priorities, the coordinating agencies shall also consider the need for regulatory compliance, the extent to which the program or project is ready to proceed, and the availability of federal matching funds or other nonstate funding, including public-private partnerships. Federal and other nonstate funding shall be maximized to the greatest extent practicable.

(f) ~~(h)~~ *Priorities and implementation schedules*.—The coordinating agencies are authorized and directed to establish priorities and implementation schedules for the achievement of total maximum daily loads, compliance with the requirements of s. 403.067, and compliance with applicable water quality standards within the waters and watersheds subject to this section.

~~(i) *Legislative ratification*.—The coordinating agencies shall submit the Phase II technical plan developed pursuant to paragraph (b) to the President of the Senate and the Speaker of the House of Representatives prior to the 2008 legislative session for review. If the Legislature takes no action on the plan during the 2008 legislative session, the plan is deemed approved and may be implemented.~~

(4) CALOOSAHATCHEE RIVER WATERSHED PROTECTION PROGRAM AND ST. LUCIE RIVER WATERSHED PROTECTION PROGRAM.—A protection program shall be developed and implemented as specified in this subsection. In order to protect and restore surface water resources, the program shall address the reduction of pollutant loadings, restoration of natural hydrology, and compliance with applicable state water quality standards. The program shall be achieved through a phased program of implementation. In addition, pollutant load reductions based upon adopted total maximum daily loads established in accordance with s. 403.067 shall serve as a program objective. In the development and administration of the program, the coordinating agencies shall maximize opportunities provided by federal and local government cost-sharing programs and opportunities for partnerships with the private sector and local government. The program ~~plan~~ shall include a goal for salinity envelopes and freshwater inflow targets for the estuaries based upon existing research and documentation. The goal may be revised as new information is available. This goal shall seek to reduce the frequency and duration of undesirable salinity ranges while meeting the other water-related needs of the region, including water supply and flood protection, while recognizing the extent to which water inflows are within the control and jurisdiction of the district.

(a) *Caloosahatchee River Watershed Protection Plan*.—~~No later than January 1, 2009,~~ The district, in cooperation with the other coordinating agencies, Lee County, and affected counties and municipalities, shall complete a River Watershed Protection Plan in accordance with this subsection. The

Caloosahatchee River Watershed Protection Plan shall identify the geographic extent of the watershed, be coordinated as needed with the plans developed pursuant to paragraph (3)(a) and paragraph (c) ~~(b)~~ of this subsection, and ~~contain an implementation schedule for pollutant load reductions consistent with any adopted total maximum daily loads and compliance with applicable state water quality standards. The plan shall~~ include the Caloosahatchee River Watershed Construction Project and the Caloosahatchee River Watershed Research and Water Quality Monitoring Program.~~:~~

1. Caloosahatchee River Watershed Construction Project.—To improve the hydrology, water quality, and aquatic habitats within the watershed, the district shall, no later than January 1, 2012, plan, design, and construct the initial phase of the Watershed Construction Project. In doing so, the district shall:

a. Develop and designate the facilities to be constructed to achieve stated goals and objectives of the Caloosahatchee River Watershed Protection Plan.

b. Conduct scientific studies that are necessary to support the design of the Caloosahatchee River Watershed Construction Project facilities.

c. Identify the size and location of all such facilities.

d. Provide a construction schedule for all such facilities, including the sequencing and specific timeframe for construction of each facility.

e. Provide a schedule for the acquisition of lands or sufficient interests necessary to achieve the construction schedule.

f. Provide a schedule of costs and benefits associated with

each construction project and identify funding sources.

g. To ensure timely implementation, coordinate the design, scheduling, and sequencing of project facilities with the coordinating agencies, Lee County, other affected counties and municipalities, and other affected parties.

2. Caloosahatchee River Watershed Research and Water Quality Monitoring Program.—The district, in cooperation with the other coordinating agencies and local governments, shall implement a Caloosahatchee 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 Caloosahatchee River watershed and their relative contributions to the timing and volume of water delivered to the estuary.

(b)~~2.~~ *Caloosahatchee River Watershed Basin Management Action Plans* ~~Pollutant Control Program~~.—The basin management action plans adopted pursuant to s. 403.067 for the Caloosahatchee River watershed shall be the Caloosahatchee River Watershed Pollutant Control Program. The plans shall be ~~is~~ designed to be a multifaceted approach to reducing pollutant loads by improving the management of pollutant sources within the Caloosahatchee 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 utilization of alternative

technologies for pollutant reduction, such as cost-effective biologically based, hybrid wetland/chemical and other innovative nutrient control technologies. The plans 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.

1.~~a.~~ Nonpoint source best management practices consistent with s. 403.067 ~~paragraph (3)(c)~~, designed to achieve the objectives of the Caloosahatchee 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.

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.

3.~~c.~~ 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

harmful discharges by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, or increasing aquifer recharge, are eligible for grants available under this section from the coordinating agencies.

4.~~d.~~ The Caloosahatchee River Watershed Basin Management Action Plans ~~Pollutant Control Program~~ shall require assessment of current water management practices within the watershed and shall require development of recommendations for structural, nonstructural, and operational improvements. Such recommendations shall consider and balance water supply, flood control, estuarine salinity, aquatic habitat, and water quality considerations.

5.~~e.~~ ~~After December 31, 2007,~~ The department may not authorize the disposal of domestic wastewater biosolids ~~residuals~~ within the Caloosahatchee River watershed unless the applicant can affirmatively demonstrate that the nutrients in the biosolids ~~residuals~~ will not add to nutrient loadings in the watershed. This demonstration shall be based on achieving a net balance between nutrient imports relative to exports on the permitted application site. Exports shall include only nutrients removed from the watershed through products generated on the permitted application site. This prohibition does not apply to Class AA biosolids ~~residuals~~ that are marketed and distributed as fertilizer products in accordance with department rule.

6.~~f.~~ The Department of Health shall require all entities disposing of septage within the Caloosahatchee River watershed to develop and submit to that agency an agricultural use plan that limits applications based upon nutrient loading consistent

with any basin management action plan adopted pursuant to s. 403.067. ~~By July 1, 2008, nutrient concentrations originating from these application sites may not exceed the limits established in the district's WOD program.~~

7.~~g.~~ The Department of Agriculture and Consumer Services shall require ~~initiate rulemaking requiring~~ entities within the Caloosahatchee River watershed which land-apply animal manure to develop a resource management system level conservation plan, according to United States Department of Agriculture criteria, which limit such application. Such rules may include criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, and recordkeeping requirements.

8. The district shall initiate rulemaking to provide for a monitoring program for nonpoint source dischargers required to monitor water quality pursuant to s. 403.067(7)(b)2.g. or s. 403.067(7)(c)3. The results of such monitoring must be reported to the coordinating agencies.

~~3. Caloosahatchee River Watershed Research and Water Quality Monitoring Program.—The district, in cooperation with the other coordinating agencies and local governments, shall establish a Caloosahatchee 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 the Lake Okeechobee and Caloosahatchee River watersheds and their relative contributions to the timing and volume of water~~

~~delivered to the estuary.~~

(c)~~(b)~~ *St. Lucie River Watershed Protection Plan.*~~—No later than January 1, 2009,~~ The district, in cooperation with the other coordinating agencies, Martin County, and affected counties and municipalities shall complete a plan in accordance with this subsection. The St. Lucie River Watershed Protection Plan shall identify the geographic extent of the watershed, be coordinated as needed with the plans developed pursuant to paragraph (3)(a) and paragraph (a) of this subsection, and ~~contain an implementation schedule for pollutant load reductions consistent with any adopted total maximum daily loads and compliance with applicable state water quality standards. The plan shall~~ include the St. Lucie River Watershed Construction Project and St. Lucie River Watershed Research and Water Quality Monitoring Program.~~:~~

1. St. Lucie River Watershed Construction Project.—To improve the hydrology, water quality, and aquatic habitats within the watershed, the district shall, no later than January 1, 2012, plan, design, and construct the initial phase of the Watershed Construction Project. In doing so, the district shall:

a. Develop and designate the facilities to be constructed to achieve stated goals and objectives of the St. Lucie River Watershed Protection Plan.

b. Identify the size and location of all such facilities.

c. Provide a construction schedule for all such facilities, including the sequencing and specific timeframe for construction of each facility.

d. Provide a schedule for the acquisition of lands or sufficient interests necessary to achieve the construction

schedule.

e. Provide a schedule of costs and benefits associated with each construction project and identify funding sources.

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.

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.

(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

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.

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.

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.

3. ~~c.~~ 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

harmful discharges by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, or increasing aquifer recharge, are eligible for grants available under this section from the coordinating agencies.

4.~~d.~~ The St. Lucie River Watershed Basin Management Action Plans ~~Pollutant Control Program~~ shall require assessment of current water management practices within the watershed and shall require development of recommendations for structural, nonstructural, and operational improvements. Such recommendations shall consider and balance water supply, flood control, estuarine salinity, aquatic habitat, and water quality considerations.

5.~~e. After December 31, 2007,~~ The department may not authorize the disposal of domestic wastewater biosolids ~~residuals~~ within the St. Lucie River watershed unless the applicant can affirmatively demonstrate that the nutrients in the biosolids ~~residuals~~ will not add to nutrient loadings in the watershed. This demonstration shall be based on achieving a net balance between nutrient imports relative to exports on the permitted application site. Exports shall include only nutrients removed from the St. Lucie River watershed through products generated on the permitted application site. This prohibition does not apply to Class AA biosolids ~~residuals~~ that are marketed and distributed as fertilizer products in accordance with department rule.

6.~~f.~~ The Department of Health shall require all entities disposing of septage within the St. Lucie River watershed to develop and submit to that agency an agricultural use plan that

limits applications based upon nutrient loading consistent with any basin management action plan adopted pursuant to s. 403.067. ~~By July 1, 2008, nutrient concentrations originating from these application sites may not exceed the limits established in the district's WOD program.~~

7.~~g.~~ The Department of Agriculture and Consumer Services shall initiate rulemaking requiring entities within the St. Lucie River watershed which land-apply animal manure to develop a resource management system level conservation plan, according to United States Department of Agriculture criteria, which limit such application. Such rules may include criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, and recordkeeping requirements.

8. The district shall initiate rulemaking to provide for a monitoring program for nonpoint source dischargers required to monitor water quality pursuant to s. 403.067(7)(b)2.g. or s. 403.067(7)(c)3. The results of such monitoring must be reported to the coordinating agencies.

~~3. 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 the Lake Okeechobee and St. Lucie River watersheds and their relative contributions to the~~

~~timing and volume of water delivered to the estuary.~~

(e)~~(c)~~ *River Watershed Protection Plan implementation.*—The coordinating agencies shall be jointly responsible for implementing the River Watershed Protection Plans, consistent with the statutory authority and responsibility of each agency. Annual funding priorities shall be jointly established, and the highest priority shall be assigned to programs and projects that have the greatest potential for achieving the goals and objectives of the plans. In determining funding priorities, the coordinating agencies shall also consider the need for regulatory compliance, the extent to which the program or project is ready to proceed, and the availability of federal or local government matching funds. Federal and other nonstate funding shall be maximized to the greatest extent practicable.

(f)~~(d)~~ *Evaluation.*—Beginning ~~By~~ March 1, 2020 ~~2012~~, and every 5 ~~3~~ years thereafter concurrent with the updates of the basin management action plans adopted pursuant to s. 403.067, the district, in cooperation with the other coordinating agencies, shall 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 ~~Plans~~. ~~Additionally,~~ The district shall identify modifications to facilities of the River Watershed Construction Projects, as appropriate, or any other elements of the River Watershed Protection Programs ~~Plans~~. The evaluation shall be included in the annual progress report submitted pursuant to this section.

(g)~~(e)~~ *Priorities and implementation schedules.*—The coordinating agencies are authorized and directed to establish priorities and implementation schedules for the achievement of

total maximum daily loads, the requirements of s. 403.067, and compliance with applicable water quality standards within the waters and watersheds subject to this section.

~~(f) *Legislative ratification.* The coordinating agencies shall submit the River Watershed Protection Plans developed pursuant to paragraphs (a) and (b) to the President of the Senate and the Speaker of the House of Representatives prior to the 2009 legislative session for review. If the Legislature takes no action on the plan during the 2009 legislative session, the plan is deemed approved and may be implemented.~~

(5) ADOPTION AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS AND DEVELOPMENT OF BASIN MANAGEMENT ACTION PLANS.—The department is directed to expedite development and adoption of total maximum daily loads for the Caloosahatchee River and estuary. The department is further directed to~~, no later than December 31, 2008,~~ propose for final agency action total maximum daily loads for nutrients in the tidal portions of the Caloosahatchee River and estuary. The department shall initiate development of basin management action plans for Lake Okeechobee, the Caloosahatchee River watershed and estuary, and the St. Lucie River watershed and estuary as provided in s. 403.067 ~~s. 403.067(7)(a)~~ as follows:

(a) Basin management action plans shall be developed as soon as practicable as determined necessary by the department to achieve the total maximum daily loads established for the Lake Okeechobee watershed and the estuaries.

(b) The Phase II technical plan development pursuant to paragraph (3)(a) ~~(3)(b)~~, and the River Watershed Protection Plans developed pursuant to paragraphs (4)(a) and (c)~~(b)~~, shall

provide the basis for basin management action plans developed by the department.

(c) As determined necessary by the department in order to achieve the total maximum daily loads, additional or modified projects or programs that complement those in the legislatively ratified plans may be included during the development of the basin management action plan.

(d) As provided in s. 403.067, management strategies and pollution reduction requirements set forth in a basin management action plan subject to permitting by the department under subsection (7) must be completed pursuant to the schedule set forth in the basin management action plan, as amended. The implementation schedule may extend beyond the 5-year permit term.

(e) As provided in s. 403.067, management strategies and pollution reduction requirements set forth in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a department or district issued permit or a permit modification issued in accordance with subsection (7).

~~(d) Development of basin management action plans that implement the provisions of the legislatively ratified plans shall be initiated by the department no later than September 30 of the year in which the applicable plan is ratified. Where a total maximum daily load has not been established at the time of plan ratification, development of basin management action plans shall be initiated no later than 90 days following adoption of the applicable total maximum daily load.~~

(6) ANNUAL PROGRESS REPORT.—Each March 1 the district, in cooperation with the other coordinating agencies, shall report on implementation of this section as part of the consolidated annual report required in s. 373.036(7). The annual report shall include a summary of the conditions of the hydrology, water quality, and aquatic habitat in the northern Everglades based on the results of the Research and Water Quality Monitoring Programs, the status of the Lake Okeechobee Watershed Construction Project, the status of the Caloosahatchee River Watershed Construction Project, and the status of the St. Lucie River Watershed Construction Project. In addition, the report shall contain an annual accounting of the expenditure of funds from the Save Our Everglades Trust Fund. At a minimum, the annual report shall provide detail by program and plan, including specific information concerning the amount and use of funds from federal, state, or local government sources. In detailing the use of these funds, the district shall indicate those designated to meet requirements for matching funds. The district shall prepare the report in cooperation with the other coordinating agencies and affected local governments. The department shall report on the status of the Lake Okeechobee Basin Management Action Plan, the Caloosahatchee River Watershed Basin Management Action Plan, and the St. Lucie River Watershed Basin Management Action Plan. The Department of Agriculture and Consumer Services shall report on the status of the implementation of the agricultural nonpoint source best management practices.

(7) LAKE OKEECHOBEE PROTECTION PERMITS.—

(a) The Legislature finds that the Lake Okeechobee

Watershed Protection Program will benefit Lake Okeechobee and downstream receiving waters and is in ~~consistent with~~ the public interest. The Lake Okeechobee Watershed Construction Project, and structures discharging into or from Lake Okeechobee shall be constructed, operated, and maintained in accordance with this section.

(b) Permits obtained pursuant to this section are in lieu of all other permits under this chapter or chapter 403, except those issued under s. 403.0885, if applicable. ~~No~~ Additional permits are not required for the Lake Okeechobee Watershed Construction Project, or structures discharging into or from Lake Okeechobee, if such project or structures are permitted under this section. Construction activities related to implementation of the Lake Okeechobee Watershed Construction Project may be initiated before ~~prior to~~ final agency action, or notice of intended agency action, on any permit from the department under this section.

(c)1. ~~Within 90 days of completion of the diversion plans set forth in Department Consent Orders 91-0694, 91-0707, 91-0706, 91-0705, and RT50-205564,~~ Owners or operators of existing structures which discharge into or from Lake Okeechobee that were subject to Department Consent Orders 91-0694, 91-0705, 91-0706, 91-0707, and RT50-205564 and that are subject to ~~the provisions of~~ s. 373.4592(4)(a) do not require a permit under this section and shall be governed by permits issued under ~~apply for a permit from the department to operate and maintain such structures. By September 1, 2000, owners or operators of all other existing structures which discharge into or from Lake Okeechobee shall apply for a permit from the department to~~

~~operate and maintain such structures. The department shall issue one or more such permits for a term of 5 years upon the demonstration of reasonable assurance that schedules and strategies to achieve and maintain compliance with water quality standards have been provided for, to the maximum extent practicable, and that operation of the structures otherwise complies with provisions of~~ ss. 373.413 and 373.416 and the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067.

~~1. Permits issued under this paragraph shall also contain reasonable conditions to ensure that discharges of waters through structures:~~

~~a. Are adequately and accurately monitored;~~

~~b. Will not degrade existing Lake Okeechobee water quality and will result in an overall reduction of phosphorus input into Lake Okeechobee, as set forth in the district's Technical Publication 81-2 and the total maximum daily load established in accordance with s. 403.067, to the maximum extent practicable; and~~

~~c. Do not pose a serious danger to public health, safety, or welfare.~~

2. For the purposes of this paragraph, owners and operators of existing structures which are subject to ~~the provisions of~~ s. 373.4592(4)(a) and which discharge into or from Lake Okeechobee shall be deemed in compliance with this paragraph ~~the term "maximum extent practicable"~~ if they are in full compliance with the conditions of permits under chapter ~~chapters 40E-61 and~~ 40E-63, Florida Administrative Code.

3. ~~By January 1, 2004,~~ The district shall obtain from

~~submit to~~ the department a permit modification to the Lake Okeechobee structure permits to incorporate proposed changes necessary to ensure that discharges through the structures covered by this permit are consistent with the basin management action plan adopted pursuant to ~~achieve state water quality standards, including the total maximum daily load established in accordance with~~ s. 403.067. ~~These changes shall be designed to achieve such compliance with state water quality standards no later than January 1, 2015.~~

(d) The department shall require permits for district regional projects that are part of the Lake Okeechobee Watershed Construction Project ~~facilities~~. However, projects ~~identified in sub-subparagraph (3)(b)1.b.~~ that qualify as exempt pursuant to s. 373.406 do ~~shall~~ not require ~~need~~ permits under this section. Such permits shall be issued for a term of 5 years upon the demonstration of reasonable assurances that:

1. District regional projects that are part of the Lake Okeechobee Watershed Construction Project shall ~~facility, based upon the conceptual design documents and any subsequent detailed design documents developed by the district, will~~ achieve the design objectives for phosphorus required in subparagraph (3)(a)1. ~~paragraph (3)(b)~~;

2. For water quality standards other than phosphorus, the quality of water discharged from the facility is of equal or better quality than the inflows;

3. Discharges from the facility do not pose a serious danger to public health, safety, or welfare; and

4. Any impacts on wetlands or state-listed species resulting from implementation of that facility of the Lake

Okeechobee Construction Project are minimized and mitigated, as appropriate.

(e) At least 60 days before ~~prior to~~ the expiration of any permit issued under this section, the permittee may apply for a renewal thereof for a period of 5 years.

(f) Permits issued under this section may include any standard conditions provided by department rule which are appropriate and consistent with this section.

(g) Permits issued under ~~pursuant to~~ this section may be modified, as appropriate, upon review and approval by the department.

(8) ENFORCEMENT OF BASIN MANAGEMENT ACTION PLANS.—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.

Section 19. Paragraphs (a) and (b) of subsection (6) of section 373.536, Florida Statutes, are amended to read:

373.536 District budget and hearing thereon.—

(6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN; WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

(a) Each district must, by the date specified for each item, furnish copies of the following documents to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees having substantive or fiscal jurisdiction over the districts, as determined by the President of the Senate or the Speaker of the House of Representatives as applicable, the secretary of the department, and the governing board of each

county in which the district has jurisdiction or derives any funds for the operations of the district:

1. The adopted budget, to be furnished within 10 days after its adoption.

2. A financial audit of its accounts and records, to be furnished within 10 days after its acceptance by the governing board. The audit must be conducted in accordance with s. 11.45 and the rules adopted thereunder. In addition to the entities named above, the district must provide a copy of the audit to the Auditor General within 10 days after its acceptance by the governing board.

3. A 5-year capital improvements plan, to be included in the consolidated annual report required by s. 373.036(7). The plan must include expected sources of revenue for planned improvements and must be prepared in a manner comparable to the fixed capital outlay format set forth in s. 216.043.

4. A 5-year water resource development work program to be furnished within 30 days after the adoption of the final budget. The program must describe the district's implementation strategy and include an annual funding plan for each of the 5 years included in the plan for the water resource and~~,~~ water supply~~,~~ development components, including ~~and~~ alternative water supply development, ~~components~~ of each approved regional water supply plan developed or revised under s. 373.709. The work program must address all the elements of the water resource development component in the district's approved regional water supply plans, as well as the water supply projects proposed for district funding and assistance. The annual funding plan shall 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 for consideration for state funding pursuant to s. 403.0616 shall be identified separately. The work program ~~and~~ must identify projects in the work program which will provide water; explain how each water resource~~,~~ and water supply~~, and alternative water supply development~~ project will produce additional water available for consumptive uses; estimate the quantity of water to be produced by each project; ~~and~~ provide an assessment of the contribution of the district's regional water supply plans in supporting the implementation of minimum flows and levels and reservations; and ensure ~~providing~~ sufficient water is available ~~needed~~ to timely meet the water supply needs of existing and future reasonable-beneficial uses for a 1-in-10-year drought event and to avoid the adverse effects of competition for water supplies.

(b) Within 30 days after its submittal, the department shall review the proposed work program and submit its findings, questions, and comments to the district. The review must include a written evaluation of the program's consistency with the furtherance of the district's approved regional water supply plans, and the adequacy of proposed expenditures. As part of the review, the department shall post the work program on its website and give interested parties the opportunity to provide written comments on each district's proposed work program. Within 45 days after receipt of the department's evaluation, the governing board shall state in writing to the department which of the changes recommended in the evaluation it will incorporate into its work program submitted as part of the March 1

consolidated annual report required by s. 373.036(7) or specify the reasons for not incorporating the changes. The department shall include the district's responses in a final evaluation report and shall submit a copy of the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 20. Subsection (9) of section 373.703, Florida Statutes, is amended to read:

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

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

Section 21. Paragraph (b) of subsection (2), subsection (3), and paragraph (b) of subsection (4) of section 373.705,

Florida Statutes, are amended, and subsection (5) is added to that section, to read:

373.705 Water resource development; water supply development.—

(2) It is the intent of the Legislature that:

(b) Water management districts take the lead in identifying and implementing water resource development projects, and be responsible for securing necessary funding for regionally significant water resource development projects, including 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 a minimum flow or minimum water level, implement a recovery or prevention strategy or water reservation.

(3)(a) The water management districts shall fund and implement water resource development as defined in s. 373.019. The water management districts are encouraged to implement water resource development as expeditiously as possible in areas subject to regional water supply plans.

(b) Each governing board shall include in its annual budget submittals required under this chapter:

1. The amount of funds for each project in the annual funding plan developed pursuant to s. 373.536(6)(a)4.

2. The total amount needed for the fiscal year to implement water resource development projects, as prioritized in its regional water supply plans.

3. The amount of funds requested for each project submitted for consideration for state funding pursuant to s. 403.0616.

(4)

(b) Water supply development projects that meet the criteria in paragraph (a) and that meet one or more of the following additional criteria shall be given first consideration for state or water management district funding assistance:

1. The project brings about replacement of existing sources in order to help implement a minimum flow or level; ~~or~~

2. The project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9)<u>; or</u>

<u>3. The project reduces or eliminates the adverse effects of competition between legal users and the natural system</u>.

<u>(5) The water management districts shall 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.</u>

Section 22. Paragraph (f) of subsection (3), paragraph (a) of subsection (6), and paragraph (e) of subsection (8) of section 373.707, Florida Statutes, are amended to read:

373.707 Alternative water supply development.—

(3) The primary roles of the water management districts in water resource development as it relates to supporting alternative water supply development are:

(f) The provision of technical and financial assistance to local governments and publicly owned and privately owned water utilities for alternative water supply projects <u>and for self-suppliers for alternative water supply projects to the extent assistance for self-suppliers promotes the policies in paragraph (1)(f)</u>.

(6)(a) <u>Where state</u> ~~The statewide~~ funds <u>are</u> provided <u>through</u>

<u>specific appropriation for a priority project of the water resources work program pursuant to s. 403.0616, or</u> pursuant to the Water Protection and Sustainability Program<u>, such funds</u> serve to supplement existing water management district or basin board funding for alternative water supply development assistance and should not result in a reduction of such funding. <u>For each project identified in the plans prepared pursuant to s. 373.536(6)(a)4.</u> ~~Therefore~~, the water management districts shall include in the annual tentative and adopted budget submittals required under this chapter the amount of funds allocated for water resource development that supports alternative water supply development and the funds allocated for alternative water supply projects ~~selected for inclusion in the Water Protection and Sustainability Program~~. It shall be the goal of each water management district and basin boards that the combined funds allocated annually for these purposes be, at a minimum, the equivalent of 100 percent of the state funding provided to the water management district for alternative water supply development. If this goal is not achieved, the water management district shall provide in the budget submittal an explanation of the reasons or constraints that prevent this goal from being met, an explanation of how the goal will be met in future years, and affirmation of match is required during the budget review process as established under s. 373.536(5). The Suwannee River Water Management District and the Northwest Florida Water Management District shall not be required to meet the match requirements of this paragraph; however, they shall try to achieve the match requirement to the greatest extent practicable.

(8)

(e) Applicants for projects that may receive funding assistance pursuant to the Water Protection and Sustainability Program shall, at a minimum, be required to pay 60 percent of the project's construction costs. The water management districts may, at their discretion, totally or partially waive this requirement for projects sponsored by:

1. Financially disadvantaged small local governments as defined in former s. 403.885(5); or

2. Water users for projects determined by a water management district governing board to be in the public interest pursuant to paragraph (1)(f), if the projects are not otherwise financially feasible.

The water management districts or basin boards may, at their discretion, use ad valorem or federal revenues to assist a project applicant in meeting the requirements of this paragraph.

Section 23. Paragraph (a) of subsection (2) and paragraphs (a) and (e) of subsection (6) of section 373.709, Florida Statutes, are amended to read:

373.709 Regional water supply planning.—

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

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

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the

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

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

b. Agricultural demand projections used for determining the needs of agricultural self-suppliers must be based upon the best available data. In determining the best available data for agricultural self-supplied water needs, the district shall consider the data indicative of future water supply demands provided by the Department of Agriculture and Consumer Services pursuant to s. 570.93 and agricultural demand projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1), if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the data provided by the Department of Agriculture and Consumer Services must be fully described, and the original data must be presented along with

the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options that are technically and financially feasible, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of alternative water supply projects. If such users propose a project to be listed as an alternative water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan must exceed the needs identified in subparagraph 1. and take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

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

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

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

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

d. Identification of the entity that should implement each project option and the current status of project implementation.

(6) Annually and in conjunction with the reporting requirements of s. 373.536(6)(a)4., the department shall submit to the Governor and the Legislature a report on the status of regional water supply planning in each district. The report shall include:

(a) A compilation of the estimated costs ~~of~~ and an analysis of the sufficiency of potential sources of funding from all sources for water resource development and water supply development projects as identified in the water management district regional water supply plans.

(e) An overall assessment of the progress being made to develop water supply in each district, including, but not limited to, an explanation of how each project in the 5-year water resource development work program in s. 373.536(6)(a)4., either alternative or traditional, will produce, contribute to, or account for additional water being made available for consumptive uses, minimum flows and levels, or water reservations; an estimate of the quantity of water to be

produced by each project;~~,~~ and an assessment of the contribution of the district's regional water supply plan in providing sufficient water to meet the needs of existing and future reasonable-beneficial uses for a 1-in-10-year drought event, as well as the needs of the natural systems.

Section 24. Part VIII of chapter 373, Florida Statutes, consisting of sections 373.801, 373.802, 373.803, 373.805, 373.807, 373.811, 373.813, and 373.815, Florida Statutes, is created and entitled the "Florida Springs and Aquifer Protection Act."

Section 25. Section 373.801, Florida Statutes, is created to read:

373.801 Legislative findings and intent.—

(1) The Legislature finds that springs are a unique part of this state's scenic beauty. Springs provide critical habitat for plants and animals, including many endangered or threatened species. Springs also provide immeasurable natural, recreational, economic, and inherent value. Springs are of great scientific importance in understanding the diverse functions of aquatic ecosystems. Water quality of springs is an indicator of local conditions of the Floridan Aquifer, which is a source of drinking water for many residents of this state. Water flows in springs reflect regional aquifer conditions. In addition, springs provide recreational opportunities for swimming, canoeing, wildlife watching, fishing, cave diving, and many other activities in this state. These recreational opportunities and the accompanying tourism they provide are a benefit to local economies and the economy of the state as a whole.

(2) Water quantity and water quality in springs may be

related. For regulatory purposes, the department has primary responsibility for water quality; the water management districts have primary responsibility for water quantity; the Department of Agriculture and Consumer Services has primary responsibility for the development and implementation of agricultural best management practices; and the local governments have primary responsibility for providing wastewater and stormwater management. The foregoing responsible entities must coordinate to restore and maintain the water quantity and water quality of the Outstanding Florida Springs.

(3) The Legislature recognizes that:

(a) Springs are only as healthy as their springsheds. The groundwater that supplies springs is derived from water that recharges the aquifer system in the form of seepage from the land surface and through direct conduits, such as sinkholes. Springs may be adversely affected by polluted runoff from urban and agricultural lands; discharge resulting from inadequate wastewater and stormwater management practices; stormwater runoff; and reduced water levels of the Floridan Aquifer. As a result, the hydrologic and environmental conditions of a spring or spring run are directly influenced by activities and land uses within a springshed and by water withdrawals from the Floridan Aquifer.

(b) Springs, whether found in urban or rural settings, or on public or private lands, may be threatened by actual or potential flow reductions and declining water quality. Many of this state's springs are demonstrating signs of significant ecological imbalance, increased nutrient loading, and declining water flow. Without effective remedial action, further declines

in water quality and water quantity may occur.

(c) Springshed boundaries and areas of high vulnerability within a springshed need to be identified and delineated using the best available data.

(d) Springsheds typically cross water management district boundaries and local government jurisdictional boundaries, so a coordinated statewide springs protection plan is needed.

(e) The aquifers and springs of this state are complex systems affected by many variables and influences.

(4) The Legislature recognizes that action is urgently needed and, as additional data is acquired, action must be continually modified.

Section 26. Section 373.802, Florida Statutes, is created to read:

373.802 Definitions.—As used in this part, the term:

(1) "Department" means the Department of Environmental Protection, which includes the Florida Geological Survey or its successor agencies.

(2) "Local government" means a county or municipal government the jurisdictional boundaries of which include an Outstanding Florida Spring or any part of a springshed or delineated priority focus area of an Outstanding Florida Spring.

(3) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be

installed beyond the building sewer on land of the owner or on other land on which the owner has the legal right to install such system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(4) "Outstanding Florida Spring" includes all historic first magnitude springs, as determined by the department using the most recent Florida Geological Survey springs bulletin, excluding submarine springs, and the following springs, and their associated spring runs:

(a) De Leon Springs;

(b) Peacock Springs;

(c) Poe Springs;

(d) Rock Springs;

(e) Wekiwa Springs; and

(f) Gemini Springs.

(5) "Priority focus area" means 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.

(6) "Springshed" means the areas within the groundwater and surface water basins which contribute, based upon all relevant facts, circumstances, and data, to the discharge of a spring as defined by potentiometric surface maps and surface watershed

boundaries.

(7) "Spring run" means a body of flowing water that originates from a spring or whose primary source of water is a spring or springs under average rainfall conditions.

(8) "Spring vent" means a location where groundwater flows out of a natural, discernable opening in the ground onto the land surface or into a predominantly fresh surface water body.

Section 27. Section 373.803, Florida Statutes, is created to read:

373.803 Delineation of priority focus areas for Outstanding Florida Springs.—Using the best data available from the water management districts and other credible sources, the department, in coordination with the water management districts, shall delineate priority focus areas for each Outstanding Florida Spring or group of springs that contains one or more Outstanding Florida Springs. In delineating priority focus areas, the department shall consider groundwater travel time to the spring, hydrogeology, nutrient load, and any other factors that may lead to degradation of an Outstanding Florida Spring. The delineation of priority focus areas must be completed by July 1, 2018.

Section 28. Section 373.805, Florida Statutes, is created to read:

373.805 Minimum flows and minimum water levels for Outstanding Florida Springs.—

(1)(a) At the time a minimum flow or minimum water level is adopted for an Outstanding Florida Spring, if the spring is below or is projected within 20 years to fall below the minimum flow or minimum water level, a water management district or the department shall simultaneously adopt a recovery or prevention

strategy.

(b) When an interim minimum flow or minimum water level is established pursuant to s. 373.042(2) for an Outstanding Florida Spring, the water management district or the department shall also adopt a recovery or prevention strategy by July 1, 2016, if the spring is below or is projected within 20 years to fall below the interim minimum flow or minimum water level.

(2) For an Outstanding Florida Spring, a minimum flow or minimum water level adopted before July 1, 2015, must be revised by July 1, 2018. When a minimum flow or minimum water level is revised, if the spring is below or is projected within 20 years to fall below the revised minimum flow or minimum water level, a water management district or the department shall simultaneously adopt a recovery or prevention strategy or modify an existing recovery or prevention strategy. A district or the department may adopt the revised minimum flow or minimum water level before the adoption of a recovery or prevention strategy if the revised minimum flow or minimum water level is less constraining on existing or projected future consumptive uses.

(3) For an Outstanding Florida Spring without an adopted recovery or prevention strategy, if a district or the department determines the spring has fallen below, or is projected within 20 years to fall below the adopted or interim minimum flow or minimum water level, a water management district or the department shall expeditiously adopt a recovery or prevention strategy.

(4) The recovery or prevention strategy for each Outstanding Florida Spring must, at a minimum, include:

(a) A listing of all specific projects identified for

implementation of the plan;

(b) A priority listing of each project;

(c) For each listed project, the estimated cost of and the estimated date of completion;

(d) The source and amount of financial assistance to be made available by the water management district for each listed project, which may not be less than 25 percent of the total project cost unless a specific funding source or sources are identified which will provide more than 75 percent of the total project cost. The Northwest Florida Water Management District and the Suwannee River Water Management District are not required to provide matching funds pursuant to this paragraph;

(e) An estimate of each listed project's benefit to an Outstanding Florida Spring; and

(f) An implementation plan with a goal to achieve the adopted or interim minimum flow or minimum water level no more than 20 years after the adoption of a recovery or prevention strategy. The implementation plan must include measureable interim milestones to be achieved within 5, 10, and 15 years, respectively, intended to achieve the adopted or interim minimum flow or minimum water level.

(5) A local government may apply to the department for an extension of up to 5 years for any project in an adopted recovery or prevention strategy. The department may grant the extension if the local government provides to the department sufficient evidence that an extension is in the best interest of the public. For a local government in a rural area of opportunity, as defined in s. 288.0656, the department may grant an extension of up to 10 years.

Section 29. Section 373.807, Florida Statutes, is created to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2015, the department shall initiate assessment, pursuant to s. 403.067(3), of each Outstanding Florida Spring for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents. Assessments must be completed by July 1, 2018.

(1)(a) Simultaneously with the adoption of a nutrient total maximum daily load for an Outstanding Florida Spring, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan, as specified in s. 403.067. For an Outstanding Florida Spring with a nutrient total maximum daily load adopted before July 1, 2015, the department, or the department in conjunction with a water management district, shall initiate development of a basin management action plan by July 1, 2015. During the development of a basin management action plan, if the department identifies onsite sewage treatment and disposal systems as significant nonpoint sources of nutrient pollution which need to be addressed within a local government jurisdiction, the department shall notify the local government within 30 days. The local government shall develop an onsite sewage treatment and disposal system remediation plan pursuant to subsection (3) for those systems identified as significant nonpoint sources of nutrient pollution for inclusion in the basin management action plan.

(b) A basin management action plan for an Outstanding Florida Spring shall be adopted within 3 years after its

initiation and must include, at a minimum:

1. A list of all specific projects identified to implement a nutrient total maximum daily load;

2. A list of all specific projects identified in an onsite sewage treatment and disposal system remediation plan, if applicable;

3. A priority rank for each listed project;

4. For each listed project, the estimated cost of and the estimated date of completion;

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

6. An estimate of each listed project's nutrient load reduction;

7. Identification of each point source or category of nonpoint sources, including, but not limited to, urban turf fertilizer, sports turf fertilizer, agricultural fertilizer, onsite sewage treatment and disposal systems, wastewater treatment facilities, animal wastes, and stormwater facilities. An estimated allocation of the pollutant load must be provided for each point source or category of nonpoint sources; and

8. An implementation plan intended to achieve the adopted nutrient total maximum daily load no more than 20 years after the adoption of a basin management action plan. The plan must include measureable interim milestones to be achieved within 5, 10, and 15 years, respectively, intended to achieve the adopted nutrient total maximum daily load.

(c) For a basin management action plan adopted before July 1, 2015, which addresses an Outstanding Florida Spring, the

department or the department in conjunction with a water management district must revise the plan pursuant to this section by July 1, 2018.

(d) Upon approval of an onsite sewage treatment and disposal system remediation plan by the department, the plan shall be deemed incorporated as part of the appropriate basin management action plan pursuant to s. 403.067(7) until such time as the basin management action plan is revised.

(e) A local government may apply to the department for an extension of up to 5 years for any project in an adopted basin management action plan. A local government in a rural area of opportunity, as defined in s. 288.0656, may apply for an extension of up to 10 years for such a project. The department may grant the extension if the local government provides to the department sufficient evidence that an extension is in the best interest of the public.

(2) Within 6 months after the delineation of priority focus areas of an Outstanding Florida Spring that is fully or partially within the jurisdiction of a local government, a local government must develop, enact, and implement an ordinance that meets or exceeds the requirements of the department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. Such ordinance must require that, within a priority focus area of an Outstanding Florida Spring with an adopted nutrient total maximum daily load, the nitrogen application rate of any fertilizer applied to turf or landscape plants may not exceed the lowest basic maintenance rate of the most recent recommendations by the Institute of Food and Agricultural Sciences. The department shall adopt rules to implement this

subsection which establish reasonable minimum standards and reflect advancements or improvements regarding nutrient load reductions.

(3) Notwithstanding ss. 381.0064, 381.0065, 381.00651, 381.00655, 381.0066, 381.0067 and 381.0068, by July 1, 2017, the department, in conjunction with the Department of Health and local governments, must identify onsite sewage treatment and disposal systems within each priority focus area. Within 60 days after the department's completion of the identification of these systems, the department shall provide the location of the systems to the local governments in which they are located. If notified by the department pursuant to subsection (1), the local government, in consultation with the department, shall develop an onsite sewage treatment and disposal system remediation plan within 12 months after notification by the department. If the department determines onsite sewage treatment and disposal systems within a priority focus area contribute at least 20 percent of nonpoint source nutrient pollution, the plan must identify which systems require repair, upgrade, replacement, drainfield modification, connection to a central sewerage system, or no action. The plan must include a priority ranking for each system or group of systems that require remediation. Each remediation plan must be submitted to the department for approval.

(a) In reviewing and approving the remediation plans, the department shall consider, at a minimum:

1. The density of onsite sewage treatment and disposal systems;

2. The number of onsite sewage treatment and disposal

systems;

3. The proximity of the onsite sewage treatment and disposal system or systems to an Outstanding Florida Spring;

4. The estimated nutrient loading of the onsite sewage treatment and disposal system or systems; and

5. The cost of the proposed remedial action.

(b) Before submitting an onsite sewage treatment and disposal system remediation plan to the department, the local government shall hold at least one public meeting to provide the public an opportunity to comment on the plan. The approval of an onsite sewage treatment and disposal system remediation plan by the department constitutes a final agency action.

(c) If a local government does not substantially comply with this subsection, it may be ineligible for funding pursuant to s. 403.0617.

(d) With respect to implementation of an onsite sewage treatment and disposal system remediation plan, a property owner with an onsite sewage treatment and disposal system identified as requiring remediation by the plan may not be required to pay the cost of a system inspection, a system upgrade, a system replacement, a drainfield modification, or any initial connection fee for connecting to a sanitary sewer system. This paragraph does not apply to local government programs in existence before July 1, 2015, which are inconsistent with this paragraph.

(4) The department shall provide notice to a local government of all permit applicants under s. 403.814(12) in a priority focus area of an Outstanding Florida Spring over which the local government has full or partial jurisdiction.

Section 30. Section 373.811, Florida Statutes, is created to read:

373.811 Prohibited activities within a priority focus area.—The following activities are prohibited within a priority focus area of an Outstanding Florida Spring:

(1) New municipal or industrial wastewater disposal facilities, including rapid infiltration basins, with permitted capacities of 100,000 gallons per day or more, except for those facilities that meet an advanced wastewater treatment standard of no more than 3 mg/l total nitrogen, expressed as N, on an annual permitted basis, or a more stringent treatment standard if the department determines the more stringent standard is necessary to prevent impairment or aid in the recovery of an Outstanding Florida Spring.

(2) Beginning 6 months after the Department of Health approves passive nitrogen removing onsite sewage treatment and disposal systems, new onsite sewage treatment and disposal systems on lots of less than 1 acre, except for passive nitrogen removing onsite sewage treatment and disposal systems.

(3) New facilities for the disposal of hazardous waste.

(4) The land application of Class A or Class B domestic wastewater biosolids.

(5) New agriculture operations that do not implement best management practices, measures necessary to achieve pollution reduction levels established by the department, or groundwater monitoring plans approved by a water management district or the department.

Section 31. Section 373.813, Florida Statutes, is created to read:

373.813 Rules.—

(1) The department shall adopt rules to create a program to improve water quantity and water quality to administer this part, as applicable.

(2) The Department of Health, the Department of Agriculture and Consumer Services, and the water management districts, as appropriate, may adopt rules to administer this part, as applicable.

(3)(a) The Department of Agriculture and Consumer Services is the lead agency coordinating the reduction of agricultural nonpoint sources of pollution for the protection of Outstanding Florida Springs. The Department of Agriculture and Consumer Services and the department, pursuant to s. 403.067(7)(c)4., shall study new or revised agricultural best management practices for improving and protecting Outstanding Florida Springs and, if necessary, in cooperation with applicable local governments and stakeholders, initiate rulemaking to require the implementation of such practices within a reasonable period.

(b) The department, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences shall cooperate in conducting the necessary research and demonstration projects to develop improved or additional nutrient management tools, including the use of controlled release fertilizer that can be used by agricultural producers as part of an agricultural best management practices program. The development of such tools must reflect a balance between water quality improvement and agricultural productivity and, if applicable, must be incorporated into the revised agricultural best management

practices adopted by rule by the Department of Agriculture and Consumer Services.

Section 32. Section 373.815, Florida Statutes, is created to read:

373.815 Reports.—Each July 1, beginning July 1, 2016, the department, in conjunction with the water management districts, shall submit progress reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of each total maximum daily load, basin management action plan, minimum flow or minimum water level, and recovery or prevention strategy adopted pursuant to this part. The report must include the status of each project identified to achieve an adopted total maximum daily load or an adopted or interim minimum flow or minimum water level, as applicable. If a report indicates that any of the interim 5-, 10-, or 15-year milestones, or the 20-year goal will not be met, the report must include specific corrective actions that will be taken to achieve these milestones and goals, and, if necessary, executive and legislative recommendations to that end.

Section 33. Subsections (25) and (29) of section 403.061, Florida Statutes, are amended, and subsection (45) is added to that section, to read:

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

(25)(a) Establish and administer a program for the restoration and preservation of bodies of water within the state. The department shall have the power to acquire lands, to

cooperate with other applicable state or local agencies to enhance existing public access to such bodies of water, and to adopt all rules necessary to accomplish this purpose.

(b) Create a consolidated water resources work plan, in consultation with state agencies, water management districts, and local governments, which provides a geographic depiction of the total inventory of water resources projects currently under construction, completed in the previous 5 years, or planned to begin construction in the next 5 years. The consolidated work plan must include for each project a description of the project, the total cost of the project, and identification of the governmental entity financing the project. This information together with the information provided pursuant to paragraph (45)(a) is intended to facilitate the ability of the Florida Water Resources Advisory Council, the Legislature, and the public to consider the projects contained in the tentative water resources work program developed pursuant to s. 403.0616 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 department may adopt all rules necessary to accomplish this purpose.

(29)(a) Adopt by rule special criteria to protect Class II and Class III shellfish harvesting waters. Such rules may include special criteria for approving docking facilities that have 10 or fewer slips if the construction and operation of such facilities will not result in the closure of shellfish waters.

(b) Adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply. These designated surface waters shall have the same water

quality criteria protections as waters designated for fish consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife, and shall be free from discharged substances at a concentration that, alone or in combination with other discharged substances, would require significant alteration of permitted treatment processes at the permitted treatment facility or that would otherwise prevent compliance with applicable state drinking water standards in the treated water. 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 to the potable water supply classification.

(45)(a) Create and maintain a web-based, interactive map that includes, at a minimum:

1. All watersheds and each water body within those watersheds;

2. The county or counties in which the watershed or water body is located;

3. The water management district or districts in which the watershed or water body is located;

4. Whether a minimum flow or minimum water level has been adopted for the water body, and if such minimum flow or minimum water level has not been adopted, the anticipated adoption date;

5. Whether a recovery or prevention strategy has been adopted for the watershed or water body and, if such a plan has not been adopted, the anticipated adoption date;

6. The impairment status of each watershed or water body;

7. Whether a total maximum daily load has been adopted if

the watershed or water body is listed as impaired and, if such total maximum daily load has not been adopted, the anticipated adoption date;

8. Whether a basin management action plan has been adopted for the watershed and, if such a plan has not been adopted, the anticipated adoption date;

9. Each project listed on the 5-year water resources work program developed pursuant to s. 373.036(7);

10. The agency or agencies and local sponsor, if any, responsible for overseeing the project;

11. The estimated cost and completion date of each project and the financial contribution of each entity;

12. The quantitative estimated benefit to the watershed or water body; and

13. The water projects completed within the last 5 years within the watershed or water body.

(b) The department and each water management district shall prominently display on their respective websites a hyperlink to the interactive map required by this subsection.

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

Section 34. Section 403.0616, Florida Statutes, is created to read:

403.0616 Florida Water Resources Advisory Council.—

(1) The Florida Water Resources Advisory Council is hereby created within the department for the purpose of evaluating

water resource projects prioritized and submitted by state agencies, water management districts, or local governments. The council shall evaluate and recommend projects that are eligible for state funding as priority projects of statewide, regional, or critical local importance under this chapter or chapter 373. The council must review and evaluate all water resource projects that are prioritized and reported by state agencies or water management districts pursuant to s. 373.036(7)(d)3., or by local governments, if applicable, in order to provide the Legislature with recommendations for projects that improve or restore the water resources of this state. The council is also responsible for submitting a prioritization of 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 as provided in s. 403.0617.

(2) The Florida Water Resources Advisory Council consists of five voting members and five ex officio, nonvoting members as follows:

(a) 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; one member with expertise in a scientific discipline related to water resources, appointed by the President of the Senate; and one member with expertise in a scientific discipline related to water resources, appointed by the Speaker of the House of Representatives, all of whom shall be voting members.

(b) The executive directors of each of the five water management districts, all of whom shall be nonvoting members.

(3) Members appointed by the President of the Senate and Speaker of the House of Representatives shall serve 2-year terms but may not serve more than a total of 6 years. The President of the Senate and Speaker of the House of Representatives may fill a vacancy at any time for an unexpired term of an appointed member.

(4) If a member of the council is disqualified from serving because he or she no longer holds the position required to serve under this section, the interim head of the agency shall serve as the agency representative.

(5) The two appointed council members shall receive reimbursement for expenses and per diem for travel to attend council meetings authorized pursuant to s. 112.061 while in the performance of their duties.

(6) The council shall hold periodic meetings at the request of the chair but must hold at least two public meetings, separately noticed, each year in which the public has the opportunity to participate and comment. Unless otherwise provided by law, notice for each meeting must be published in a newspaper of general circulation in the area where the meeting is to be held at least 5 days but no more than 15 days before the meeting date.

(a) By July 15 of each year, the council shall release a tentative water resources work program containing legislative recommendations for water resource projects. The public has 30 days to submit comments regarding the tentative program.

(b) The council shall adopt the tentative work program containing its legislative recommendations and submit it to the Governor, the President of the Senate, and the Speaker of the

House of Representatives by August 31 of each year. An affirmative vote of three members of the council is required to adopt the tentative work program.

(7) The department shall provide primary staff support to the council and shall ensure that council meetings are electronically recorded. Such recordings must be preserved pursuant to chapters 119 and 257.

(8) The council shall recommend rules for adoption by the department to competitively evaluate, select, and rank projects for the tentative water resources work program. The council shall develop specific criteria for the evaluation, selection, and ranking of projects, including a preference for projects that will have a significant, measurable impact on improving water quantity or water quality; projects in areas of greatest impairment; projects of state or regional significance; projects recommended by multiple districts or multiple local governments cooperatively; projects with a significant monetary commitment by the local project sponsor or sponsors; projects in rural areas of opportunity as defined in s. 288.0656; projects that may be funded through appropriate loan programs; and projects that have significant private contributions of time or money.

(9) The department, in consultation with the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, and the water management districts, shall adopt rules to implement this section.

Section 35. Section 403.0617, Florida Statutes, is created to read:

403.0617 Innovative nutrient and sediment reduction and conservation pilot project program.—

(1) By December 31, 2015, the department shall adopt rules to competitively evaluate and rank projects for selection and prioritization by the Water Resources Advisory Council, pursuant to s. 403.0616, for submission to the Legislature for funding. These pilot projects are intended to 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 department must include in the evaluation criteria a determination by the department that the pilot project will not be harmful to the ecological resources in the study area.

(2) In developing these rules, the council shall give preference to the projects that will result in the greatest improvement to water quality and water quantity for the dollars to be expended for the project. At a minimum, the department shall consider all of the following:

(a) The level of nutrient impairment of the waterbody, watershed, or water segment in which the project is located.

(b) The quantity of pollutants, particularly total nitrogen, which the project is estimated to remove from a water body, watershed, or water segment with an adopted nutrient total maximum daily load.

(c) The potential for the project to provide a cost effective solution to pollution caused by onsite sewage treatment and disposal systems.

(d) The flow necessary to restore a water resource to its adopted or interim minimum flow or minimum water level.

(e) The anticipated impact the project will have on restoring or increasing water flow or water level.

(f) The amount of matching funds for the project which will be provided by the entities responsible for implementing the project.

(g) Whether the project is located in a rural area of opportunity, as defined in s. 288.0656, with preference given to the local government responsible for implementing the project.

(h) For multiple-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project.

(i) The cost of the project and the length of time it will take to complete relative to its expected benefits.

(j) 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 36. Section 403.0623, Florida Statutes, is amended to read:

403.0623 Environmental data; quality assurance.—

(1) The department must establish, by rule, appropriate quality assurance requirements for environmental data submitted to the department and the criteria by which environmental data may be rejected by the department. The department may adopt and enforce rules to establish data quality objectives and specify requirements for training of laboratory and field staff, sample collection methodology, proficiency testing, and audits of laboratory and field sampling activities. Such rules may be in addition to any laboratory certification provisions under ss. 403.0625 and 403.863.

(2)(a) The department, in coordination with the water

management districts, shall establish 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 water management districts shall submit such data collected after June 30, 2015, to the department for analysis. The department shall analyze the data to ensure statewide consistency. The department shall maintain a centralized database for all testing results and analyses, which must be accessible by the water management districts.

(b) To the extent practicable, the department shall coordinate with federal agencies to ensure that its collection and analysis of water quality, water quantity, and related data, which may be used by any state agency, water management district, or local government, is consistent with this subsection.

(c) In order to receive state funds for the acquisition of lands or the financing of a water resource project, state agencies and water management districts must use the department's testing results and analysis, if available, as a prerequisite for any such request for funding.

(d) The department and the water management districts may adopt rules to implement this subsection.

Section 37. Subsection (21) is added to section 403.861, Florida Statutes, to read:

403.861 Department; powers and duties.—The department shall have the power and the duty to carry out the provisions and purposes of this act and, for this purpose, to:

(21)(a) Upon issuance of a construction permit to construct a new public water system drinking water treatment facility to

provide potable water supply 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 department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(29)(b).

(b) For existing public water system drinking water treatment facilities that use a surface water of the state as a treated potable water supply, which surface water classification does not include potable water as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with 403.061(29)(b).

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 AIF H2O Coalition

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)

4/8/2015
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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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)

4/8/2015
Meeting Date

SB 918
Bill Number (if applicable)

901608
Amendment Barcode (if applicable)

Topic Environmental Resources

Name Todd J. Bonlarron

Job Title

Address 301 N. Olive Ave
Street
West Palm Beach FL 33401
City *State* *Zip*

Phone (561) 355-3451

Email tbonlarre@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

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)

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

SB 918
Bill Number (if applicable)

129140
Amendment Barcode (if applicable)

Topic Environmental Resources

Name Nick Matthews

Job Title

Address 115 S. Andrews Ave
Street
Ft. Lauderdale FL 33301
City *State* *Zip*

Phone (954)357-7135

Email nmatthews@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

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)

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

SB 918
Bill Number (if applicable)

129140
Amendment Barcode (if applicable)

Topic Environmental Resources

Name Todd J. Bonlarron

Job Title

Address 301 N. Olive Ave
Street
West Palm Beach FL 33401
City *State* *Zip*

Phone (561) 355-3451

Email tbonlarr@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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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

8 April 2015
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 918
Bill Number (if applicable)

Topic Enviromental Resources

AA 229130
Amendment Barcode (if applicable)

Name Edgar G. Fernandez

Job Title Consultant

Address 201 W Park Avenue
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 786 255 5755

Email Edgar@AnfieldFlorida.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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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

918
Bill Number (if applicable)

ALTMAN AMEND
Amendment Barcode (if applicable)

Topic WATER CONSERVATION

Name FRANK MATTHEWS

Job Title ATTY

Address PO BOX 6526
Street

TLH FLA 32301
City *State* *Zip*

Phone 850 222 7500

Email frankm@hgslaw.com

Speaking: [X] 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 [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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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)

Meeting Date	Bill Number (if applicable)
	918

Topic Onsite Wastewater

Amendment Barcode (if applicable)

Name Roxanne L. Groover

Job Title Executive Director

Address 5115 State Road 557 (Street)

Phone 8135048340

Lake Alfred (City) FL (State) 33850 (Zip)

Email rgroover@fowa 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

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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)

9-9-15
Meeting Date

CS/SB 918
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Lake Okeechobee

Name Eric Draper

Job Title

Address 308 N Monroe
Street

Tallahassee FL 323
City *State* *Zip*

Phone 850 222 2773

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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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

918
Bill Number (if applicable)

Topic Environmental Resources

Amendment Barcode (if applicable)

Name Chris Scoonover

Job Title

Address 101 E. College Ave Ste 502
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 222-9075

Email cschoonover@capcity 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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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

918
Bill Number (if applicable)

Topic ENV RESOURCES

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title

Address 1674 UNIVERSITY PKWY
Street

SARASOTA FL 34243
City *State* *Zip*

Phone 941.323.2404

Email cullenzee@aol.com

Speaking: ☐ For ☐ Against ☑ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SIERRA CLUB FLORIDA

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

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

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
Street

Phone 850-320-4208

Tallahassee FL 32301
City *State* *Zip*

Email Stef.Kunkel

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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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

918
Bill Number (if applicable)

Topic Enviro Resources

Amendment Barcode (if applicable)

Name Katie Kelly

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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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)

Meeting Date	Bill Number (if applicable)
	918

Topic Onsite Wastewater

Amendment Barcode (if applicable)

Name Roxanne Groover

Job Title Exec. Director

Address 5115 SR 557 (Street)

LA (City) (State) (Zip)

Phone 8135048340

Email rgroover@floridaonsite.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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S-001 (10/14/14)

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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15 APR -1 PM 5:08
CHAIR Vice Chairman
STAFF DIR. STAFF

REPLY TO:
☐ 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*

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.)

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

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.	Gudeman	Uchino	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

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.[1] Leaking storage tanks pose a significant threat to groundwater quality, and Florida relies on groundwater for about 92 percent of its drinking water needs.[2]

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.[3]

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.[4]

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[1] *See* ch. 83-310, Laws of Fla.
[2] DEP, *Storage Tank Compliance*, http://www.dep.state.fl.us/waste/categories/tanks/ (last visited Mar. 9, 2015).
[3] DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[4] 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.[5] 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.[6]

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.[7] There are currently 4,084 eligible ATRP discharges and 2,078 discharges have been remediated.[8]

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,[9] which was funded by increasing the excise tax on petroleum and petroleum products.[10] 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.[11]

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.[12]

[5] Section 376.3072, F.S.
[6] Chapter 89-188, Laws of Fla.
[7] Section 376.305, F.S.
[8] DEP, *Senate Bill 314 Agency Analysis*, 3, (Jan. 20, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[9] The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.
[10] Chapter 92-30, Laws of Fla.
[11] Comm. on Environmental Preservation and Conservation, the Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).
[12] 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).[13] 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.[14]

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.[15] 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.[16]

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.[17] There are currently 1,727 PCPP eligible discharges.[18]

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

[13] Chapter 96-277, s. 6, Laws of Fla.
[14] Section 376.30713, F.S.
[15] Section 376.30713(4), F.S.
[16] Section 376.30713(2), F.S
[17] Section 376.3071(13), F.S.
[18] 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.[19]

[19] 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.[20]

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.[21] The remaining $75 million in appropriation was released in March 2014.[22]

[20] Chapter 2013-41, s. 29, Laws of Fla.

[21] 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).

[22] 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.[23]

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.[24] 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.[25] 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;

[23] See s. 287.057, F.S.

[24] 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."

[25] 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 (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.[26]

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,[27] institutional[28] and engineering controls,[29] and remediation by natural attenuation[30] 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.[31]

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

[26] 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 (last visited Mar. 9, 2015).
[27] 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."
[28] 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."
[29] 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."
[30] 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."
[31] 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

systems. For purposes of this subsection, the term "abandoned petroleum storage system" means a petroleum storage system that has not stored petroleum products for consumption, use, or sale since March 1, 1990. The department shall establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:

1. An application must be submitted to the department ~~by June 30, 1996,~~ certifying that the system has not stored petroleum products for consumption, use, or sale at the facility since March 1, 1990.

2. The owner or operator of the petroleum storage system when it was in service must have ceased conducting business involving consumption, use, or sale of petroleum products at that facility on or before March 1, 1990.

3. The site is not otherwise eligible for the cleanup programs pursuant to s. 376.3071 or s. 376.3072.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to department rules before an eligibility determination. However, if the department determines that the owner of the facility cannot financially comply with the department's petroleum storage system closure requirements and all other eligibility requirements are met, the petroleum storage system closure requirements shall be waived. The department shall take into consideration the owner's net worth and the economic impact on the owner in making the determination of the owner's financial ability. ~~The June 30, 1996, application deadline shall be waived for owners who cannot financially~~


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~~comply.~~

(c) Sites accepted in the program are eligible for site rehabilitation funding as provided in s. 376.3071.

(d) The following sites are excluded from eligibility:

1. Sites on property of the Federal Government;

2. Sites contaminated by pollutants that are not petroleum products;

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 person acquired title to the site after issuance of a notice of site eligibility by the department.

(e) Participating sites are subject to a deductible as determined by rule, not to exceed $10,000.

~~This subsection does not relieve a person who has acquired title after July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s. 376.308(1)(c).~~

Section 2. Paragraph (b) of subsection (12), and subsection (13) of section 376.3071, Florida Statutes, are amended, and paragraph (c) is added to subsection (12) of that section, to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—


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(12) SITE CLEANUP.—

(b) *Low-risk* ~~*Low-scored*~~ *site initiative.*—Notwithstanding subsections (5) and (6), a site ~~with a priority ranking score of 29 points or less~~ may voluntarily participate in the low-risk ~~low-scored~~ site initiative regardless of whether the site is eligible for state restoration funding.

1. To participate in the low-risk ~~low-scored~~ site initiative, the ~~responsible party or~~ property owner, or a responsible party that provides evidence of authorization from the property owner, must submit a "No Further Action" proposal and affirmatively demonstrate that the ~~following~~ conditions of paragraph (c) are met.~~:~~

~~a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.~~

~~b. Excessively contaminated soil, as defined by department rule, does not exist onsite as a result of a release of petroleum products.~~

~~c. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.~~

~~d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.~~

~~e. The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated.~~

~~f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human~~


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~~exposure is limited by appropriate institutional or engineering controls.~~

2. Upon affirmative demonstration that ~~of~~ the conditions under paragraph (c) are met ~~subparagraph 1.~~, the department shall issue a site rehabilitation completion order incorporating the ~~determination of~~ "No Further Action~~.~~" proposal submitted by the property owner or the responsible party that provides evidence of the authorization from the property owner. ~~Such 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 no contamination is detected, the department may issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding may receive payment of costs for the low-risk ~~low-scored~~ site initiative as follows:

a. A ~~responsible party or~~ property owner, or responsible party that provides evidence of authorization from the property owner, may submit an assessment and limited remediation plan designed to affirmatively demonstrate that the site meets the conditions under paragraph (c) ~~subparagraph 1~~. Notwithstanding the priority ranking score of the site, the department may approve the cost of the assessment and limited remediation, including up to 6 months of groundwater monitoring, in one or more task assignments, or modifications thereof, not to exceed the threshold amount provided in s. 287.017 for CATEGORY TWO, ~~$30,000~~ for each site where the department has determined that the assessment and limited remediation, if applicable, will likely result in a determination of "No Further Action". The


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department may not pay the costs associated with the establishment of institutional or engineering controls, with the exception of 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.

b. Following the assessment, the department may approve up to an additional $35,000 for interim source removal pursuant to department rule to achieve a "No Further Action" order or a site rehabilitation completion order pursuant to subparagraph 2.

b. Following approval of initial site assessment results provided pursuant to state funding under sub-subparagraph a., the department may approve up to an additional amount not to exceed the threshold amount provided in s. 287.017 for CATEGORY TWO, for limited remediation, where needed to achieve a determination of "No Further Action".

c.~~b.~~ The assessment and limited remediation work shall be completed no later than 9 ~~6~~ months after the department authorizes the start of a state funded low-risk site initiative task ~~issues its approval~~. If groundwater monitoring is required after the assessment and limited remediation in order to satisfy the conditions of paragraph (c), the department may authorize an additional 6 months to complete the monitoring.

d.~~c.~~ No more than $15 ~~$10~~ million for the low-risk ~~low-scored~~ site initiative may be encumbered from the fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each ~~responsible party or~~ property owner or each responsible party that provides evidence of authorization from the property owner.

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e.~~d.~~ Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

(c) The department shall issue a site rehabilitation completion order incorporating the "No Further Action Proposal" submitted by a property owner or a responsible party that provides evidence of authorization from the property owner upon affirmative demonstration that all of the following conditions are met:

1. Soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million or higher for Gasoline Analytical Group or 50 parts per million or higher for Kerosene Analytical Group, as defined by department rule, does not exist onsite as a result of a release of petroleum products.

2. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

3. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

4. The area of groundwater containing the petroleum products' chemicals of concern is confined to the source property boundaries of the real property on which the discharge originated, or has migrated from the source property only to a transportation facility of the Department of Transportation.

5. The groundwater contamination containing the petroleum products chemicals of concern is not a threat to any permitted potable water supply well.

6. Soils onsite that are subject to human exposure found

between land surface and 2 feet below land surface meet the soil cleanup target levels established pursuant to s. 376.3071(5)(b)9., or human exposure is limited by appropriate institutional or engineering controls.

Issuance of a site rehabilitation completion order under this paragraph 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 department determines that a discharge for which a site rehabilitation completion order was issued pursuant to this subsection may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order, with or without conditions, does not alter eligibility for state-funded rehabilitation that would otherwise be applicable under this section.

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program site rehabilitation agreement. Eligibility is subject to an annual appropriation from the fund. Additionally, funding for eligible sites is contingent upon

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annual appropriation in subsequent years. Such continued state funding is not an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

(a)1. The department shall accept any discharge reporting form received before January 1, 1995, as an application for this program, and the facility owner or operator need not reapply.

2. Owners or operators of property, regardless of whether ownership has changed, which is contaminated by petroleum or petroleum products from a petroleum storage system may apply for such program by filing a written report of the contamination incident, including evidence that such incident occurred before January 1, 1995, with the department. Incidents of petroleum contamination discovered after December 31, 1994, at sites which have not stored petroleum or petroleum products for consumption, use, or sale after such date shall be presumed to have occurred before January 1, 1995. An operator’s filed report shall be an application of the owner for all purposes. Sites reported to the department after December 31, 1998, are not eligible for the program.

(b) Subject to annual appropriation from the fund, sites meeting the criteria of this subsection are eligible for up to $400,000 of site rehabilitation funding assistance in priority order pursuant to subsections (5) and (6). Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the

criteria of this subsection for which a site rehabilitation completion order was not issued before June 1, 2008, regardless of whether they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. The department may not pay expenses incurred beyond the scope of an approved contract.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections (5) and (6), the owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a Petroleum Cleanup Participation Program site rehabilitation agreement with the department. The agreement must provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot financially comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner’s and operator’s net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot complete negotiation of the cost-

sharing agreement within 120 days after beginning negotiations, the department shall terminate negotiations and the site shall be ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

(d) A report of a discharge made to the department by a person pursuant to this subsection or any rules adopted pursuant to this subsection may not be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(e) This subsection does not preclude the department from pursuing penalties under s. 403.141 for violations of any law or any rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

(f) Upon the filing of a discharge reporting form under paragraph (a), the department or local government may not pursue any judicial or enforcement action to compel rehabilitation of the discharge. This paragraph does not prevent any such action with respect to discharges determined ineligible under this subsection or to sites for which rehabilitation funding assistance is available pursuant to subsections (5) and (6).

(g) The following are excluded from participation in the program:

1. Sites at which the department has been denied reasonable site access to implement this section.

2. Sites that were active facilities when owned or operated by the Federal Government.

3. Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for

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listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.

4. Sites for which contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program, or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program.

Section 3. Paragraph (a) of subsection (2) and subsection (4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—

(2) The department may approve an application for advanced cleanup at eligible sites, before funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 shall be for the fiscal year beginning July 1. An application must consist of:

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share. An application proposing that the department enter into a performance-based contract for the cleanup of 10 ~~20~~ or more sites may use a


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commitment to pay, a demonstrated cost savings to the department, or both to meet the cost-share requirement. For an application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those same sites using the current rates provided to the department by the proposed agency term contractor. The department shall determine whether the cost savings demonstration is acceptable. Such determination is not subject to chapter 120.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department’s review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection or any other provision of this section is not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The certification must be submitted with the application.

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(4) The department may enter into contracts for a total of up to $25 ~~$15~~ million of advanced cleanup work in each fiscal year. However, a facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved for more than $5 million of cleanup activity in each fiscal year. A property owner or responsible party may enter into a voluntary cost-share agreement in which the property owner or responsible party commits to bundle multiple sites and lists the facilities that will be included in those future bundles. The facilities listed are not subject to agency term contractor assignment pursuant to department rule. The department reserves the right to terminate the voluntary cost-share agreement if the property owner or responsible party fails to submit an application to bundle multiple sites within an open application period in which it is eligible to participate. For the purposes of this section, the term "facility" includes, but is not limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

Section 4. This act shall take effect July 1, 2015.

================ 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 the Petroleum Restoration Program; amending s. 376.305, F.S.; 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; deleting provisions prohibiting the relief of liability for persons who acquired title after a certain date; amending s. 376.3071, F.S.; revising the conditions for eligibility and methods for payment of costs for the low-risk site initiative; clarifying that a change in ownership does not preclude a site from entering into the program; amending s. 376.30713, F.S.; reducing the number of sites that may be proposed for certain advanced cleanup applications; increasing the total amount for which the department may contract for advanced cleanup work in a fiscal year; authorizing property owners and responsible parties to enter into voluntary cost-share agreements under certain 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~~

~~person acquired title to the site after issuance of a notice of site eligibility by the department~~.

873724

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 132 - 135.

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

592-02178-15 2015314c1

A bill to be entitled

An act relating to the Petroleum Restoration Program; amending s. 376.305, F.S.; 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; deleting provisions relieving certain persons from liability; amending s. 376.3071, F.S.; prohibiting the department from incorporating risk-based corrective actions principles not approved by the property owner; prohibiting site rehabilitation from being implemented on certain sites without the approval of the property owner; requiring the department to establish a procedure by rule for the processing of certain invoices and the direct assignment of tasks by a certain date; authorizing site owners and operators to select agency term contractors from which the department must select from under certain circumstances; requiring the property owner or responsible party selecting the agency term contractor and the selected agency term contractor to execute a sworn affidavit testifying to certain terms; requiring agency term contractors to disclose any conflict of interest to the department; revising the conditions for eligibility and methods for payment of costs for the low-scored site initiative; clarifying that a change in ownership does not preclude a site from entering into the program; revising the eligibility requirements for receiving rehabilitation funding

592-02178-15 2015314c1

assistance; increasing the amount of funding assistance available; amending s. 376.30713, F.S.; revising the number of sites for certain advanced cleanup applications; increasing the total amount for which the department may contract for advanced cleanup work in a fiscal year; authorizing property owners and responsible parties to enter into voluntary cost-share agreements under certain circumstances; providing an effective date.

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

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 systems. For purposes of this subsection, the term "abandoned petroleum storage system" means a petroleum storage system that has not stored petroleum products for consumption, use, or sale since March 1, 1990. The department shall establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:

1. An application must be submitted to the department ~~by June 30, 1996,~~ certifying that the system has not stored petroleum products for consumption, use, or sale at the facility since March 1, 1990.

2. The owner or operator of the petroleum storage system when it was in service must have ceased conducting business involving consumption, use, or sale of petroleum products at that facility on or before March 1, 1990.

3. The site is not otherwise eligible for the cleanup programs pursuant to s. 376.3071 or s. 376.3072.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to department rules before an eligibility determination. However, if the department determines that the owner of the facility cannot financially comply with the department's petroleum storage system closure requirements and all other eligibility requirements are met, the petroleum storage system closure requirements shall be waived. The department shall take into consideration the owner's net worth and the economic impact on the owner in making the determination of the owner's financial ability. ~~The June 30, 1996, application deadline shall be waived for owners who cannot financially comply.~~

(c) Sites accepted in the program are eligible for site rehabilitation funding as provided in s. 376.3071.

(d) The following sites are excluded from eligibility:

1. Sites on property of the Federal Government;

2. Sites contaminated by pollutants that are not petroleum products;

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

person acquired title to the site after issuance of a notice of site eligibility by the department.

(e) Participating sites are subject to a deductible as determined by rule, not to exceed $10,000.

~~This subsection does not relieve a person who has acquired title after July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s. 376.308(1)(c).~~

Section 2. Paragraph (b) of subsection (5), paragraph (d) of subsection (6), paragraph (b) of subsection (12), and subsection (13) of section 376.3071, Florida Statutes, are amended, and paragraphs (n) and (o) are added to subsection (6) of that section, to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(5) SITE SELECTION AND CLEANUP CRITERIA.—

(b) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program are completed. In establishing the rule, the department shall incorporate~~, to the maximum extent feasible,~~ risk-based corrective action principles approved by

the property owner to achieve protection of the public health, safety, and welfare, water resources, and the environment in a cost-effective manner as provided in this subsection. Criteria for determining what constitutes a rehabilitation program task or completion of site rehabilitation program tasks and site rehabilitation programs shall be based upon the factors set forth in paragraph (a) and the following additional factors:

1. The current exposure and potential risk of exposure to humans and the environment including multiple pathways of exposure.

2. The appropriate point of compliance with cleanup target levels for petroleum products' chemicals of concern. The point of compliance shall be at the source of the petroleum contamination. However, the department may temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may also, pursuant to criteria provided for in this paragraph, temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, if the public health, safety, and welfare, water resources, and the environment are adequately protected. Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, must include notice to local governments and owners of any property into which the point of compliance is allowed to extend.

3. The appropriate site-specific cleanup goal. The site-specific cleanup goal shall be that all petroleum contamination sites ultimately achieve the applicable cleanup target levels provided in this paragraph. However, the department may allow concentrations of the petroleum products' chemicals of concern to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if the public health, safety, and welfare, water resources, and the environment are adequately protected.

4. The appropriateness of using institutional or engineering controls. Site rehabilitation programs may include the use of institutional or engineering controls to eliminate the potential exposure to petroleum products' chemicals of concern to humans or the environment. Use of such controls must have prior department approval and may not be acquired with moneys from the fund. When institutional or engineering controls are implemented to control exposure, the removal of such controls must have prior department approval and must be accompanied immediately by the resumption of active cleanup or other approved controls unless cleanup target levels pursuant to this paragraph have been achieved. Beginning July 1, 2013, site rehabilitation for a site that qualifies for a conditional closure or closure with institutional or engineering controls that require deed restrictions or a work stoppage not due to insufficient funds may be implemented only with the approval of the property owner.

5. The additive effects of the petroleum products' chemicals of concern. The synergistic effects of petroleum

products' chemicals of concern must also be considered when the scientific data becomes available.

6. Individual site characteristics which must include, but not be limited to, the current and projected use of the affected groundwater in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

7. Applicable state water quality standards.

a. Cleanup target levels for petroleum products' chemicals of concern found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall consider the following, as appropriate, in establishing the applicable minimum criteria: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

b. Where surface waters are exposed to petroleum contaminated groundwater, the cleanup target levels for the petroleum products' chemicals of concern shall be based on the surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface

water body.

8. Whether deviation from state water quality standards or from established criteria is appropriate. The department may issue a "No Further Action Order" based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost-effectively implemented within available technologies or engineering and institutional control strategies. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the standard. In determining whether it is appropriate to establish alternate cleanup target levels at a site, the department may consider the effectiveness of source removal that has been completed at the site and the practical likelihood of the use of low yield or poor quality groundwater; the use of groundwater near marine surface water bodies; the current and projected use of the affected groundwater in the vicinity of the site; or the use of groundwater in the immediate vicinity of the storage tank area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, if the public health, safety, and welfare, water resources, and the environment are adequately protected.

9. Appropriate cleanup target levels for soils.

a. In establishing soil cleanup target levels for human exposure to petroleum products' chemicals of concern found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit;

or the naturally occurring background concentration.

b. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil target levels established by the department. The leachability goals do not apply if the department determines, based upon individual site characteristics, that petroleum products' chemicals of concern will not leach into the groundwater at levels which pose a threat to public health, safety, and welfare, water resources, or the environment.

This paragraph does not restrict the department from temporarily postponing completion of any site rehabilitation program for which funds are being expended whenever such postponement is necessary in order to make funds available for rehabilitation of a contamination site with a higher priority status.

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

(d) The department rules implementing this section must:

1. Specify that only qualified vendors may submit responses on a competitive solicitation. ~~The department rules must also~~

2. Include procedures for the rejection of vendors not meeting the minimum qualifications on the opening of a competitive solicitation. ~~and~~

3. Include requirements for a vendor to maintain its qualifications in order to enter contracts or perform rehabilitation work.

4. Establish a procedure by October 1, 2015, for the processing of invoices and the direct assignment of tasks that are less than $500,000. This procedure may not involve the use of MyFloridaMarketPlace. Invoices and assignment of tasks may be processed pursuant to chapter 287.

(n) For sites that are within the priority scoring range eligible for funding, excluding sites that are within a cost-share program, a site owner or operator may select three agency term contractors. The department will then select one of the three agency term contractors based on the best value to be determined by a combination of the agency term contractor's Invitation to Negotiate ranking and Schedule E rates.

(o)1. Both the selected agency term contractor and the property owner, or responsible party, who selects the agency term contractor must execute a sworn affidavit testifying that neither party has solicited, offered, accepted, paid, or received any compensation, remuneration, or gift of any kind, directly or indirectly, in exchange for the selection of the agency term contractor in connection with the cleanup of the petroleum contaminated property, except for the compensation paid by the department to the agency term contractor pursuant to the agency term contractor's contract with the department. If the department subsequently determines that remuneration did occur, the department may seek recovery of the costs of cleanup of specific properties from all parties responsible for the property contamination, and the property is ineligible for participation in any cleanup program.

2. Pursuant to the terms and conditions of the agency term contractor's contract with the department, the agency term

contractor must disclose any conflict of interest to the department. The agency term contractor shall be conclusively determined to have a conflict of interest with regard to any site if it has given or offered remuneration, in cash or in kind, directly or indirectly, to the property owner or responsible party, or the owner's or responsible party's designee, to obtain work associated with such property. The department retains the right to investigate and determine if an agency term contractor has a conflict of interest with regard to any property. The department may terminate the agency term contractor's contract with the department or may terminate the agency term contractor's work assignment to a particular property based upon the department's assessment of the potential conflict of interest.

(12) SITE CLEANUP.—

(b) *Low-scored site initiative.*—Notwithstanding subsections (5) and (6), a site with a priority ranking score of 29 points or less may voluntarily participate in the low-scored site initiative regardless of whether the site is eligible for state restoration funding.

1. To participate in the low-scored site initiative, the responsible party or property owner must affirmatively demonstrate that the following conditions are met:

a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.

b. Excessively contaminated soil, as defined by department rule, does not exist onsite as a result of a release of petroleum products.

c. A minimum of 6 months of groundwater monitoring

indicates that the plume is shrinking or stable.

d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

e. The area of groundwater containing the petroleum products' chemicals of concern ~~is less than one-quarter acre and~~ is confined to the source property boundaries of the real property on which the discharge originated or is located below a state road or a state road's right-of-way.

f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human exposure is limited by appropriate institutional or engineering controls.

2. Upon affirmative demonstration of the conditions under subparagraph 1., the department shall issue a determination of "No Further Action." Such 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 no contamination is detected, the department may issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding may receive payment of costs for the low-scored site initiative as follows:

a. A responsible party or property owner may submit an assessment plan designed to affirmatively demonstrate that the site meets the conditions under subparagraph 1. Notwithstanding the priority ranking score of the site, the department may approve the cost of the assessment, including 6 months of

groundwater monitoring, not to exceed $35,000 ~~$30,000~~ for each site. The department may not pay the costs associated with the establishment of institutional or engineering controls.

b. Following the assessment, the department may approve up to an additional $35,000 for interim source removal pursuant to department rule to achieve a "No Further Action" order or a site rehabilitation completion order pursuant to subparagraph 2.

c. For low-scored site initiative sites that were completed before July 1, 2015, the department may approve up to an additional $35,000 for supplemental site assessment pursuant to department rule or to achieve a "No Further Action" order or a site rehabilitation completion order pursuant to subparagraph 2.

d. To provide pricing levels on the best terms to the department, only an agency term contractor may participate in the low-scored site initiative.

e. Completed low-scored site initiative sites shall be granted priority 2 scoring status for ongoing assessment or remedial activity pursuant to department rule.

f.~~b.~~ All ~~The assessment~~ work shall be completed no later than 9 ~~6~~ months after the department issues its approval. If groundwater monitoring is required after the assessment in order to satisfy the conditions of sub-subparagraph 1.c., the department may authorize an additional 6 months to complete the monitoring.

g.~~c.~~ No more than $10 million for the low-scored site initiative may be encumbered from the fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each responsible party or property owner.

h.~~d.~~ Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program site rehabilitation agreement. Eligibility is subject to an annual appropriation from the fund. Additionally, funding for eligible sites is contingent upon annual appropriation in subsequent years. Such continued state funding is not an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

(a)1. The department shall accept any discharge reporting form received before January 1, 1995, as an application for this program, and the facility owner or operator need not reapply.

2. Owners or operators of property, regardless of whether ownership has changed, which is contaminated by petroleum or petroleum products from a petroleum storage system may apply for such program by filing a written report of the contamination incident, including evidence that such incident occurred before January 1, 1995, with the department. Incidents of petroleum

contamination discovered after December 31, 1994, at sites which have not stored petroleum or petroleum products for consumption, use, or sale after such date shall be presumed to have occurred before January 1, 1995. An operator's filed report shall be an application of the owner for all purposes. ~~Sites reported to the department after December 31, 1998, are not eligible for the program.~~

(b) Subject to annual appropriation from the fund, sites meeting the criteria of this subsection are eligible for up to $1 million ~~$400,000~~ of site rehabilitation funding assistance in priority order pursuant to subsections (5) and (6). Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before June 1, 2008, regardless of whether they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. The department may not pay expenses incurred beyond the scope of an approved contract.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections (5) and (6), the owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and

shall enter into a Petroleum Cleanup Participation Program site rehabilitation agreement with the department. The agreement must provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot financially comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner's and operator's net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot complete negotiation of the cost-sharing agreement within 120 days after beginning negotiations, the department shall terminate negotiations and the site shall be ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

(d) A report of a discharge made to the department by a person pursuant to this subsection or any rules adopted pursuant to this subsection may not be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(e) This subsection does not preclude the department from pursuing penalties under s. 403.141 for violations of any law or any rule, order, permit, registration, or certification adopted

or issued by the department pursuant to its lawful authority.

(f) Upon the filing of a discharge reporting form under paragraph (a), the department or local government may not pursue any judicial or enforcement action to compel rehabilitation of the discharge. This paragraph does not prevent any such action with respect to discharges determined ineligible under this subsection or to sites for which rehabilitation funding assistance is available pursuant to subsections (5) and (6).

(g) The following are excluded from participation in the program:

1. Sites at which the department has been denied reasonable site access to implement this section.

2. Sites that were active facilities when owned or operated by the Federal Government.

3. Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.

4. Sites for which contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program, or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program.

Section 3. Paragraph (a) of subsection (2) and subsection (4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—

(2) The department may approve an application for advanced cleanup at eligible sites, before funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 shall be for the fiscal year beginning July 1. An application must consist of:

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share. An application proposing that the department enter into a performance-based contract for the cleanup of 10 ~~20~~ or more sites may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the cost-share requirement. For an application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those same sites using the current rates provided to the department by the proposed agency term contractor. The department shall determine whether the cost savings demonstration is acceptable. Such determination is not subject to chapter 120.

2. A nonrefundable review fee of $250 to cover the

administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection or any other provision of this section is not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The certification must be submitted with the application.

(4) The department may enter into contracts for a total of up to $25 ~~$15~~ million of advanced cleanup work in each fiscal year. However, a facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved for more than $5 million of cleanup activity in each fiscal year. A property owner or responsible party may enter into a voluntary cost-share agreement in which the property owner or responsible party commits to bundle multiple sites and lists the facilities that will be included in those future bundles. The facilities listed are not subject to agency term contractor assignment pursuant to department rule. The department reserves the right to terminate the voluntary cost-share agreement if the property owner or responsible party fails to submit an

application to bundle multiple sites within an open application period in which it is eligible to participate. For the purposes of this section, the term "facility" includes, but is not limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

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

314
Bill Number (if applicable)

Topic PETROLEUM REJUVENATION PROGRAM

497664
Amendment Barcode (if applicable)

Name MIKE SCARINGELLA

Job Title FLORIDA RESIDENT

Address 2248 SANDRIDGE CIRCLE
Street

EUSTIS FL
City *State* *Zip*

Phone 352-459-8488

Email EHJMIKE@YAHOO.COM

Speaking: [X] 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 [X] No

Lobbyist registered with Legislature: [ ] Yes [X] 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)

4/8/2015
Meeting Date

314
Bill Number (if applicable)

Topic Petroleum Restoration

Amendment Barcode (if applicable)

Name Phil Lenry

Job Title Lobbyist

Address 1821 Cape St
Street

Palatka FL 32177
City *State* *Zip*

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Email plenry@lenrygrc.com

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)

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)

Topic Petroleum Restoration Program

Amendment Barcode (if applicable)

Name Natalie King

Job Title VP

Address 235 W Brandon Blvd 640 Phone 813 924 8218
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Brandon FL 33511 Email natalie@saorsultinyk.com
City *State* *Zip*

Speaking: ☑ 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 ☑ 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)

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 314
Bill Number (if applicable)

Topic PETROLEUM RESTORATION PROGRAM

Amendment Barcode (if applicable)

Name RANDY MILLER

Job Title EX VICE PRESIDENT

Address 227 S. ADAMS ST
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TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-222-4082

Email

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.

Wilton Simpson

Senator, 18th District

CC: Jamie DeLoach, Staff Director

REPLY TO:
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☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: *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.)

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

BILL:	SB 718
INTRODUCER:	Senator Lee
SUBJECT:	Administrative Procedures
DATE:	April 1, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Favorable**
2.	Davis	DeLoach	AGG	**Recommend: Favorable**
3.			AP	

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.[1] Rulemaking authority is delegated by the Legislature[2] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[3] a rule. Agencies do not have discretion whether to engage in rulemaking.[4] To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.[5] The grant of rulemaking authority itself need not be detailed.[6] 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.[7]

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.[8] 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."[9]

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.[10]
- The petition was filed to challenge another agency decision.[11]
- The petition seeks approval or disapproval of conduct which has already occurred.[12]

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[1] 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).
[2] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17), F.S.
[4] Section 120.54(1)(a), F.S.
[5] Sections 120.52(8) and 120.536(1), F.S.
[6] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 at 599.
[7] *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).
[8] Section 120.565, F.S.
[9] *1000 Friends of Fla., Inc., v. State Dept. of Cmty. Affairs*, 760 So. 2d 154, 158 (Fla. 1st DCA 2000).
[10] *Fox v. State Bd. of Osteopathic Med. Examiners*, 395 So. 2d 192 (Fla. 1st DCA 1981).
[11] *Kahn v. Office of Ins. Reg.*, 881 So. 2d 699 (Fla. 1st DCA 2004).
[12] *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.[13] 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.[14]

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.[15]

The authorization for attorney fees in the Equal Access to Justice Act supplement other statutes authorizing attorney fees.[16]

Notice of Rules

Under current law, the Department of State is required to publish the Florida Administrative Register on the Internet.[17] 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.

[13] Section 57.111, F.S.
[14] Section 120.595, F.S,
[15] Section 120.595(4)(b), F.S.
[16] 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.).
[17] 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.[18] 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.[19] In addition, a rule may not be filed for adoption until any pending challenge is resolved.[20]

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.[21]

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.[22] 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.[23]

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

[18] Section 120.56(3), F.S.
[19] Section 120.56(2), F.S.
[20] Section 120.54(3)(e)2., F.S.
[21] Section 120.56(4), F.S.
[22] Section 120.57(1)(e)3., F.S.
[23] Section 120.57(1)(k-l), 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.[24] 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.[25]

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.[26] 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.[27] 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.

[24] Section 120.68(2)(a), F.S.
[25] Section 120.68(9), F.S.
[26] 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."
[27] 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.[28] 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.[29] The second purpose of the particularity requirement seems intended to prevent an agency from

[28] *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.").
[29] *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.[30] 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

[30] *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.

By Senator Lee

24-00407-15 2015718__

A bill to be entitled

An act relating to administrative procedures; amending s. 57.111, F.S.; providing conditions under which a proceeding is not substantially justified for purposes of attorney fees and costs; amending s. 120.54, F.S.; requiring agencies to set a time for workshops for certain unadopted rules; amending s. 120.55, F.S.; providing additional items that must be noticed by an agency in the Florida Administrative Register; requiring agencies to provide such notice to registered recipients under certain circumstances; amending s. 120.56, F.S.; clarifying that petitions for administrative determinations apply to rules and proposed rules; identifying which entities have the burden in hearings in which a rule, proposed rule, or agency statement is at issue; prohibiting an administrative law judge from bifurcating certain petitions; amending s. 120.565, F.S.; authorizing certain parties to state to an agency their understanding of how certain rules apply to specific facts; specifying the timeframe for an agency to provide a declaratory statement; authorizing the award of attorney fees under certain circumstances; amending s. 120.569, F.S.; granting agencies additional time to render final orders under certain circumstances; amending s. 120.57, F.S.; conforming proceedings based on invalid or unadopted rules to proceedings used for challenging existing rules; requiring an agency to issue a notice regarding its reliance on the

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challenged rule or alleged unadopted rule; authorizing the administrative law judge to make certain findings on the validity of certain alleged unadopted rules; requiring the administrative law judge to issue a separate final order on certain rules and alleged unadopted rules; prohibiting agencies from rejecting specific conclusions of law; limiting situations under which an agency may reject or modify conclusions of law; providing for stay of proceedings not involving disputed issues of fact upon timely filing of a rule challenge; providing that the final order terminates the stay; amending s. 120.573, F.S.; providing additional situations in which a party may request mediation; amending s. 120.595, F.S.; 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; providing exceptions; removing a provision authorizing an agency to demonstrate its actions were substantially justified; requiring notice of a proposed challenge by the petitioner as a condition precedent to filing a challenge and being eligible for the reimbursement of attorney fees and costs; authorizing the recovery of attorney fees and costs incurred in litigating rights to attorney fees and costs in certain actions; providing such attorney fees and costs are not limited in amount; amending s. 120.68, F.S.; requiring

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

specified agencies to provide notice of appeal to the Administrative Procedures Committee under certain circumstances; amending s. 120.695, F.S.; removing obsolete provisions; requiring agency review and certification of minor rule violations by a specified date; requiring the reporting of agency failure to complete such review and certification; requiring certification of minor violations for all rules adopted after a specified date; requiring public notice; providing for nonapplicability; providing an effective date.

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

Section 1. Paragraph (e) of subsection (3) of section 57.111, Florida Statutes, is amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorney ~~attorneys'~~ fees and costs.—

(3) As used in this section:

(e) A proceeding is "substantially justified" if it had a reasonable basis in law and fact at the time it was initiated by a state agency. A proceeding is not "substantially justified" if the law, rule, or order at issue in the current agency action is the subject upon which the prevailing party previously petitioned the agency for a declaratory statement under s. 120.565; the current agency action involves identical or substantially similar facts and circumstances as those raised in the previous petition; and:

1. The agency action contradicts the declaratory statement issued by the agency upon the previous petition; or

2. The agency denied the previous petition under s. 120.565 before initiating the current agency action against the substantially affected party.

Section 2. Paragraph (c) of subsection (7) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(7) PETITION TO INITIATE RULEMAKING.—

(c) Within 30 days following the public hearing provided for in ~~by~~ paragraph (b), if the petition's requested action requires rulemaking and the agency initiates rulemaking, the agency shall establish a time certain for rulemaking workshops and shall discontinue reliance upon the agency statement or unadopted rule until it adopts rules pursuant to subsection (3). If the agency does not initiate rulemaking or otherwise comply with the requested action, the agency shall publish in the Florida Administrative Register a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action~~,~~ and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise

modifying the authority of the agency.

Section 3. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or

effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating

reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed by the department a continuous revision and publication entitled the "Florida Administrative Register," which shall serve as the official publication and must contain:

1. All notices required by s. 120.54(2) and (3)(a) ~~120.54(3)(a)~~, showing the text of all rules proposed for consideration.

2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

4. Notice of petitions for declaratory statements or administrative determinations.

5. A summary of each objection to any rule filed by the Administrative Procedures Committee.

6. A listing of rules filed for adoption in the previous 7 days.

7. A listing of all rules filed for adoption pending legislative ratification under s. 120.541(3). Each rule on the list shall be taken off the list once it is ratified or withdrawn.

8.~~6.~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication of the Florida Administrative Register and make copies available on an annual subscription basis.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

(d) Charge each agency using the Florida Administrative Register a space rate to cover the costs related to the Florida Administrative Register and the Florida Administrative Code.

(e) Maintain a permanent record of all notices published in the Florida Administrative Register.

(2) The Florida Administrative Register Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with publication of the electronic Florida Administrative Register. Such notification must include in the text of the e-mail a summary of the content of each notice.

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on

the Florida Administrative Register Internet website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Each agency that provides an e-mail notification service to inform registered recipients of notices shall use that service to notify recipients of each notice required under s. 120.54(2) and (3)(a) and provide Internet links to the appropriate rule page on the Secretary of State's website or Internet links to an agency website that contains the proposed rule or final rule.

(6) ~~(5)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Register or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(7) ~~(6)~~ Access to the Florida Administrative Register Internet website and its contents, including the e-mail notification service, shall be free for the public.

(8) ~~(7)~~ (a) All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed $300,000 at the beginning of each fiscal year, and any

excess shall be transferred to the General Revenue Fund.

Section 4. Subsections (1), (3), and (4) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.—

(1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A RULE OR A PROPOSED RULE~~.—

(a) Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(b) The petition seeking an administrative determination of the invalidity of a rule or proposed rule must state the facts and ~~with particularity the~~ provisions alleged to be invalid with sufficient explanation of the ~~facts or~~ grounds for the alleged invalidity and facts sufficient to show that the petitioner ~~person~~ challenging a rule is substantially affected by it, or that the petitioner ~~person~~ challenging a proposed rule would be substantially affected by it.

(c) The petition shall be filed by electronic means with the division which shall, immediately upon filing, forward by electronic means copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with ~~the requirements of~~ paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. Evidence of good cause includes, but is not limited to, written notice of an agency's decision to modify or withdraw

the proposed rule or a written notice from the chair of the committee stating that the committee will consider an objection to the rule at its next scheduled meeting. The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

(d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons therefor in writing. The division shall forthwith transmit by electronic means copies of the administrative law judge's decision to the agency, the Department of State, and the committee.

(e) Hearings held under this section shall be de novo in nature. The standard of proof shall be the preponderance of the evidence. The petitioner has the burden of going forward with the evidence. The agency has the burden of proving by a preponderance of the evidence that the rule, proposed rule, or agency statement is not an invalid exercise of delegated legislative authority. Hearings shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section does ~~shall~~ not constitute failure to exhaust administrative remedies.

(3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule. The petitioner has the ~~a~~ burden of going forward with the evidence as set forth in paragraph (1)(b), and the agency has the burden of proving by a preponderance of the evidence that the existing rule is not an invalid exercise of delegated legislative authority as to the objections raised.

(b) The administrative law judge may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Register in the first available issue after the rule has become void.

(c) If an existing agency rule is declared invalid, the agency may no longer rely on the rule for final agency action, including any final action on cases pending under s. 120.57.

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL PROVISIONS.—

(a) Any person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state ~~with particularity~~ facts sufficient to show that the statement constitutes a rule under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54.

(b) The administrative law judge may extend the hearing

date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving that rulemaking is not feasible or not practicable under s. 120.54(1)(a).

(c) The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Register.

(d) If an administrative law judge enters a final order that all or part of an agency statement violates s. 120.54(1)(a), the agency must immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action.

(e) If proposed rules addressing the challenged statement are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance on the statement

and any substantially similar statement until rules addressing the subject are properly adopted, and the administrative law judge shall enter a final order to that effect.

(f) If a petitioner files a petition challenging agency action and a part of that petition alleges the presence of or reliance upon agency statements or unadopted rules, the administrative law judge may not bifurcate the petition into two cases but shall consider the challenge to the proposed agency action and the allegation that such agency action was based upon the presence of or reliance upon agency statements or unadopted rules.

(g) ~~(f)~~ All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. This paragraph does not prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

Section 5. Subsection (2) of section 120.565, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

120.565 Declaratory statement by agencies.—

(2) The petition seeking a declaratory statement shall state ~~with particularity~~ the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(4) The petitioner may submit to the agency clerk a statement that describes or asserts the petitioner's understanding of how the statutory provision, rule, or order

applies to the set of circumstances. The agency has 60 days to review the petitioner's statement and to either accept the statement or offer changes and other clarifications to establish the plain meaning of how the statutory provision, rule, or order applies to the set of circumstances described in the petitioner's statement.

(5) If the agency denies a request for a declaratory statement and the petitioner appeals the denial and it is determined that the agency improperly denied the request, the petitioner is entitled to an award of reasonable attorney fees and costs.

Section 6. Paragraph (l) of subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.—

(2)

(l) Unless the time period is waived or extended with the consent of all parties, the final order in a proceeding which affects substantial interests must be in writing and include findings of fact, if any, and conclusions of law separately stated, and it must be rendered within 90 days:

1. After the hearing is concluded, if conducted by the agency;

2. After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by an administrative law judge, except that, at the election of the agency, the time for rendering the final order may be extended up to 10 days after the entry of a mandate on any appeal from a final order under s. 120.57(1)(e)4.; or

3. After the agency has received the written and oral

material it has authorized to be submitted, if there has been no hearing.

Section 7. Paragraphs (e), (h), and (l) of subsection (1) and subsection (2) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.—

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—

(e)1. An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. ~~The administrative law judge shall determine whether an agency statement constitutes an unadopted rule.~~ This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

2. In a matter initiated as a result of agency action proposing to determine the substantial interests of a party, a party's timely petition for hearing may challenge the proposed agency action based on a rule that is an invalid exercise of delegated legislative authority or based on an alleged unadopted rule. For challenges brought under this subparagraph:

a. The challenge shall be pled as a defense using the procedures set forth in s. 120.56(1)(b).

b. Section 120.56(3)(a) applies to a challenge alleging that a rule is an invalid exercise of delegated legislative authority.

c. Section 120.56(4)(c) applies to a challenge alleging an unadopted rule.

d. The agency has 15 days from the date of receipt of a challenge under this subparagraph to serve the challenging party with a notice as to whether the agency will continue to rely upon the rule or the alleged unadopted rule as a basis for the action determining the party's substantive interests. Failure to serve or to timely serve the notice constitutes a binding determination that the agency may not rely upon the rule or unadopted rule further in the proceeding. The agency shall include a copy of the notice, if one was served, when it refers the matter to the division under s. 120.569(2)(a).

e. This subparagraph does not preclude the consolidation of any proceeding under s. 120.56 with any proceeding under this paragraph.

3.~~2.~~ Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules if~~, subject to de novo review by~~ the administrative law judge determines that the unadopted rules would not constitute an invalid exercise of delegated legislative authority if adopted as rules. An unadopted rule is ~~The agency action shall~~ not ~~be~~ presumed to be valid ~~or invalid~~. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority vested in the agency by ~~derived from~~ the State

Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

4. If the agency timely serves notice of continued reliance upon a challenged rule or an alleged unadopted rule under sub-subparagraph 2.d., the administrative law judge shall determine whether the challenged rule is an invalid exercise of delegated legislative authority or whether the challenged agency statement constitutes an unadopted rule and if that unadopted rule meets the requirements of subparagraph 3. The determination shall be rendered as a separate final order no earlier than the date on which the administrative law judge serves the recommended order.

5.~~3.~~ The recommended and final orders in any proceeding shall be governed by ~~the provisions of~~ paragraphs (k) and (l), except that the administrative law judge's determination ~~regarding an unadopted rule~~ under subparagraph 4. ~~1. or subparagraph 2.~~ shall be included as a conclusion of law that the agency may not reject ~~not be rejected by the agency unless the agency first determines from a review of the complete~~

~~record, and states with particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review~~.

(h) Any party to a proceeding in which an administrative law judge ~~of the Division of Administrative Hearings~~ has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order. This paragraph does not apply to proceedings set forth in paragraph (e).

(l) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may only reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction if the agency

determines that the conclusions of law are clearly erroneous. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as reasonable as, or more reasonable than, that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which subsection (1) does not apply:

(a) The agency shall:

1. Give reasonable notice to affected persons of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give parties or their counsel the option, at a

convenient time and place, to present to the agency or administrative law judge ~~hearing officer~~ written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the parties are overruled, provide a written explanation within 7 days.

(b) An agency may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. No later than the date provided by the agency under subparagraph (a)2., the party may file a petition under s. 120.56 challenging the rule, portion of rule, or unadopted rule upon which the agency bases its proposed action or refusal to act. The filing of a challenge under s. 120.56 pursuant to this paragraph shall stay all proceedings on the agency's proposed action or refusal to act until entry of the final order by the administrative law judge. The final order shall provide notice that the stay of the pending agency action is terminated and any further stay pending appeal of the final order must be sought from the appellate court.

(c) ~~(b)~~ The record shall only consist of:

1. The notice and summary of grounds.

2. Evidence received.

3. All written statements submitted.

4. Any decision overruling objections.

5. All matters placed on the record after an ex parte communication.

6. The official transcript.

7. Any decision, opinion, order, or report by the presiding officer.

Section 8. Section 120.573, Florida Statutes, is amended to read:

120.573 Mediation of disputes.—

(1) Each announcement of an agency action that affects substantial interests shall advise whether mediation of the administrative dispute for the type of agency action announced is available and that choosing mediation does not affect the right to an administrative hearing. If the agency and all parties to the administrative action agree to mediation, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under ss. 120.569 and 120.57, the time limitations imposed by ss. 120.569 and 120.57 shall be tolled to allow the agency and parties to mediate the administrative dispute. The mediation shall be concluded within 60 days after ~~of~~ such agreement unless otherwise agreed by the parties. The mediation agreement shall include provisions for mediator selection, the allocation of costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the agency shall enter a final order incorporating the agreement of the parties. If mediation terminates without settlement of the dispute, the agency shall notify the parties in writing that the administrative hearing processes under ss. 120.569 and 120.57 are resumed.

(2) A party in a proceeding conducted pursuant to a petition seeking an administrative determination of the invalidity of an existing rule, proposed rule, or agency statement under s. 120.56 or a proceeding conducted pursuant to a petition seeking a declaratory statement under s. 120.565 may request mediation of the dispute under this section.

Section 9. Section 120.595, Florida Statutes, is amended to read:

120.595 Attorney ~~Attorney's~~ fees.—

(1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.57(1).—

(a) The provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney fees ~~attorney's fee~~ to the prevailing party if the administrative law judge determines ~~only where~~ the nonprevailing adverse party ~~has been determined by the administrative law judge to have~~ participated in the proceeding for an improper purpose.

1.~~(c)~~ Other than as provided in paragraph (d), in proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection. ~~In making such determination, the administrative law judge shall consider whether~~ The nonprevailing adverse party shall be presumed to have participated in the pending proceeding for an improper purpose

if:

a. Such party was an adverse party ~~has participated~~ in three ~~two~~ or more ~~other such~~ proceedings involving the same prevailing party and the same subject;

b. In those ~~project as an adverse party and in which such two or more~~ proceedings, the nonprevailing adverse party did not establish either the factual or legal merits of its position;~~, and shall consider whether~~

c. The factual or legal position asserted in the pending ~~instant~~ proceeding would have been cognizable in the previous proceedings; and

d. The nonprevailing adverse party has not rebutted the presumption of participating~~. In such event, it shall be rebuttably presumed that the nonprevailing adverse party participated~~ in the pending proceeding for an improper purpose.

2.~~(d)~~ If ~~In any proceeding in which the administrative law judge determines that~~ a party is determined to have participated in the proceeding for an improper purpose, the recommended order shall include such findings of fact and conclusions of law to establish the conclusion ~~so designate~~ and shall determine the award of costs and attorney ~~attorney's~~ fees.

(c)~~(c)~~ For the purpose of this subsection:

1. "Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

2. "Costs" has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.

3. "Nonprevailing adverse party" means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a nonprevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term "nonprevailing party" or "prevailing party" be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

(d) For challenges brought under s. 120.57(1)(e), when the agency relies on a challenged rule or an alleged unadopted rule pursuant to s. 120.57(1)(e)2.d., if the appellate court or the administrative law judge declares the rule or portion of the rule to be invalid or that the agency statement is an unadopted rule that does not meet the requirements of s. 120.57(1)(e)4., a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney fees. An award of attorney fees as provided by this paragraph may not exceed $50,000.

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).—If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist

which would make the award unjust. ~~An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency.~~ If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(c) ~~(1)(c)~~. An ~~No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).—If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or (5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions were substantially justified or~~ special circumstances exist which would make the award unjust. ~~An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency.~~ If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(c) ~~(1)(c)~~. An ~~No~~ award of attorney ~~attorney's~~ fees as provided by this subsection may not ~~shall~~ exceed $50,000.

(4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO SECTION 120.56(4).—

(a) If the appellate court or administrative law judge determines that all or part of an unadopted rule ~~agency statement~~ violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance upon ~~on~~ the unadopted rule ~~statement~~ and any substantially similar statement pursuant to s. 120.56(4)(e), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney ~~attorney's~~ fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the petitioner before ~~prior to~~ the date the notice was published~~, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an~~

~~unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7)~~. An award of attorney ~~attorney's~~ fees as provided by this paragraph may not exceed $50,000.

(c) Notwithstanding ~~the provisions of~~ chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency is ~~shall~~ not ~~be~~ entitled to payment of an award or reimbursement for payment of an award under any provision of law.

(d) If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and attorney ~~attorney's~~ fees against a party if the appellate court or administrative law judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(c) ~~(1)(c)~~ or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.

(5) APPEALS.—When there is an appeal, the court in its discretion may award reasonable attorney ~~attorney's~~ fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the

appellate process, or that the agency action that ~~which~~ precipitated the appeal was a gross abuse of the agency's discretion. Upon review of agency action that precipitates an appeal, if the court finds that the agency improperly rejected or modified findings of fact in a recommended order, the court shall award reasonable attorney ~~attorney's~~ fees and reasonable costs to a prevailing appellant for the administrative proceeding and the appellate proceeding.

(6) NOTICE OF INVALIDITY.—A party failing to serve a notice of proposed challenge under this subsection is not entitled to an award of reasonable attorney fees and reasonable costs under this section.

(a) Before filing a petition challenging the validity of a proposed rule under s. 120.56(2), an adopted rule under s. 120.56(3), or an agency statement defined as an unadopted rule under s. 120.56(4), a substantially affected person shall serve the agency head with notice of the proposed challenge. The notice shall identify the proposed or adopted rule or the unadopted rule that the person proposes to challenge and a brief explanation of the basis for that challenge. The notice must be received by the agency head at least 5 days before the filing of a petition under s. 120.56(2) and at least 30 days before the filing of a petition under s. 120.56(3) or s. 120.56(4).

(b) This subsection does not apply to defenses raised and challenges authorized by s. 120.57(1)(e) or s. 120.57(2)(b).

(7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For purposes of this chapter, s. 57.105(5), and s. 57.111, in addition to an award of reasonable attorney fees and reasonable costs, the prevailing party shall also recover reasonable

attorney fees and reasonable costs incurred in litigating entitlement to, and the determination or quantification of, reasonable attorney fees and reasonable costs for the underlying matter. Reasonable attorney fees and reasonable costs awarded for litigating entitlement to, and the determination or quantification of, reasonable attorney fees and reasonable costs for the underlying matter are not subject to the limitations on amounts provided in this chapter or s. 57.111.

(8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions, including ss. 57.105 and 57.111, authorize the award of attorney ~~attorney's~~ fees and costs in administrative proceedings. ~~Nothing in~~ This section does not ~~shall~~ affect the availability of attorney ~~attorney's~~ fees and costs as provided in those sections.

Section 10. Paragraph (a) of subsection (2) and subsection (9) of section 120.68, Florida Statutes, are amended to read:

120.68 Judicial review.—

(2)(a) Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under s. 120.56 or a final order under s. 120.57(1)(e)4., the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

(9) A ~~No~~ petition challenging an agency rule as an invalid exercise of delegated legislative authority may not ~~shall~~ be

instituted pursuant to this section, except to review an order entered pursuant to a proceeding under s. 120.56, s. 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule pursuant to s. 120.54(4), unless the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact.

Section 11. Section 120.695, Florida Statutes, is amended to read:

120.695 Notice of noncompliance; designation of minor violation of rules.—

(1) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties may be provided in order to assure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with an agency's rules. 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.

(2)(a) Each agency shall issue a notice of noncompliance as a first response to a minor violation of a rule. A "notice of noncompliance" is a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with

a fine or other disciplinary penalty. It must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the violator to comply with the rule. A rule is agency action that regulates a business, occupation, or profession, or regulates a person operating a business, occupation, or profession, and that, if not complied with, may result in a disciplinary penalty.

(b) Each agency shall review all of its rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken against a person or business subject to regulation. A violation of a rule 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. ~~If an agency under the direction of a cabinet officer mails to each licensee a notice of the designated rules at the time of licensure and at least annually thereafter, the provisions of paragraph (a) may be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.~~

(c)1. Within 3 months after any request of the rules ombudsman in the Executive Office of the Governor, ~~The agency's review and designation must be completed by December 1, 1995;~~ each agency shall review ~~under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet by January 1, 1996, on which of~~ 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 any designated rules, ~~have been designated as rules~~ the violation of which would be a minor violation under paragraph (b), consistent with the legislative intent stated in subsection (1). The rules ombudsman shall promptly report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Administrative Procedures Committee each failure of an agency to timely complete the review and file the certification as required by this section.

2. Beginning July 1, 2015, each agency shall:

a. Publish all rules that the agency has designated as rules that the violation of which would be a minor violation, either as a complete list on the agency's Internet web page or by incorporation of the designations in the agency's disciplinary guidelines adopted as a rule.

b. Ensure that all investigative and enforcement personnel are knowledgeable about the agency's designations under this section.

3. For each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule that the violation of which would be a minor violation and shall update the listing required by sub-subparagraph 2.a.

(d) The Governor or the Governor and Cabinet, as appropriate ~~pursuant to paragraph (c)~~, may evaluate the review and designation effects of each agency subject to the direction and supervision of such authority and may direct ~~apply~~ a different designation than that applied by such ~~the~~ agency.

(e) Notwithstanding s. 120.52(1)(a), this section does not

apply to:

1. The Department of Corrections;

2. Educational units;

3. The regulation of law enforcement personnel; or

4. The regulation of teachers.

(f) Designation pursuant to this section is not subject to challenge under this chapter.

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.)

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

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.	Harmsen	McKay	CM	**Fav/CS**
2.	Blizzard	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

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.[1] These regulations co-exist with federal law, which governs interstate moving of household goods.

[1] 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.[2] 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.[3]

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.[4] 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.[5]

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.[6] 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.[7]

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.[8]

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.[9] 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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[2] Section 507.01(9), F.S.
[3] Section 507.01(10), F.S.
[4] DACS, *SB 798 Agency Analysis* (February 24, 2015), on file with the Senate Commerce and Tourism Committee; Interview with DACS staff, March 17, 2015.
[5] Section 507.03(1), F.S.
[6] Section 507.04(4), F.S.
[7] Section 507.04(1)(b), F.S.
[8] Section 507.04(4), F.S.
[9] 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.[10] 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.[11]

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[12] 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.

[10] Section 507.09, F.S.
[11] Section 507.09, F.S.
[12] 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.[13]

VI. Technical Deficiencies:

None.

[13] 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),

respectively, new subsections (2), (9), and (13) are added to that section, and present subsections (6) and (9) are amended, to read:

507.01 Definitions.—As used in this chapter, the term:

(2) "Additional services" means any additional transportation of household goods which is performed by a mover, is not specifically included in a binding estimate or contract, and results in a charge to the shipper.

~~(6) "Estimate" means a written document that sets forth the total costs and describes the basis of those costs, relating to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.~~

(9) "Impracticable operations" means conditions arising after execution of a contract for household moving services which make it impractical for a mover to perform pickup or delivery services for a household move.

(10) ~~(9)~~ "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that, or a person labor who, does not advertise ~~itself~~ as a mover or moving service.

(13) "Personal laborer" means an individual hired directly by the shipper to assist in the loading and unloading of the shipper's own household goods. The term does not include any individual who has contracted with or is compensated by a third-party or whose services are brokered as part of a household move.

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Section 2. Subsection (3) of section 507.02, Florida Statutes, is amended to read:

507.02 Construction; intent; application.—

(3) This chapter is intended to provide consistency and transparency in moving practices and to secure the satisfaction and confidence of shippers and members of the public when using a mover.

Section 3. Subsections (1), (3), (4), and (5) of section 507.04, Florida Statutes, are amended to read:

507.04 Required insurance coverages; liability limitations; valuation coverage.—

(1) CARGO LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid cargo liability insurance coverage of at least $10,000 per shipment for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the mover's registration period. ~~A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter~~

~~120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.~~

(b) A mover that operates two or fewer vehicles, in lieu of maintaining the cargo liability insurance coverage required under paragraph (a), may, and each moving broker must, maintain one of the following alternative coverages:

1. A performance bond in the amount of $25,000, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of $25,000.

The original bond or certificate of deposit must be filed with the department and must designate the department as the sole beneficiary. The department must use the bond or certificate of deposit exclusively for the payment of claims to consumers who are injured by the fraud, misrepresentation, breach of contract, misfeasance, malfeasance, or financial failure of the mover or moving broker or by a violation of this chapter by the mover or broker. Liability for these injuries may be determined in an administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these injuries, by order of the department in an administrative proceeding. The bond or certificate of deposit is subject to successive claims, but the aggregate amount of these claims may

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not exceed the amount of the bond or certificate of deposit.

(3) INSURANCE COVERAGES.—The insurance coverages required under paragraph (1)(a) and subsection (2) must be issued by an insurance company or carrier licensed to transact business in this state under the Florida Insurance Code as designated in s. 624.01. The department shall require a mover to present a certificate of insurance of the required coverages before issuance or renewal of a registration certificate under s. 507.03. The department shall be named as a certificateholder in the certificate and must be notified at least 10 days before cancellation of insurance coverage. A mover's failure to maintain insurance coverage constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.

(4) ~~LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not limit its liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. A provision of a contract for moving services is void if the provision limits a mover's liability to a valuation rate that is less than the minimum rate under this subsection. If a mover limits its liability for a shipper's goods, the mover must~~


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~~disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage under subsection (5).~~

~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move. ~~If a mover offers valuation coverage,~~ The coverage must indemnify the shipper for at least the cost of repair or replacement of the goods, unless waived or amended by the shipper. The shipper may waive or amend the valuation coverage, and the waiver must be made in a signed acknowledgment in the contract ~~minimum valuation rate required under subsection (4)~~. The mover must disclose the terms of the coverage to the shipper in writing, including any deductibles, within ~~at the time that~~ the binding estimate and again when the contract for services is ~~are~~ executed and before any moving or accessorial services are provided. The disclosure must inform the shipper of the cost of the valuation coverage, if any ~~the valuation rate of the coverage, and the opportunity to reject the coverage~~. ~~If valuation coverage compensates a shipper for at least the minimum valuation rate required under subsection (4), the coverage satisfies the mover's liability for the minimum valuation rate.~~

Section 4. Section 507.05, Florida Statutes, is amended to read:

507.05 Physical surveys, binding estimates, and contracts

for service. ~~—Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:~~

(1) PHYSICAL SURVEY.—A mover must conduct a physical survey of the household goods to be moved and provide the prospective shipper with a binding estimate of the cost of the move.

(2) WAIVER OF SURVEY.—A shipper may elect to waive the physical survey, and such waiver must be in writing and signed by the shipper before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for service.

(3) BINDING ESTIMATE.—Before executing a contract for service for a household move, and at least 48 hours before the scheduled time and date of a shipment of household goods, a mover must provide a binding estimate of the total charges, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services. The binding estimate shall be based on a physical survey conducted pursuant to subsection (1), unless waived pursuant to subsection (2).

(a) The shipper may waive the binding estimate if the waiver is made by signed or electronic acknowledgment before the commencement of the 48-hour period before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for services. To be enforceable, a waiver executed under this paragraph must, at a minimum, include a statement in uppercase type that is at least 5 points larger than, and clearly distinguishable from, the rest of the text of

the waiver or release containing the statement. The exact statement to be included in a waiver of a binding estimate to be used by all movers shall be determined by the department in rulemaking and must include a delineation of the specific rights that a shipper may lose by waiving the binding estimate.

(b) The shipper may also waive the 48-hour period if the moving services requested commence within 48 hours of the shipper's initial contact with the mover contracted to perform the moving services.

(c) At a minimum, the binding estimate must include all of the following:

1. The table of measures used by the mover or the mover's agent in preparing the estimate.

2. The date the estimate was prepared and the proposed date of the move, if any.

3. An itemized breakdown and description of services, and the total cost to the shipper of loading, transporting or shipping, unloading, and accessorial services.

4. A statement that the estimate is binding on the mover and the shipper and that the charges shown apply only to those services specifically identified in the estimate.

5. Identification of acceptable forms of payment.

(d) A mover may charge a one-time fee, not to exceed $100, for providing a binding estimate.

(e) The binding estimate must be signed by the mover and the shipper, and a copy must be provided to the shipper by the mover at the time that the estimate is signed.

(f) A binding estimate may only be amended by the mover before the scheduled loading of household goods for shipment


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when the shipper has requested additional services of the mover not previously disclosed in the original binding estimate, or upon mutual agreement of the mover and the shipper. Once a mover begins to load the household goods for a move, failure to execute a new binding estimate signifies the mover has reaffirmed the original binding estimate.

(g) A mover may not collect more than the amount of the binding estimate unless:

1. The shipper waives receipt of a binding estimate under this subsection.

2. The shipper tenders additional household goods, requests additional services, or requires services that are not specifically included in the binding estimate, in which case the mover is not required to honor the estimate. If, despite the addition of household goods or the need for additional services, the mover chooses to perform the move, it must, before loading the household goods, inform the shipper of the associated charges in writing. The mover may require full payment at the destination for the costs associated with the additional requested services and the full amount of the original binding estimate.

3. Upon issuance of the contract for services, the mover advises the shipper, in advance of performing additional services, including accessorial services, that such services are essential to properly performing the move. The mover must allow the shipper at least 1 hour to determine whether to authorize the additional services.

a. If the shipper agrees to pay for the additional services, the mover must execute a written addendum to the

contract for services, which must be signed by the shipper. The addendum may be sent to the shipper by facsimile, e-mail, overnight courier, or certified mail, with return receipt requested. The mover must bill the shipper for the agreed upon additional services within 15 days after the delivery of those additional services pursuant to s. 507.06.

b. If the shipper does not agree to pay for the additional services, the mover may perform and, pursuant to s. 507.06, bill the shipper for those additional services necessary to complete the delivery.

(h) A mover shall retain a copy of the binding estimate for each move performed for at least 1 year after its preparation date as an attachment to the contract for service.

(4) CONTRACT FOR SERVICE.—Before providing any moving or accessorial services, a mover must provide a contract for service to the shipper, which the shipper must sign and date.

(a) At a minimum, the contract for service must include:

1.~~(1)~~ The name, telephone number, and physical address where the mover’s employees are available during normal business hours.

2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and the ~~any~~ proposed date of the move, if any.

3.~~(3)~~ The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

4.~~(4)~~ The name, telephone number, and physical address of any location where the household goods will be held pending further transportation, including situations in which ~~where~~ the mover retains possession of household goods pending resolution


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of a fee dispute with the shipper.

5.~~(5)~~ A binding estimate provided in accordance with subsection (3) ~~An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods~~.

6. The total charges owed by the shipper based on the binding estimate and the terms and conditions for their payment, including any required minimum payment.

7. If the household goods are transported under an agreement to collect payment upon delivery, the maximum payment that the mover may demand at the time of delivery.

8.~~(6)~~ Acceptable forms of payment, which must be clearly and conspicuously disclosed to the shipper on the binding estimate and the contract for services. A mover must ~~shall~~ accept at least ~~a minimum of~~ two of the three following forms of payment:

a.~~(a)~~ Cash, cashier's check, money order, or traveler's check;

b.~~(b)~~ Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

c.~~(c)~~ Valid credit card, which shall include, but not be limited to, Visa or MasterCard. ~~A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).~~

(b) Each addendum to the contract for service is an integral part of the contract.

(c) A copy of the contract for service must accompany the household goods whenever they are in the mover's or the mover's agent's possession. Before a vehicle that is being used for the move leaves the point of origin, the driver responsible for the move must have the contract for service in his or her possession.

(d) A mover shall retain a contract for service for each move it performs for at least 1 year after the date the contract for service was signed.

Section 5. Section 507.054, Florida Statutes, is created to read:

507.054 Publication.—

(1) The department shall prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to movers and shippers under this chapter. The publication must include a statement that a mover's failure to relinquish household goods as required by this chapter constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, that any other violation of this chapter constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and that any violation of this chapter constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. The publication must also include a notice to the shipper about the potential risks of shipping sentimental or family heirloom items.

(2) A mover may provide exact copies of the department's publication to shippers or may customize the color, design, and dimension of the front and back covers of the standard

department publication. If the mover customizes the publication, the customized publication must include the content specified in subsection (1) and meet the following requirements:

(a) The font size used must be at least 10 points, with the exception that the following must appear prominently on the front cover in at least 12-point boldface type: "Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law."

(b) The size of the booklet must be at least 36 square inches.

(3) The shipper must acknowledge receipt of the publication by signed acknowledgement in the contract.

Section 6. Section 507.055, Florida Statutes, is created to read:

507.055 Required disclosure and acknowledgment of rights and remedies.—Before executing a contract for service for a move, a mover must provide to a prospective shipper all of the following:

(1) The publication required under s. 507.054.

(2) A concise, easy-to-read, and accurate binding estimate required under s. 507.05(3).

Section 7. Subsections (1) and (3) of section 507.06, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

507.06 Delivery and storage of household goods.—

(1) On the agreed upon delivery date or within the timeframe specified in the contract for service, a mover must relinquish household goods to a shipper and must place the household goods inside a shipper's dwelling or, if directed by

the shipper, inside a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent, unless the shipper has not tendered payment pursuant to s. 507.065 or s. 507.066 ~~in the amount specified in a written contract or estimate signed and dated by the shipper~~. This requirement may be waived by the shipper. A mover may not, under any circumstances, refuse to relinquish prescription medicines and household goods for use by children, including children's furniture, clothing, or toys~~, under any circumstances~~.

(3) A mover that lawfully fails to relinquish a shipper's household goods may place the goods in storage until payment in accordance with ss. 507.065 or 507.066 is tendered; however, the mover must notify the shipper of the location where the goods are stored and the amount due within 5 days after receipt of a written request for that information from the shipper, which request must include the address where the shipper may receive the notice. A mover may not require a prospective shipper to waive any rights or requirements under this section.

(4) If a mover becomes aware that it cannot perform the pickup or the delivery of household goods on the date agreed upon or during the timeframe specified in the contract for service due to circumstances not anticipated by the contract, the mover shall notify the shipper of the delay and advise the shipper of the amended date or timeframe within which the mover expects to pick up or deliver the household goods in a timely manner.

Section 8. Section 507.065, Florida Statutes, is created to read:

507.065 Payment.—


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(1) Except as provided in s. 507.05(3), the maximum amount that a mover may charge before relinquishing household goods to a shipper is the exact amount of the binding estimate, unless waived by the shipper, plus

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

And the title is amended as follows:

Delete lines 15 - 50

and insert:

cost of repair or replacement goods unless waived or amended by the shipper; authorizing the shipper to waive or amend the valuation coverage; requiring that the waiver be made in a signed acknowledgment in the contract; revising the time at which the mover must disclose the terms of the coverage to the shipper in writing including any deductibles; revising the information that the disclosure must provide to the shipper; amending s. 507.05, F.S.; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper; requiring specified content for the binding estimate; authorizing a shipper to waive the binding estimate in certain circumstances; authorizing the mover to provide a maximum one-time fee for providing a binding estimate; requiring the mover and shipper to sign the estimate; requiring the mover to provide the shipper with a copy of the estimate at the time of signature; providing that a binding estimate may only be amended under certain circumstances; authorizing a

mover to charge more than the binding estimate in certain circumstances; requiring a mover to allow a shipper to consider whether additional services are needed; requiring a mover to retain a copy of the binding estimate for a specified period; requiring a mover to provide a contract for service to the shipper before providing moving or accessorial services; requiring a driver to have possession of the contract before leaving the point of origin; requiring a mover to retain a contract of service for a specified period; creating s. 507.054, F.S.; requiring the department to prepare a publication that summarizes the rights and responsibilities of, and remedies available to, movers and shippers; requiring the publication to meet certain specifications; creating s. 507.055, F.S.; requiring a mover to provide certain disclosures to a prospective shipper; amending s. 507.06, F.S.; 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; requiring a mover to notify and provide certain information to a shipper if the mover is unable to perform delivery on the agreed upon date or during the specified period; creating s. 507.065, F.S.; providing a maximum amount that a mover may charge a shipper unless waived by the shipper; 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:

Senate Substitute for Amendment (949376) (with title amendment)

Delete lines 82 - 567
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), (10), and (11) of that section are redesignated as subsections (10), (11), and (12), respectively, present subsections (12) and (13) of

that section are redesignated as subsections (14) and (15), respectively, new subsections (2), (9), and (13) are added to that section, and present subsections (6) and (9) are amended, to read:

507.01 Definitions.—As used in this chapter, the term:

(2) "Additional services" means any additional transportation of household goods which is performed by a mover, is not specifically included in a binding estimate or contract, and results in a charge to the shipper.

~~(6) "Estimate" means a written document that sets forth the total costs and describes the basis of those costs, relating to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.~~

(9) "Impracticable operations" means conditions arising after execution of a contract for household moving services which make it impractical for a mover to perform pickup or delivery services for a household move.

(10) ~~(9)~~ "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that, or a personal laborer who, does not advertise ~~itself~~ as a mover or moving service.

(13) "Personal laborer" means an individual hired directly by the shipper to assist in the loading and unloading of the shipper's own household goods. The term does not include any individual who has contracted with or is compensated by a third-party or whose services are brokered as part of a household

move.

Section 2. Subsection (3) of section 507.02, Florida Statutes, is amended to read:

507.02 Construction; intent; application.—

(3) This chapter is intended to provide consistency and transparency in moving practices and to secure the satisfaction and confidence of shippers and members of the public when using a mover.

Section 3. Subsections (1), (3), (4), and (5) of section 507.04, Florida Statutes, are amended to read:

507.04 Required insurance coverages; liability limitations; valuation coverage.—

(1) CARGO LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid cargo liability insurance coverage of at least $10,000 per shipment for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the mover's registration period. ~~A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the~~

~~availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.~~

(b) A mover that operates two or fewer vehicles, in lieu of maintaining the cargo liability insurance coverage required under paragraph (a), may, and each moving broker must, maintain one of the following alternative coverages:

1. A performance bond in the amount of $25,000, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of $25,000.

The original bond or certificate of deposit must be filed with the department and must designate the department as the sole beneficiary. The department must use the bond or certificate of deposit exclusively for the payment of claims to consumers who are injured by the fraud, misrepresentation, breach of contract, misfeasance, malfeasance, or financial failure of the mover or moving broker or by a violation of this chapter by the mover or broker. Liability for these injuries may be determined in an administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these injuries, by order of the department in an administrative proceeding. The bond or certificate of deposit is subject to

successive claims, but the aggregate amount of these claims may not exceed the amount of the bond or certificate of deposit.

(3) INSURANCE COVERAGES.—The insurance coverages required under paragraph (1)(a) and subsection (2) must be issued by an insurance company or carrier licensed to transact business in this state under the Florida Insurance Code as designated in s. 624.01. The department shall require a mover to present a certificate of insurance of the required coverages before issuance or renewal of a registration certificate under s. 507.03. The department shall be named as a certificateholder in the certificate and must be notified at least 10 days before cancellation of insurance coverage. A mover's failure to maintain insurance coverage constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph. The mover may also be assessed a civil penalty not to exceed $5,000 and court costs.

(4) ~~LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not limit its liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. A provision of a contract for moving services is void if the provision limits a mover's liability to a valuation rate~~

~~that is less than the minimum rate under this subsection. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage under subsection (5).~~

~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move. ~~If a mover offers valuation coverage,~~ The coverage must indemnify the shipper for at least the cost of repair or replacement of the goods, unless waived or amended by the shipper. The shipper may waive or amend the valuation coverage, and the waiver must be made in a signed acknowledgment in the contract ~~minimum valuation rate required under subsection (4)~~. The mover must disclose the terms of the coverage to the shipper in writing, including any deductibles, in ~~at the time that~~ the binding estimate and again when the contract for services is ~~are~~ executed and before any moving or accessorial services are provided. The disclosure must inform the shipper of the cost of the valuation coverage, if any ~~the valuation rate of the coverage, and the opportunity to reject the coverage~~. ~~If valuation coverage compensates a shipper for at least the minimum valuation rate required under subsection (4), the coverage satisfies the mover's liability for the minimum valuation rate.~~

Section 4. Section 507.05, Florida Statutes, is amended to

read:

507.05 Physical surveys, binding estimates, and contracts for service. ~~Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:~~

(1) PHYSICAL SURVEY.—A mover must conduct a physical survey of the household goods to be moved and provide the prospective shipper with a binding estimate of the cost of the move.

(2) WAIVER OF SURVEY.—A shipper may elect to waive the physical survey, and such waiver must be in writing and signed by the shipper before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for service.

(3) BINDING ESTIMATE.—Before executing a contract for service for a household move, and at least 48 hours before the scheduled time and date of a shipment of household goods, a mover must provide a binding estimate of the total charges, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services. The binding estimate shall be based on a physical survey conducted pursuant to subsection (1), unless waived pursuant to subsection (2).

(a) The shipper may waive the binding estimate if the waiver is made by signed or electronic acknowledgment before the commencement of the 48-hour period before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for services. To be enforceable, a waiver executed under this paragraph must, at a minimum, include

a statement in uppercase type that is at least 5 points larger than, and clearly distinguishable from, the rest of the text of the waiver or release containing the statement. The exact statement to be included in a waiver of a binding estimate to be used by all movers shall be determined by the department in rulemaking and must include a delineation of the specific rights that a shipper may lose by waiving the binding estimate.

(b) The shipper may also waive the 48-hour period if the moving services requested commence within 48 hours of the shipper's initial contact with the mover contracted to perform the moving services.

(c) At a minimum, the binding estimate must include all of the following:

1. The table of measures used by the mover or the mover's agent in preparing the estimate.

2. The date the estimate was prepared and the proposed date of the move, if any.

3. An itemized breakdown and description of services, and the total cost to the shipper of loading, transporting or shipping, unloading, and accessorial services.

4. A statement that the estimate is binding on the mover and the shipper and that the charges shown apply only to those services specifically identified in the estimate.

5. Identification of acceptable forms of payment.

(d) A mover may charge a one-time fee, not to exceed $100, for providing a binding estimate.

(e) The binding estimate must be signed by the mover and the shipper, and a copy must be provided to the shipper by the mover at the time that the estimate is signed.

(f) A binding estimate may only be amended by the mover before the scheduled loading of household goods for shipment when the shipper has requested additional services of the mover not previously disclosed in the original binding estimate, or upon mutual agreement of the mover and the shipper. Once a mover begins to load the household goods for a move, failure to execute a new binding estimate signifies the mover has reaffirmed the original binding estimate.

(g) A mover may not collect more than the amount of the binding estimate unless:

1. The shipper waives receipt of a binding estimate under this subsection.

2. The shipper tenders additional household goods, requests additional services, or requires services that are not specifically included in the binding estimate, in which case the mover is not required to honor the estimate. If, despite the addition of household goods or the need for additional services, the mover chooses to perform the move, it must, before loading the household goods, inform the shipper of the associated charges in writing. The mover may require full payment at the destination for the costs associated with the additional requested services and the full amount of the original binding estimate.

3. Upon issuance of the contract for services, the mover advises the shipper, in advance of performing additional services, including accessorial services, that such services are essential to properly performing the move. The mover must allow the shipper at least 1 hour to determine whether to authorize the additional services.

a. If the shipper agrees to pay for the additional services, the mover must execute a written addendum to the contract for services, which must be signed by the shipper. The addendum may be sent to the shipper by facsimile, e-mail, overnight courier, or certified mail, with return receipt requested. The mover must bill the shipper for the agreed upon additional services within 15 days after the delivery of those additional services pursuant to s. 507.06.

b. If the shipper does not agree to pay for the additional services, the mover may perform and, pursuant to s. 507.06, bill the shipper for those additional services necessary to complete the delivery.

(h) A mover shall retain a copy of the binding estimate for each move performed for at least 1 year after its preparation date as an attachment to the contract for service.

(4) CONTRACT FOR SERVICE.—Before providing any moving or accessorial services, a mover must provide a contract for service to the shipper, which the shipper must sign and date.

(a) At a minimum, the contract for service must include:

1.~~(1)~~ The name, telephone number, and physical address where the mover’s employees are available during normal business hours.

2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and the ~~any~~ proposed date of the move, if any.

3.~~(3)~~ The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

4.~~(4)~~ The name, telephone number, and physical address of any location where the household goods will be held pending

further transportation, including situations in which ~~where~~ the mover retains possession of household goods pending resolution of a fee dispute with the shipper.

5.~~(5)~~ A binding estimate provided in accordance with subsection (3) ~~An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods~~.

6. The total charges owed by the shipper based on the binding estimate and the terms and conditions for their payment, including any required minimum payment.

7. If the household goods are transported under an agreement to collect payment upon delivery, the maximum payment that the mover may demand at the time of delivery.

8.~~(6)~~ Acceptable forms of payment, which must be clearly and conspicuously disclosed to the shipper on the binding estimate and the contract for services. A mover must ~~shall~~ accept at least ~~a minimum of~~ two of the three following forms of payment:

a.~~(a)~~ Cash, cashier’s check, money order, or traveler’s check;

b.~~(b)~~ Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

c.~~(c)~~ Valid credit card, which shall include, but not be limited to, Visa or MasterCard. ~~A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).~~


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(b) Each addendum to the contract for service is an integral part of the contract.

(c) A copy of the contract for service must accompany the household goods whenever they are in the mover's or the mover's agent's possession. Before a vehicle that is being used for the move leaves the point of origin, the driver responsible for the move must have the contract for service in his or her possession.

(d) A mover shall retain a contract for service for each move it performs for at least 1 year after the date the contract for service was signed.

Section 5. Section 507.054, Florida Statutes, is created to read:

507.054 Publication.—

(1) The department shall prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to movers and shippers under this chapter. The publication must include a statement that a mover's failure to relinquish household goods as required by this chapter constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, that any other violation of this chapter constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and that any violation of this chapter constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. The publication must also include a notice to the shipper about the potential risks of shipping sentimental or family heirloom items.

(2) A mover may provide exact copies of the department's

publication to shippers or may customize the color, design, and dimension of the front and back covers of the standard department publication. If the mover customizes the publication, the customized publication must include the content specified in subsection (1) and meet the following requirements:

(a) The font size used must be at least 10 points, with the exception that the following must appear prominently on the front cover in at least 12-point boldface type: "Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law."

(b) The size of the booklet must be at least 36 square inches.

(3) The shipper must acknowledge receipt of the publication by signed acknowledgement in the contract.

Section 6. Section 507.055, Florida Statutes, is created to read:

507.055 Required disclosure and acknowledgment of rights and remedies.—Before executing a contract for service for a move, a mover must provide to a prospective shipper all of the following:

(1) The publication required under s. 507.054.

(2) A concise, easy-to-read, and accurate binding estimate required under s. 507.05(3).

Section 7. Subsections (1) and (3) of section 507.06, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

507.06 Delivery and storage of household goods.—

(1) On the agreed upon delivery date or within the timeframe specified in the contract for service, a mover must

relinquish household goods to a shipper and must place the household goods inside a shipper's dwelling or, if directed by the shipper, inside a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent, unless the shipper has not tendered payment pursuant to s. 507.065 ~~in the amount specified in a written contract or estimate signed and dated by the shipper~~. This requirement may be waived by the shipper. A mover may not, under any circumstances, refuse to relinquish prescription medicines and household goods for use by children, including children's furniture, clothing, or toys~~, under any circumstances~~.

(3) A mover that lawfully fails to relinquish a shipper's household goods may place the goods in storage until payment in accordance with s. 507.065 is tendered; however, the mover must notify the shipper of the location where the goods are stored and the amount due within 5 days after receipt of a written request for that information from the shipper, which request must include the address where the shipper may receive the notice. A mover may not require a prospective shipper to waive any rights or requirements under this section.

(4) If a mover becomes aware that it will be unable to perform either the pickup or the delivery of household goods on the date agreed upon or during the timeframe specified in the contract for service due to circumstances not anticipated by the contract, the mover shall notify the shipper of the delay and advise the shipper of the amended date or timeframe within which the mover expects to pick up or deliver the household goods in a timely manner.

Section 8. Section 507.065, Florida Statutes, is created to

read:

507.065 Payment.—

(1) Except as provided in s. 507.05(3), the maximum amount that a mover may charge before relinquishing household goods to a shipper is the exact amount of the binding estimate, unless waived by the shipper, plus charges for any additional services requested or agreed to in writing by the shipper after the contract for service was issued and for impracticable operations, if applicable.

(2) A mover must bill a shipper for any charges assessed under this chapter which are not collected upon delivery of household goods at their destination within 15 days after such delivery. A mover may assess a late fee for any uncollected charges if the shipper fails to make payment within 30 days after receipt of the bill.

Section 9. Subsections (1), (4), and (5) and paragraphs (a) and (b) of subsection (6), of section 507.07, Florida Statutes, are amended, to read:

507.07 Violations.—It is a violation of this chapter:

(1) To operate ~~conduct business as a mover or moving broker, or advertise to engage~~ in violation ~~the business~~ of ~~moving~~ or fail to comply with ss. 507.03-507.10, or any other requirement under this chapter ~~offering to move, without being registered with the department~~.

(4) To increase the contracted cost ~~fail to honor and comply with all provisions of the contract~~ for moving services in any way other than provided for in this chapter ~~or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder~~.

(5) To withhold delivery of household goods or in any way hold household goods in storage against the expressed wishes of the shipper if payment has been made as delineated in the estimate or contract for services, or pursuant to this chapter.

(6) ~~(a) To include in any contract any provision purporting to waive or limit any right or benefit provided to shippers under this chapter.~~

(a) ~~(b)~~ Unless expressly authorized by this chapter, to seek or solicit a waiver or acceptance of limitation from a shipper concerning rights or benefits provided under this chapter.

Section 10. Section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the rules or orders issued pursuant to this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation, subject to the conditions specified by the department.

(2) The department shall, upon notification and subsequent written verification by a law enforcement agency, a court, a

state attorney, or the Department of Law Enforcement, immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or an officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or a crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

(3) The administrative proceedings that ~~which~~ could result in the entry of an order imposing any of the penalties specified in subsection (1) or subsection (2) are governed by chapter 120.

~~(3) The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.~~

Section 11. Subsection (4) of section 507.10, Florida Statutes, is amended to read:

507.10 Civil penalties; remedies.—

(4) Except as expressly authorized by this chapter, any provision in a contract for services or bill of lading from a mover or moving broker that purports to waive, limit, restrict, or avoid any of the duties, obligations, or prescriptions of the mover or broker, as provided in this chapter, is void.

Section 12. Section 507.11, Florida Statutes, is amended to read:

507.11 Criminal penalties.—

(1) The refusal of a mover or a mover’s employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper’s household goods after the officer determines that the shipper has tendered payment in

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accordance with s. 507.065 ~~of the amount of a~~

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

And the title is amended as follows:

Delete lines 15 - 75

and insert:

cost of repair or replacement goods unless waived or amended by the shipper; authorizing the shipper to waive or amend the valuation coverage; requiring that the waiver be made in a signed acknowledgment in the contract; revising the time at which the mover must disclose the terms of the coverage to the shipper in writing, including any deductibles; revising the information that the disclosure must provide to the shipper; amending s. 507.05, F.S.; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper; requiring specified content for the binding estimate; authorizing a shipper to waive the binding estimate in certain circumstances; authorizing the mover to provide a maximum one-time fee for providing a binding estimate; requiring the mover and shipper to sign the estimate; requiring the mover to provide the shipper with a copy of the estimate at the time of signature; providing that a binding estimate may only be amended under certain circumstances; authorizing a mover to charge more than the binding estimate in certain circumstances; requiring a mover to allow a shipper to consider whether additional services are

needed; requiring a mover to retain a copy of the binding estimate for a specified period; requiring a mover to provide a contract for service to the shipper before providing moving or accessorial services; requiring a driver to have possession of the contract before leaving the point of origin; requiring a mover to retain a contract of service for a specified period; creating s. 507.054, F.S.; requiring the department to prepare a publication that summarizes the rights and responsibilities of, and remedies available to, movers and shippers; requiring the publication to meet certain specifications; creating s. 507.055, F.S.; requiring a mover to provide certain disclosures to a prospective shipper; amending s. 507.06, F.S.; 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; requiring a mover to notify and provide certain information to a shipper if the mover is unable to perform delivery on the agreed upon date or during the specified period; creating s. 507.065, F.S.; providing a maximum amount that a mover may charge a shipper unless waived by the shipper; requiring a mover to bill a shipper for specified charges in certain circumstances; authorizing a mover to assess a late fee for any uncollected charges in certain circumstances; amending s. 507.07, F.S.; providing that it is a violation of ch. 507, F.S., to fail to comply with specified provisions; providing

that it is a violation of ch. 507, F.S., to increase the contracted cost for moving services in certain circumstances; conforming provisions to changes made by this act; amending s. 507.09, F.S.; requiring the department, upon verification by certain entities, to immediately suspend a registration or the processing of an application for a registration in certain circumstances; amending s. 507.10, F.S.; conforming a provision to a change made by this act; amending s. 507.11, F.S.; providing

By the Committee on Commerce and Tourism; and Senator Lee

577-02749A-15 2015798c1

A bill to be entitled

An act relating to household moving services; amending s. 507.01, F.S.; defining terms; amending s. 507.02, F.S.; clarifying intent; amending s. 507.04, F.S.; removing a prohibition that a mover may not limit its liability for the loss or damage of household goods to a specified valuation rate; removing a requirement that a mover disclose a liability limitation when the mover limits its liability for a shipper's goods; requiring a mover to offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move; requiring the valuation coverage to indemnify the shipper for at least the cost of replacement goods less depreciated value; revising the time at which the mover must disclose the terms of the coverage to the shipper in writing; revising the information that the disclosure must provide to the shipper; amending s. 507.05, F.S.; requiring a mover to conduct a physical survey and provide a binding estimate in certain circumstances unless waived by the shipper; requiring specified content for the binding estimate; authorizing the mover to provide a maximum one-time fee for providing a binding estimate; requiring the mover and shipper to sign the estimate; requiring the mover to provide the shipper with a copy of the estimate at the time of signature; providing that a binding estimate may only be amended under certain circumstances; authorizing a

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mover to charge more than the binding estimate in certain circumstances; requiring a mover to allow a shipper to consider whether additional services are needed; requiring a mover to retain a copy of the binding estimate for a specified period; requiring a mover to provide a contract for service to the shipper before providing moving or accessorial services; requiring a driver to have possession of the contract before leaving the point of origin; requiring a mover to retain a contract of service for a specified period; creating s. 507.054, F.S.; requiring the department to prepare a publication that summarizes the rights and responsibilities of, and remedies available to, movers and shippers; requiring the publication to meet certain specifications; creating s. 507.055, F.S.; requiring a mover to provide certain disclosures to a prospective shipper; amending s. 507.06, F.S.; 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; requiring a mover to notify and provide certain information to a shipper if the mover is unable to perform delivery on the agreed upon date or during the specified period; creating s. 507.065, F.S.; providing a maximum amount that a mover may charge a shipper; requiring a mover to bill a shipper for certain amounts within a specified period; creating s. 507.066, F.S.; specifying the amount of payment that the mover may collect upon delivery of

partially lost or destroyed household goods; requiring a mover to determine the proportion of lost or destroyed household goods; prohibiting a mover from collecting or requiring a shipper to pay any charges other than specific valuation rate charges if a household goods shipment is totally lost or destroyed in transit; amending s. 507.07, F.S.; providing that it is a violation of ch. 507, F.S., to fail to comply with specified provisions; providing that it is a violation of ch. 507, F.S., to increase the contracted cost for moving services in certain circumstances; conforming a provision to a change made by this act; amending s. 507.09, F.S.; requiring the department, upon verification by certain entities, to immediately suspend a registration or the processing of an application for a registration in certain circumstances; amending s. 507.11, F.S.; providing criminal penalties; creating s. 507.14, F.S.; requiring the department to adopt rules; providing an effective date.

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

Section 1. Present subsections (6) through (9) of section 507.01, Florida Statutes, are amended, and new subsection (8) is added to that section, to read:

507.01 Definitions.—As used in this chapter, the term:

~~(6) "Estimate" means a written document that sets forth the total costs and describes the basis of those costs, relating to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.~~

(6)~~(7)~~ "Household goods" or "goods" means personal effects or other personal property commonly found in a home, personal residence, or other dwelling, including, but not limited to, household furniture. The term does not include freight or personal property moving to or from a factory, store, or other place of business.

(7)~~(8)~~ "Household move" or "move" means the loading of household goods into a vehicle, moving container, or other mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations, regardless of whether the mover temporarily stores the goods while en route between the originating and terminating locations:

(a) From one dwelling to another dwelling;

(b) From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or

(c) From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.

(8) "Impracticable operations" means conditions that arise after execution of a contract for household moving services which make it impractical for a mover to perform pickup or delivery services for a household move.

(9) "Additional Services" means any additional transportation of household goods that is performed by a mover,

is not specifically included in a binding estimate, and which results in a charge to the shipper.

(10) ~~(9)~~ "Mover" means a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.

Section 2. Subsection (3) of section 507.02, Florida Statutes, is amended to read:

507.02 Construction; intent; application.—

(3) This chapter is intended to provide consistency and transparency in moving practices and to secure the satisfaction and confidence of shippers and members of the public when using a mover.

Section 3. Subsections (1), (3), (4), and (5) of section 507.04, Florida Statutes, are amended to read:

507.04 Required insurance coverages; liability limitations; valuation coverage.—

(1) CARGO LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid cargo liability insurance coverage of at least $10,000 per shipment for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the

mover's registration period. ~~A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.~~

(b) A mover that operates two or fewer vehicles, in lieu of maintaining the cargo liability insurance coverage required under paragraph (a), may, and each moving broker must, maintain one of the following alternative coverages:

1. A performance bond in the amount of $25,000, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of $25,000.

The original bond or certificate of deposit must be filed with the department and must designate the department as the sole beneficiary. The department must use the bond or certificate of deposit exclusively for the payment of claims to consumers who are injured by the fraud, misrepresentation, breach of contract, misfeasance, malfeasance, or financial failure of the mover or moving broker or by a violation of this chapter by the mover or

broker. Liability for these injuries may be determined in an administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these injuries, by order of the department in an administrative proceeding. The bond or certificate of deposit is subject to successive claims, but the aggregate amount of these claims may not exceed the amount of the bond or certificate of deposit.

(3) INSURANCE COVERAGES.—The insurance coverages required under paragraph (1)(a) and subsection (2) must be issued by an insurance company or carrier licensed to transact business in this state under the Florida Insurance Code as designated in s. 624.01. The department shall require a mover to present a certificate of insurance of the required coverages before issuance or renewal of a registration certificate under s. 507.03. The department shall be named as a certificateholder in the certificate and must be notified at least 10 days before cancellation of insurance coverage. A mover's failure to maintain insurance coverage constitutes an immediate threat to the public health, safety, and welfare. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil

penalty not to exceed $5,000, and court costs.

(4) ~~LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not limit its liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. A provision of a contract for moving services is void if the provision limits a mover's liability to a valuation rate that is less than the minimum rate under this subsection. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage under subsection (5).~~

~~(5)~~ VALUATION COVERAGE.—A mover shall ~~may~~ offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move. ~~If a mover offers valuation coverage,~~ The coverage must indemnify the shipper for at least the cost of replacement of the goods less depreciated value ~~minimum valuation rate required under subsection (4)~~. The mover must disclose the terms of the coverage to the shipper in writing within ~~at the time that~~ the binding estimate and again when the contract for services is ~~are~~ executed and before any moving or accessorial services are provided. The disclosure must inform the shipper of the cost of the valuation coverage, if any ~~the valuation rate of the coverage, and the opportunity to reject the coverage~~. ~~If valuation coverage compensates a shipper for at least the minimum valuation rate required under subsection (4),~~

~~the coverage satisfies the mover's liability for the minimum valuation rate.~~

Section 4. Section 507.05, Florida Statutes, is amended to read:

507.05 Physical surveys, binding estimates, and contracts for service.~~—Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:~~

(1) PHYSICAL SURVEY.—A mover must conduct a physical survey of the household goods to be moved and provide the prospective shipper with a binding estimate of the cost of the move.

(2) WAIVER OF SURVEY.—A shipper may elect to waive the physical survey, and such waiver must be in writing and signed by the shipper before the household goods are loaded. The mover shall retain a copy of the waiver as an addendum to the contract for service.

(3) BINDING ESTIMATE.—Before executing a contract for service for a household move, and at least 48 hours before the scheduled time and date of a shipment of household goods, a mover must provide a binding estimate of the total charges, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services. The binding estimate shall be based on a physical survey conducted pursuant to subsection (1), unless waived pursuant to subsection (2).

(a) The shipper may waive the 48 hour waiting period and such waiver must be made by signed acknowledgement in the contract.

(b) At a minimum, the binding estimate must include all of the following:

1. The table of measures used by the mover or the mover's agent in preparing the estimate.

2. The date the estimate was prepared and the proposed date of the move, if any.

3. An itemized breakdown and description of services, and the total cost to the shipper of loading, transporting or shipping, unloading, and accessorial services.

4. A statement that the estimate is binding on the mover and the shipper and that the charges shown apply only to those services specifically identified in the estimate.

5. Identification of acceptable forms of payment.

(c) A mover may charge a one-time fee, not to exceed $100, for providing a binding estimate.

(d) The binding estimate must be signed by the mover and the shipper, and a copy must be provided to the shipper by the mover at the time that the estimate is signed.

(e) A binding estimate may only be amended by the mover before the scheduled loading of household goods for shipment when the shipper has requested additional services of the mover not previously disclosed in the original binding estimate, or upon mutual agreement of the mover and the shipper. Once a mover begins to load the household goods for a move, failure to execute a new binding estimate signifies the mover has reaffirmed the original binding estimate.

(f) A mover may not collect more than the amount of the binding estimate unless:

1. The shipper tenders additional household goods, requests

additional services, or requires services that are not specifically included in the binding estimate, in which case the mover is not required to honor the estimate. If, despite the addition of household goods or the need for additional services, the mover chooses to perform the move, it must, before loading the household goods, inform the shipper of the associated charges in writing. The mover may require full payment at the destination for the costs associated with the additional requested services and the full amount of the original binding estimate.

2. Upon issuance of the contract for services, the mover advises the shipper, in advance of performing additional services, including accessorial services, that such services are essential to properly performing the move. The mover must allow the shipper at least 1 hour to determine whether to authorize the additional services.

a. If the shipper agrees to pay for the additional services, the mover must execute a written addendum to the contract for services, which must be signed by the shipper. The addendum may be sent to the shipper by facsimile, e-mail, overnight courier, or certified mail, with return receipt requested. The mover must bill the shipper for the agreed upon additional services within 15 days after the delivery of those additional services pursuant to s. 507.06.

b. If the shipper does not agree to pay for the additional services, the mover may perform and, pursuant to s. 507.06, bill the shipper for those additional services necessary to complete the delivery.

(g) A mover shall retain a copy of the binding estimate for

each move performed for at least 1 year after its preparation date as an attachment to the contract for service.

(4) CONTRACT FOR SERVICE.—Before providing any moving or accessorial services, a mover must provide a contract for service to the shipper, which the shipper must sign and date.

(a) At a minimum, the contract for service must include:

1.~~(1)~~ The name, telephone number, and physical address where the mover's employees are available during normal business hours.

2.~~(2)~~ The date the contract was ~~or estimate is~~ prepared and the ~~any~~ proposed date of the move, if any.

3.~~(3)~~ The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

4.~~(4)~~ The name, telephone number, and physical address of any location where the household goods will be held pending further transportation, including situations in which ~~where~~ the mover retains possession of household goods pending resolution of a fee dispute with the shipper.

5.~~(5)~~ A binding estimate provided in accordance with s. 507.05~~ An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods~~.

6. The total charges owed by the shipper based on the binding estimate and the terms and conditions for their payment, including any required minimum payment.

7. If the household goods are transported under an agreement to collect payment upon delivery, the maximum payment

that the mover may demand at the time of delivery.

8.~~(6)~~ Acceptable forms of payment, which must be clearly and conspicuously disclosed to the shipper on the binding estimate and the contract for services. A mover must ~~shall~~ accept at least ~~a minimum of~~ two of the three following forms of payment:

a.~~(a)~~ Cash, cashier's check, money order, or traveler's check;

b.~~(b)~~ Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

c.~~(c)~~ Valid credit card, which shall include, but not be limited to, Visa or MasterCard. ~~A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).~~

(b) Each addendum to the contract for service is an integral part of the contract.

(c) A copy of the contract for service must accompany the household goods whenever they are in the mover's or the mover's agent's possession. Before a vehicle that is being used for the move leaves the point of origin, the driver responsible for the move must have the contract for service in his or her possession.

(d) A mover shall retain a contract for service for each move it performs for at least 1 year after the date the contract for service was signed.

Section 5. Section 507.054, Florida Statutes, is created to read:

507.054 Publication.—

(1) The department shall prepare a publication that includes a summary of the rights and responsibilities of, and remedies available to movers and shippers under this chapter. The publication must include a statement that a mover's failure to relinquish household goods as required by this chapter constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, that any other violation of this chapter constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and that any violation of this chapter constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act. The publication must also include a notice to the shipper about the potential risks of shipping sentimental or family heirloom items.

(2) A mover may provide exact copies of the department's publication to shippers or may customize the color, design, and dimension of the front and back covers of the standard department publication. If the mover customizes the publication, the customized publication must include the content specified in subsection (1) and meet the following requirements:

(a) The font size used must be at least 10 points, with the exception that the following must appear prominently on the front cover in at least 12-point boldface type: "Your Rights and Responsibilities When You Move. Furnished by Your Mover, as Required by Florida Law."

(b) The size of the booklet must be at least 36 square inches.

(3) The shipper must acknowledge receipt of the publication

by signed acknowledgement in the contract.

Section 6. Section 507.055, Florida Statutes, is created to read:

507.055 Required disclosure and acknowledgment of rights and remedies.—Before executing a contract for service for a move, a mover must provide to a prospective shipper all of the following:

(1) The publication required under s. 507.054.

(2) A concise, easy-to-read, and accurate binding estimate required under s. 507.05(3).

Section 7. Subsections (1) and (3) of section 507.06, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

507.06 Delivery and storage of household goods.—

(1) On the agreed upon delivery date or within the timeframe specified in the contract for service, a mover must relinquish household goods to a shipper and must place the household goods inside a shipper's dwelling or, if directed by the shipper, inside a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent, unless the shipper has not tendered payment pursuant to ss. 507.065 or 507.066 ~~in the amount specified in a written contract or estimate signed and dated by the shipper~~. This requirement may be waived by the shipper. A mover may not, under any circumstances, refuse to relinquish prescription medicines and household goods for use by children, including children's furniture, clothing, or toys~~, under any circumstances~~.

(3) A mover that lawfully fails to relinquish a shipper's household goods may place the goods in storage until payment in

accordance with ss. 507.065 or 507.066 is tendered; however, the mover must notify the shipper of the location where the goods are stored and the amount due within 5 days after receipt of a written request for that information from the shipper, which request must include the address where the shipper may receive the notice. A mover may not require a prospective shipper to waive any rights or requirements under this section.

(4) If a mover becomes aware that it will be unable to perform either the pickup or the delivery of household goods on the date agreed upon or during the timeframe specified in the contract for service due to circumstances not anticipated by the contract, the mover shall notify the shipper of the delay and advise the shipper of the amended date or timeframe within which the mover expects to pick up or deliver the household goods in a timely manner.

Section 8. Section 507.065, Florida Statutes, is created to read:

507.065 Payment.—

(1) Except as provided in s. 507.05(3), the maximum amount that a mover may charge before relinquishing household goods to a shipper is the exact amount of the binding estimate, plus charges for any additional services requested or agreed to in writing by the shipper after the contract for service was issued and for impracticable operations, if applicable.

(2) A mover must bill a shipper for any charges assessed under this chapter which are not collected upon delivery of household goods at their destination within 15 days after such delivery. A mover may assess a late fee for any uncollected charges if the shipper fails to make payment within 30 days

after receipt of the bill.

Section 9. Section 507.066, Florida Statutes, is created to read:

507.066 Collection for losses.—

(1) PARTIAL LOSSES.—A mover may collect an adjusted payment from a shipper if part of a shipment of household goods is lost or destroyed.

(a) A mover may collect the following at delivery:

1. A prorated percentage of the binding estimate. The prorated percentage must equal the percentage of the weight of the portion of the household goods delivered relative to the total weight of the household goods that were ordered to be moved.

2. Charges for any additional services requested by the shipper after the contract for service was issued.

3. Charges for impracticable operations, if applicable; however, such charges may not exceed 15 percent of all other charges due at delivery.

4. Any specific valuation rate charges due, as provided in s. 507.04(4), if applicable.

(b) The mover may bill and collect from the shipper any remaining charges not collected at the time of delivery in accordance with s. 507.065. This paragraph does not apply if the loss or destruction of household goods occurred as a result of an act or omission of the shipper.

(c) A mover must determine, at its own expense, the proportion of the household goods, based on actual or constructive weight, which were lost or destroyed in transit.

(2) TOTAL LOSSES.—A mover may not collect, or require a

shipper to pay, freight charges, including a charge for accessorial services, when a household goods shipment is lost or destroyed in transit; however, the mover may collect a specific valuation rate charge due, as provided in s. 507.04(4). This subsection does not apply if the loss or destruction was due to an act or omission of the shipper.

(3) SHIPPER'S RIGHTS.—A shipper's rights under this section are in addition to any other rights the shipper may have with respect to household goods that were lost or destroyed while in the custody of the mover or the mover's agent. These rights also apply regardless of whether the shipper exercises his or her right to obtain a refund of the portion of a mover's published freight charges corresponding to the portion of the lost or destroyed household goods, including any charges for accessorial services, at the time the mover disposes of claims for loss, damage, or injury to the household goods.

Section 10. Subsections (1), (4), and (5) of section 507.07, Florida Statutes, are amended, to read:

507.07 Violations.—It is a violation of this chapter:

(1) To operate ~~conduct business as a mover or moving broker, or advertise to engage~~ in violation ~~the business~~ of ~~moving~~ or fail to comply with ss. 507.03-507.10, or any other requirement under this chapter ~~offering to move, without being registered with the department~~.

(4) To increase the contracted cost ~~fail to honor and comply with all provisions of the contract~~ for moving services in any way other than provided for in this chapter ~~or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder~~.

(5) To withhold delivery of household goods or in any way hold household goods in storage against the expressed wishes of the shipper if payment has been made as delineated in the estimate or contract for services, or pursuant to this chapter.

Section 11. Section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the rules or orders issued pursuant to this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation, subject to the conditions specified by the department.

(2) The department shall, upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or an officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of

property or a crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

(3) The administrative proceedings that ~~which~~ could result in the entry of an order imposing any of the penalties specified in subsection (1) or subsection (2) are governed by chapter 120.

~~(3) The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.~~

Section 12. Section 507.11, Florida Statutes, is amended to read:

507.11 Criminal penalties.—

(1) The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment in accordance with ss. 507.065 and 507.066 ~~of the amount of a written estimate or contract~~, or after the officer determines that the mover did not produce a signed estimate or contract for service upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish household goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

(2) Except as provided in subsection (1), any person or business that violates this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 13. Section 507.14, Florida Statutes, is created

to read:

507.14 Rulemaking.—The department shall adopt rules to administer this chapter.

Section 14. 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)

4/8/2015
Meeting Date

798
Bill Number (if applicable)

419526 SA
Amendment Barcode (if applicable)

Topic Household Moving

Name Chad Faison

Job Title Director of Communications

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Phone 850/222-6000

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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.

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 798
Bill Number (if applicable)

Topic Household Moving Services

Amendment Barcode (if applicable)

Name Jonathan Rees

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City *State* *Zip*

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Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] 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 [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.

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.)

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

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.	Matiyow	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

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.[1] Citizens is not a private insurance company.[2] 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[3] (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.[4] Assets may not be commingled or used to fund losses in another account.[5]

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

[1] Admitted market means insurance companies licensed to transact insurance in Florida.
[2] s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.
[3] The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives.
[4] The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.
[5] 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.[6]

Citizens Clearinghouse

The Citizens Property Insurance Corporation policyholder eligibility clearinghouse program was established by the Legislature in 2013[7]. 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.[8] 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.[9] The corporation may also make

[6] 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.
[7] s. 10 ch. 2013-60 L.O.F.
[8] 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.
[9] 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.[10]

Takeout Bonus Agreements

Section 627.3511, F.S., was created by the Legislature in 1995[11] 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.[12] 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.[13]

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.[14] 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.

[10] *Id.*
[11] s. 10, ch.95-276, L.O.F.
[12] Information received from the OIR on March 19, 2015. (On file with the Banking and Insurance Committee)
[13] Id.
[14] 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.[15] 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.[16]

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 though the clearinghouse.

[15] Citizens Policy Inforce Weekly Summary Report March 16, 2015.
[16] 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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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

two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the

members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer’s approved rate under a standard policy including wind coverage or, if consistent with the insurer’s underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any

policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept

appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for

the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance

with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized

insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the

provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective

date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment


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as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board

determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM,

BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant’s signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided

herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the

files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. The licensed general lines agent and an insurer receiving information under this subparagraph may not use the information for the direct solicitation of policyholders. An entity that has obtained a permit to become an authorized insurer, a reinsurer, a reinsurance broker, or a modeling company may receive the information available to a licensed general lines agent for the sole purpose of analyzing risks for underwriting in the private insurance market and must retain the confidentiality of the information received. Such entities may not use the information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation

as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after

settlement of the claim.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (6)(q)3.a. to maximize policyholder options and encourage increased participation by insurers and agents.

1. After January 1, 2016, such revisions must include a process by which policyholders are informed if one or more insurers demonstrate an interest in taking out that policy from the corporation. This demonstration of interest must include the amount of the estimated premium, a description of the coverage, including an explanation of differences, and a comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation. The corporation shall develop a uniform format for the estimated premium and coverage information required by this subparagraph. After January 1, 2016, a policy may not be taken out from the corporation unless the provisions of this subparagraph are met.

2. A policyholder may elect not to be solicited for take-out offers more than once in a 6-month period.

3. A policyholder whose policy was taken out by an insurer in the previous 36 months is considered a renewal policyholder under s. 627.3518 if the corporation determines that the insurer continues to insure the policyholder and that the initial premium of the insurer exceeded its estimated premium by more than 10 percent or the insurer increased the rate on the policy in excess of the increase allowed for the corporation under subparagraph (6)(n)6.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

527578

And the directory clause is amended as follows:

Delete lines 16 - 17

and insert:

Section 1. Paragraphs (c) and (x) of subsection (6) of section 627.351, Florida Statutes, are amended, and paragraph (ii) is added to that subsection, to read:

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

And the title is amended as follows:

Delete lines 2 - 11

and insert:

An act relating to operations of the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; specifying that a consumer representative appointed by the Governor to the Citizens Property Insurance Corporation's board of governors is not prohibited from practicing in a certain profession if required or permitted by law or ordinance; authorizing the use of specified information by certain entities in analyzing risks and prohibiting the use of such information for the direct solicitation of policyholders; requiring the take-out program to be revised for specified purposes; requiring policyholders after a specified date to receive certain information relating to a demonstration of interest to insure by private insurers; requiring the corporation to develop uniform formats for certain information; allowing a policyholder to elect to limit the frequency of solicitations for take-out offers; providing

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circumstances under which a policyholder whose policy was taken out to be considered a renewal policyholder 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:

Senate Amendment to Amendment (527578) (with title amendment)

Delete lines 300 - 303
and insert:
licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015(3) by ~~with~~ an insurer who ~~at the time of the agent's initial appointment by the corporation~~ is authorized to write and is actually writing or renewing personal lines residential

977198

11
12 ================ T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete line 550
15 and insert:
16 permitted by law or ordinance; revising the
17 requirements for licensed agents of the corporation;
18 authorizing the use of

By the Committee on Banking and Insurance; and Senator Flores

597-02737-15 20151006c1

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

share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were

eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete

and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements

of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is

appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor 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 two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the

market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation;

or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the

corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the

corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk

is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due

to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an

impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of

materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE

CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

22. Must provide that before an insurer may remove a policy from the corporation under a takeout agreement, such agreement must:

a. Be approved by the office.

b. Require that the insurer provide information to the policyholder explaining the differences in coverage and rate between the corporation policy and the policy offered.

23. Must exclude a policyholder for 6 months from future takeout agreements by the corporation if the policyholder declined a takeout agreement offer from an authorized insurer and declined to receive additional takeout offers.

24. Must allow a policyholder who was removed from the corporation in the previous 36 months by a takeout agreement with an authorized insurer to reapply with the corporation and be considered a renewal under s. 627.3518(5) if the corporation determines that the authorized insurer increased the rate for the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6.

Section 2. 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)

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 2312 Killearn Center Blvd - A
Street

Phone 850-513-3746

Tallahassee FL 32309
City *State* *Zip*

Email

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Citizens Property Ins.

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.

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)

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 Killearn Center Blvd
Street

Phone 513-3746

Tallahassee FL 32309
City *State* *Zip*

Email

Speaking: [X] 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 [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.

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 850-566-8615

City *State* *Zip*

Email LpearceDfaia.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.

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)

4/8/2015
Meeting Date

SB 1000
Bill Number (if applicable)

Topic Citizens Depopulation

Amendment Barcode (if applicable)

Name Christian Camara

Job Title State Director

Address PO Box 10577
Street

Tall. FL 32302
City *State* *Zip*

Phone 305-608-4320

Email CCamara@rstreet.org

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.

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

1006
Bill Number (if applicable)

Topic Depos of Citizens

Amendment Barcode (if applicable)

Name Corey Mathews

Job Title CEO

Address 1390 Timberlane Road
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850/222-0000

Email Corey@piaa.org

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Professional Insurance Agents of FL

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] 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

Committee Agenda Request

To: Senator Alan Hays, Chair
Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

Date: March 24, 2015

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 _____

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

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.	Kraemer	Imhof	RI	**Fav/CS**
2.	Howard	DeLoach	AGG	**Recommend: Favorable**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

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,"[1] for the benefit of public education.[2] The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.[3] 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.[4] Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.[5]

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.[6] 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,[7] and the authority to act as a retailer for lottery sales may not be transferred.[8] 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.[9]

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.[10]

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[1] *See* s. 24.104, F.S.
[2] *See* s. 24.121(2), F.S.
[3] *See* s. 24.105(17), F.S.
[4] *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).
[5] OPPAGA Report 2015-03, at page 1 (footnote 3).
[6] *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.
[7] Section 24.112(3)(c), F.S.
[8] Section 24.112(4), F.S.
[9] Section 24.112(10), F.S.
[10] 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:[11]

- Any lottery retailer, as well as any lottery department office, may redeem a winning ticket valued at less than $600.[12] 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.[13] 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.[14] 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,[15] and the remainder may be used for future prizes or special prize promotions.[16]

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."[17]

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.[18] In its most recent Financial Audit,[19] the

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[11] *See* Rule 53ER13-31, F.A.C.

[12] 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.

[13] 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.

[14] *See* s. 24.115(1)(f), F.S.

[15] 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.

[16] *See* s. 24.115(2)(b), F.S.

[17] 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).

[18] *OPPAGA Report 14-06* at page 2.

[19] *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 (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.[20] The Gaming Compact authorizes the Tribe to conduct Class III gaming.[21] It was ratified by the Legislature, with an effective date of July 6, 2010.[22] 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[23] 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.[24]

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."[25] The Gaming Compact also includes language about not using a

[20] 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* (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.*

[21] 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.

[22] *See* Chapter 2010-29, L.O.F.

[23] *See* the executed Gaming Compact at 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.

[24] *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).

[25] 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.[26]

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.[27]

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.[28] In the last two years, the OPPAGA has issued Report No. 14-06, concerning options available to the department to enhance revenues,[29] and Report No. 15-03, concerning increases in lottery revenues, further enhancement options, and options to increase efficiency. [30]

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.[31] 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.[32]

In addition to funding the operational appropriation, lottery revenue is used to pay prizes and retailer commissions.[33] In Fiscal Year 2013-2014, prizes totaled $3.43 billion and retailer commissions totaled $297.3 million.[34]

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.

[26] 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."

[27] *See* last sentence in paragraph B of Part XII of Gaming Compact at page 43.

[28] 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.

[29] *See OPPAGA Report 14-06*, at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf (last accessed March 25, 2015).

[30] *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).

[31] *Id*. at page 10.

[32] *Id.* at page 2.

[33] *See* s. 24.121(2) and (3), F.S.

[34] *Id.* at page 1.

stations and ATMs.[35] 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.[36] 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.[37] Purchases are limited to quick-pick (random) plays[38] 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.[39] The report noted that "offering this option at ATMs may help expand the retailer network to non-traditional locations."[40]

In its most recent report on Florida Lottery revenues and operations,[41] 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

[35] *See OPPAGA Report 14-06* at page 11.
[36] *See* https://mnlottery-etickets.com/ (last visited Mar. 25, 2015).
[37] *See* http://www.molottery.com/numbers/alternative_distribution.shtm (last visited March 25, 2015).
[38] 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.
[39] *See OPPAGA REPORT 14-06* at page 14.
[40] *Id.*
[41] *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.[42]

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 bills 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,[43] without violating the exclusivity provisions of the Gaming Compact.[44] There are three types of lottery vending machines. The third type of machine is defined as:

[42] See *OPPAGA Report*, No. 14-06 at page 14.
[43] *See* the executed Gaming Compact at 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).
[44] *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

580-02816-15 20151032c1

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

24.105, Florida Statutes, are redesignated as subsections (20) and (21), respectively, and a new subsection (19) is added to that section, to read:

24.105 Powers and duties of department.—The department shall:

(19) Have the authority to create a program that allows a person who is 18 years of age or older to purchase a lottery ticket or game at a point-of-sale terminal. The department may adopt rules to administer the program.

Section 3. Section 24.112, Florida Statutes, is amended to read:

24.112 Retailers of lottery tickets; ~~authorization of~~ vending machines; point-of-sale terminals ~~to dispense lottery tickets~~.—

(1) The department shall promulgate rules specifying the terms and conditions for contracting with retailers who will best serve the public interest and promote the sale of lottery tickets.

(2) In the selection of retailers, the department shall consider factors such as financial responsibility, integrity, reputation, accessibility of the place of business or activity to the public, security of the premises, the sufficiency of existing retailers to serve the public convenience, and the projected volume of the sales for the lottery game involved. In the consideration of these factors, the department may require the information it deems necessary of any person applying for authority to act as a retailer. However, the department may not establish a limitation upon the number of retailers and shall make every effort to allow small business participation as

retailers. It is the intent of the Legislature that retailer selections be based on business considerations and the public convenience and that retailers be selected without regard to political affiliation.

(3) The department may ~~shall~~ not contract with any person as a retailer who:

(a) Is less than 18 years of age.

(b) Is engaged exclusively in the business of selling lottery tickets; however, this paragraph may ~~shall~~ not preclude the department from selling lottery tickets.

(c) Has been convicted of, or entered a plea of guilty or nolo contendere to, a felony committed in the preceding 10 years, regardless of adjudication, unless the department determines that:

1. The person has been pardoned or the person's civil rights have been restored;

2. Subsequent to such conviction or entry of plea the person has engaged in the kind of law-abiding commerce and good citizenship that would reflect well upon the integrity of the lottery; or

3. If the person is a firm, association, partnership, trust, corporation, or other entity, the person has terminated its relationship with the individual whose actions directly contributed to the person's conviction or entry of plea.

(4) The department shall issue a certificate of authority to each person with whom it contracts as a retailer for purposes of display pursuant to subsection (6). The issuance of the certificate may ~~shall~~ not confer upon the retailer any right apart from that specifically granted in the contract. The

authority to act as a retailer may ~~shall~~ not be assignable or transferable.

(5) A ~~Any~~ contract executed by the department pursuant to this section shall specify the reasons for any suspension or termination of the contract by the department, including, but not limited to:

(a) Commission of a violation of this act or rule adopted pursuant thereto.

(b) Failure to accurately account for lottery tickets, revenues, or prizes as required by the department.

(c) Commission of any fraud, deceit, or misrepresentation.

(d) Insufficient sale of tickets.

(e) Conduct prejudicial to public confidence in the lottery.

(f) Any material change in any matter considered by the department in executing the contract with the retailer.

(6) Each ~~Every~~ retailer shall post and keep conspicuously displayed in a location on the premises accessible to the public its certificate of authority and, with respect to each game, a statement supplied by the department of the estimated odds of winning a ~~some~~ prize for the game.

(7) A ~~No~~ contract with a retailer may not ~~shall~~ authorize the sale of lottery tickets at more than one location, and a retailer may sell lottery tickets only at the location stated on the certificate of authority.

(8) With respect to any retailer whose rental payments for premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales, and where such computation of retail sales is not explicitly defined to include

sales of tickets in a state-operated lottery, the compensation received by the retailer from the department shall be deemed to be the amount of the retail sale for the purposes of such contractual compensation.

(9)(a) The department may require each ~~every~~ retailer to post an appropriate bond as determined by the department, using an insurance company acceptable to the department, in an amount not to exceed twice the average lottery ticket sales of the retailer for the period within which the retailer is required to remit lottery funds to the department. For the first 90 days of sales of a new retailer, the amount of the bond may not exceed twice the average estimated lottery ticket sales for the period within which the retailer is required to remit lottery funds to the department. This paragraph does ~~shall~~ not apply to lottery tickets that ~~which~~ are prepaid by the retailer.

(b) In lieu of such bond, the department may purchase blanket bonds covering all or selected retailers or may allow a retailer to deposit and maintain with the Chief Financial Officer securities that are interest bearing or accruing and that, with the exception of those specified in subparagraphs 1. and 2., are rated in one of the four highest classifications by an established nationally recognized investment rating service. Securities eligible under this paragraph shall be limited to:

1. Certificates of deposit issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States and having their principal place of business in this state.

2. United States bonds, notes, and bills for which the full faith and credit of the government of the United States is

pledged for the payment of principal and interest.

3. General obligation bonds and notes of any political subdivision of the state.

4. Corporate bonds of any corporation that is not an affiliate or subsidiary of the depositor.

Such securities shall be held in trust and shall have at all times a market value at least equal to an amount required by the department.

(10) Each ~~Every~~ contract entered into by the department pursuant to this section shall contain a provision for payment of liquidated damages to the department for any breach of contract by the retailer.

(11) The department shall establish procedures by which each retailer shall account for all tickets sold by the retailer and account for all funds received by the retailer from such sales. The contract with each retailer shall include provisions relating to the sale of tickets, payment of moneys to the department, reports, service charges, and interest and penalties, if necessary, as the department shall deem appropriate.

(12) ~~No~~ Payment by a retailer to the department for tickets may not ~~shall~~ be in cash. All such payments shall be in the form of a check, bank draft, electronic fund transfer, or other financial instrument authorized by the secretary.

(13) Each retailer shall provide accessibility for disabled persons on habitable grade levels. This subsection does not apply to a retail location that ~~which~~ has an entrance door threshold more than 12 inches above ground level. As used in

~~herein and for purposes of~~ this subsection ~~only~~, the term "accessibility for disabled persons on habitable grade levels" means that retailers shall provide ramps, platforms, aisles and pathway widths, turnaround areas, and parking spaces to the extent these are required for the retailer's premises by the particular jurisdiction where the retailer is located. Accessibility shall be required to only one point of sale of lottery tickets for each lottery retailer location. The requirements of this subsection shall be deemed to have been met if, in lieu of the foregoing, disabled persons can purchase tickets from the retail location by means of a drive-up window, provided the hours of access at the drive-up window are not less than those provided at any other entrance at that lottery retailer location. Inspections for compliance with this subsection shall be performed by those enforcement authorities responsible for enforcement pursuant to s. 553.80 in accordance with procedures established by those authorities. Those enforcement authorities shall provide to the Department of the Lottery a certification of noncompliance for any lottery retailer not meeting such requirements.

(14) The secretary may, after filing with the Department of State his or her manual signature certified by the secretary under oath, execute or cause to be executed contracts between the department and retailers by means of engraving, imprinting, stamping, or other facsimile signature.

(15) A vending machine may be used to dispense online lottery tickets, instant lottery tickets, or both online and instant lottery tickets.

(a) The vending machine must:

1. Dispense a lottery ticket after a purchaser inserts a coin or currency in the machine.

2. Be capable of being electronically deactivated for a period of 5 minutes or more.

3. Be designed to prevent its use for any purpose other than dispensing a lottery ticket.

(b) In order to be authorized to use a vending machine to dispense lottery tickets, a retailer must:

1. Locate the vending machine in the retailer's direct line of sight to ensure that purchases are only made by persons at least 18 years of age.

2. Ensure that at least one employee is on duty when the vending machine is available for use. However, if the retailer has previously violated s. 24.1055, at least two employees must be on duty when the vending machine is available for use.

(c) 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.

(d) The vending machine, or any machine or device linked to the vending 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. This does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines.

(16) The department, a retailer operating from one or more locations, or a vendor approved by the department may use a point-of-sale terminal to facilitate the sale of a lottery ticket or game.

(a) A point-of-sale terminal must:

1. Dispense a paper lottery ticket with numbers selected by the purchaser or selected randomly by the machine after the purchaser uses a credit card, debit card, charge card, or other similar card issued by a bank, savings association, credit union, or charge card company or issued by a retailer pursuant to part II of chapter 520 for payment;

2. Recognize a valid driver license or use another age verification process approved by the department to ensure that only persons at least 18 years of age may purchase a lottery ticket or game;

3. Process a lottery transaction through a platform that is certified or otherwise approved by the department; and

4. Be in compliance with all applicable department requirements related to the lottery ticket or game offered for sale.

(b) A point-of-sale terminal does not reveal winning numbers, which are selected at a subsequent time and different location through a drawing by the Florida Lottery.

(c) A point-of-sale terminal, or any machine or device linked to the point-of-sale 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 for game play. This does not preclude the use of casino game themes or titles on a lottery ticket or game or on the signage or advertising displays on the terminal.

(d) A point-of-sale terminal may not be used to redeem a winning ticket.

(17) Revenue generated from a point-of-sale terminal under this section shall be used to enhance instructional technology

resources for students and teachers in this state.

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
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

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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.

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.)

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

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.	Knudson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

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.[1] 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.[2] Many also offer assisted living, memory support care, and other specialty care arrangements.[3] These facilities also provide residents with dining options, housekeeping, security, transportation, social and recreational activities, and wellness and fitness programs.[4] 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.[5] 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. [6]

There are currently 71 licensed continuing care retirement communities in Florida.[7] 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.[8] 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.[9] The Department of Financial Services (DFS) may become

[1] Section 651.011, F.S.
[2] Jane E. Zarem, *Today's Continuing Care Retirement Community*, pg. 2 (July 2010).
[3] Zarem, *supra* note 2, at 2.
[4] Zarem, *supra* note 2, at 2.
[5] Section 651.057, F.S.
[6] About Continuing Care Retirement Communities, AARP.org, http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last visited March 7, 2015).
[7] Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (September 29, 2014).
[8] See ss. 651.021 and 651.023, F.S.
[9] 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.[10] 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.[11] 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.[12]

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.[13] 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.[14]

The entrance fee is an initial or deterred payment made as full or partial payment for continuing care.[15] According to CCRC providers, entrance fees typically are strongly correlated to local housing prices, though they range widely.[16] Generally, entrance fees range from $100,000 to $1 million.[17] Under Florida law, a continuing care contract must specify the terms governing the refund of any portion of the entrance fee.[18] 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.[19] 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,[20] or, if the provider is no

[10] Section 651.022, F.S.
[11] See ss. 651.021-651.023, F.S.
[12] Section 651.023(4)(a), F.S.
[13] Section 651.055(1), F.S.
[14] *Id*.
[15] See s. 651.011(5), F.S.
[16] Zarem, *supra* note 2, at 9.
[17] About Continuing Care Retirement Communities, AARP.org, http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last visited March 7, 2015).
[18] Section 651.055(1)(g)1., F.S.
[19] Section 651.055(1)(g)2., F.S.
[20] For units for which there are not prior resident claims.

longer marketing CCRC contracts, within 200 days after the date of notice.[21] 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.[22] 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.[23]

Rights of Residents in a Continuing Care Retirement Community

The OIR is also authorized to discipline a facility for violations of residents' rights.[24] 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.[25]

Current law requires CCRCs to hold quarterly meetings at which residents' organizations may be represented.[26] 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.[27] 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.[28] A residents' council may designate a resident to represent them before the governing body of the provider.[29] 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.[30]

If the OIR institutes receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider.[31] 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.

[21] Section 651.055(1)(g)3., F.S.
[22] Section 651.055(1)(g)4., F.S.
[23] Section 651.055(1)(h), F.S.
[24] Section 651.083, F.S.
[25] *Id*.
[26] Section 651.085, F.S.
[27] Section 651.081, F.S.
[28] Section 651.081(2), F.S.
[29] Section 651.085(2), F.S.
[30] Section 651.085(3), F.S.
[31] 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[32] 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[33] 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.

[32] 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.

[33] 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.[34]

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.

[34] 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.

557990

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

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

facilities; amending s. 651.071, F.S.; revising the subordination of continuing care and continuing care at-home contracts that are deemed preferred claims in receivership or liquidation proceedings; amending s. 651.105, F.S.; revising notice

764090

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2015	.	
	.	
	.	
	.	

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

597-02116-15 20151126c1

A bill to be entitled

An act relating to continuing care communities; amending s. 651.055, F.S.; revising requirements for continuing care contracts; amending s. 651.028, F.S.; revising authority of the Office of Insurance Regulation to waive requirements for accredited facilities; amending s. 651.071, F.S.; providing that continuing care and continuing care at-home contracts are preferred claims in the event of bankruptcy proceedings against a provider; revising subordination of claims; amending s. 651.105, F.S.; revising notice requirements; revising duties of the office; requiring an agent of a provider to provide a copy of an examination report and corrective action plan under certain conditions; amending s. 651.081, F.S.; requiring a residents' council to provide a forum for certain purposes; requiring a residents' council to adopt its own bylaws and governance documents; amending s. 651.085, F.S.; revising provisions relating to quarterly meetings between residents and the governing body of the provider; revising powers of the residents' council; amending s. 651.091, F.S.; revising continuing care facility reporting requirements; providing an effective date.

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

Section 1. Paragraphs (g) through (k) of subsection (1) of section 651.055, Florida Statutes, are amended to read:

597-02116-15 20151126c1

651.055 Continuing care contracts; right to rescind.—

(1) Each continuing care contract and each addendum to such contract shall be submitted to and approved by the office before its use in this state. Thereafter, no other form of contract shall be used by the provider until it has been submitted to and approved by the office. Each contract must:

(g) Provide that the contract may be canceled by giving at least 30 days' written notice of cancellation by the provider, the resident, or the person who provided the transfer of property or funds for the care of such resident. However, if a contract is canceled because there has been a good faith determination that a resident is a danger to himself or herself or others, only such notice as is reasonable under the circumstances is required.

(h)~~1.~~ Describe ~~The contract must also provide~~ in clear and understandable language, in print no smaller than the largest type used in the body of the contract, the terms governing the refund of any portion of the entrance fee.

1.~~2.~~ For a resident whose contract with the facility provides that the resident does not receive a transferable membership or ownership right in the facility, and who has occupied his or her unit, the refund shall be calculated on a pro rata basis with the facility retaining up to 2 percent per month of occupancy by the resident and up to a 5 percent processing fee. Such refund must be paid within 120 days after giving the notice of intention to cancel. For contracts entered into on or after January 1, 2016, refunds must be made within 90 days after the contract is terminated and the unit is vacated. A resident who enters into a contract before January 1, 2016, may

voluntarily sign a contract addendum approved by the office that provides for a revised refund requirement.

2.~~3.~~ In addition to a processing fee not to exceed 5 percent, if the contract provides for the facility to retain no more than ~~up to~~ 1 percent per month of occupancy by the resident and the resident does not receive a transferable membership or ownership right in the facility, the contract shall~~, it may~~ provide that such refund will be paid from one of the following sources of proceeds:

a. The proceeds of the next entrance fees received by the provider for units for which there are no prior claims by any resident until paid in full;

b. The proceeds of the next entrance fee received by the provider for a like or similar unit as specified in the residency or reservation contract signed by the resident for which there are no prior claims by any resident until paid in full; or

c. The proceeds of the next entrance fee received by the provider for the unit that is vacated if the contract is approved by the office before October 1, 2015. A provider may not use this refund option after October 1, 2016, and must submit a new or amended contract with an alternative refund provision to the office for approval by August 2, 2016~~, if the provider has discontinued marketing continuing care contracts, within 200 days after the date of notice~~.

3. For contracts entered into on or after January 1, 2016, that provide for a refund in accordance with sub-subparagraph 2.b., the following provisions apply:

a. Any refund that is due upon the resident's death or

relocation of the resident to another level of care that results in the termination of the contract must be paid by the earlier of:

(I) Thirty days after receipt by the provider of the next entrance fee received for a like or similar unit for which there is no prior claim by any resident until paid in full; or

(II) Within a specified maximum number of months or years, determined by the provider and specified in the contract, after the contract is terminated and the unit is vacated.

b. Any refund that is due to a resident who vacates the unit and voluntarily terminates a contract after the 7-day rescission period required in subsection (2) must be paid within 30 days after receipt by the provider of the next entrance fee for a like or similar unit for which there are no prior claims by any resident until paid in full and is not subject to the provisions in sub-subparagraph a. A contract is voluntarily terminated when a resident provides written notice of intent to leave and moves out of the continuing care facility after the 7-day rescission period.

4. For purposes of this paragraph, the term "like or similar unit" means a residential dwelling categorized into a group of units which have similar characteristics, such as comparable square footage, number of bedrooms, location, age of construction, or a combination of one or more of these features as specified in the residency or reservation contract. Each category must consist of at least 5 percent of the total number of residential units designated for independent living or 10 residential units designated for independent living, whichever is less. However, a group of units consisting of single family

homes may contain fewer than 10 units.

5. If the provider has discontinued marketing continuing care contracts, any refund due a resident must be paid within 200 days after the contract is terminated and the unit is vacated.

6.~~4.~~ Unless subsection (5) applies, for any prospective resident, regardless of whether or not such a resident receives a transferable membership or ownership right in the facility, who cancels the contract before occupancy of the unit, the entire amount paid toward the entrance fee shall be refunded, less a processing fee of up to 5 percent of the entire entrance fee; however, the processing fee may not exceed the amount paid by the prospective resident. Such refund must be paid within 60 days after the resident gives ~~giving~~ notice of intention to cancel. For a resident who has occupied his or her unit and who has received a transferable membership or ownership right in the facility, the foregoing refund provisions do not apply but are deemed satisfied by the acquisition or receipt of a transferable membership or an ownership right in the facility. The provider may not charge any fee for the transfer of membership or sale of an ownership right.

(i)~~(h)~~ State the terms under which a contract is canceled by the death of the resident. These terms may contain a provision that, upon the death of a resident, the entrance fee of such resident is considered earned and becomes the property of the provider. If the unit is shared, the conditions with respect to the effect of the death or removal of one of the residents must be included in the contract.

(j)~~(i)~~ Describe the policies that may lead to changes in

monthly recurring and nonrecurring charges or fees for goods and services received. The contract must provide for advance notice to the resident, of at least 60 days, before any change in fees or charges or the scope of care or services is effective, except for changes required by state or federal assistance programs.

(k)~~(j)~~ Provide that charges for care paid in one lump sum may not be increased or changed during the duration of the agreed upon care, except for changes required by state or federal assistance programs.

(l)~~(k)~~ Specify whether the facility is, or is affiliated with, a religious, nonprofit, or proprietary organization or management entity; the extent to which the affiliate organization will be responsible for the financial and contractual obligations of the provider; and the provisions of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax.

Section 2. Section 651.028, Florida Statutes, is amended to read:

651.028 Accredited facilities.—If a provider is accredited without stipulations or conditions by a process found by the office to be acceptable and substantially equivalent to the provisions of this chapter, the office may, pursuant to rule of the commission, waive any requirements of this chapter with respect to the provider if the office finds that such waivers are not inconsistent with the security protections intended by this chapter.

Section 3. Subsection (1) of section 651.071, Florida Statutes, is amended to read:

651.071 Contracts as preferred claims on liquidation or receivership.—

(1) In the event of bankruptcy, receivership, or liquidation proceedings against a provider, all continuing care and continuing care at-home contracts executed by a provider shall be deemed preferred claims against all assets owned by the provider; however, such claims are subordinate to ~~those priority claims set forth in s. 631.271 and~~ any secured claim.

Section 4. Subsections (4) and (5) of section 651.105, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

651.105 Examination and inspections.—

(4) The office shall notify the provider and the executive officer of the governing body of the provider in writing of all deficiencies in its compliance with the provisions of this chapter and the rules adopted pursuant to this chapter and shall set a reasonable length of time for compliance by the provider. In addition, the office shall require corrective action or request a corrective action plan from the provider which plan demonstrates a good faith attempt to remedy the deficiencies by a specified date. If the provider fails to comply within the established length of time, the office may initiate action against the provider in accordance with the provisions of this chapter.

(5) At the time of the routine examination, the office shall determine if all disclosures required under this chapter have been made to the president or chair of the residents' council and the executive officer of the governing body of the provider.

(6) A representative of the provider must give a copy of the final examination report and corrective action plan, if one is required by the office, to the executive officer of the governing body of the provider within 60 days after issuance of the report.

Section 5. Section 651.081, Florida Statutes, is amended to read:

651.081 Residents' council.—

(1) Residents living in a facility holding a valid certificate of authority under this chapter have the right of self-organization, the right to be represented by an individual of their own choosing, and the right to engage in concerted activities for the purpose of keeping informed on the operation of the facility that is caring for them or for the purpose of other mutual aid or protection.

(2)(a) Each facility shall establish a residents' council created for the purpose of representing residents on matters set forth in s. 651.085. The residents' council shall ~~may~~ be established through an election in which the residents, as defined in s. 651.011, vote by ballot, physically or by proxy. If the election is to be held during a meeting, a notice of the organizational meeting must be provided to all residents of the community at least 10 business days before the meeting. Notice may be given through internal mailboxes, communitywide newsletters, bulletin boards, in-house television stations, and other similar means of communication. An election creating a residents' council is valid if at least 40 percent of the total resident population participates in the election and a majority of the participants vote affirmatively for the council. The

initial residents' council created under this section is valid for at least 12 months. A residents' organization formalized by bylaws and elected officials must be recognized as the residents' council under this section and s. 651.085. Within 30 days after the election of a newly elected president or chair of the residents' council, the provider shall give the president or chair a copy of this chapter and rules adopted thereunder, or direct him or her to the appropriate public website to obtain this information. Only one residents' council may represent residents before the governing body of the provider as described in s. 651.085(2).

(b) In addition to those matters provided in s. 651.085, a residents' council shall provide a forum in which a resident may submit issues or make inquiries related to, but not limited to, subjects that impact the general residential quality of life and cultural environment. The residents' council shall serve as a formal liaison to provide input related to such matters to the appropriate representative of the provider.

(c) The activities of a residents' council are independent of the provider. The provider is not responsible for ensuring, or for the associated costs of, compliance of the residents' council with the provisions of this section with respect to the operation of a residents' council.

(d) A residents' council shall adopt its own bylaws and governance documents. The residents' council shall provide for open meetings when appropriate. The governing documents shall define the manner in which residents may submit an issue to the council and define a reasonable timeframe in which the residents' council shall respond to a resident submission or

inquiry. A residents' council may include term limits in its governing documents to ensure consistent integration of new leaders. If a licensed facility files for bankruptcy under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. chapter 11, the facility, in its required filing of the 20 largest unsecured creditors with the United States Trustee, shall include the name and contact information of a designated resident selected by the residents' council and a statement explaining that the designated resident was chosen by the residents' council to serve as a representative of the residents' interest on the creditors' committee.

Section 6. Section 651.085, Florida Statutes, is amended to read:

651.085 Quarterly meetings between residents and the governing body of the provider; resident representation before the governing body of the provider.—

(1) The governing body of a provider, or the designated representative of the provider, shall hold quarterly meetings with the residents of the continuing care facility for the purpose of free discussion of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility, as well as a discussion on proposed changes in policies, programs, and services. At quarterly meetings where monthly maintenance fee increases are discussed, a summary of the reasons for raising the fee as specified in subsection (4) must be provided in writing to the president or chair of the residents' council. Upon request of the residents' council, a member of the governing body of the provider, such as a board member, general partner, principal

owner, or designated representative shall attend such meetings. Residents are entitled to at least 7 days' advance notice of each quarterly meeting. An agenda and any materials that will be distributed by the governing body or representative of the provider shall be posted in a conspicuous place at the facility and shall be available upon request to residents of the facility. The office shall request verification from a facility that quarterly meetings are held and open to all residents ~~if it receives a complaint from the residents' council that a facility is not in compliance with this subsection~~. In addition, a facility shall report to the office in the annual report required under s. 651.026 the dates on which quarterly meetings were held during the reporting period.

(2) A residents' council formed pursuant to s. 651.081, members of which are elected by the residents, shall ~~may~~ designate a resident to represent them before the governing body of the provider ~~or organize a meeting or ballot election of the residents to determine whether to elect a resident to represent them before the governing body of the provider. If a residents' council does not exist, any resident may organize a meeting or ballot election of the residents of the facility to determine whether to elect a resident to represent them before the governing body and, if applicable, elect the representative. The residents' council, or the resident that organizes a meeting or ballot election to elect a representative, shall give all residents notice at least 10 business days before the meeting or election. Notice may be given through internal mailboxes, communitywide newsletters, bulletin boards, in-house television stations, and other similar means of communication. An election~~

~~of the representative is valid if at least 40 percent of the total resident population participates in the election and a majority of the participants vote affirmatively for the representative.~~ The initial designated representative elected under this section shall be elected to serve at least 12 months.

(3) The designated representative shall be notified at least 14 days in advance of any meeting of the full governing body at which proposed changes in resident fees or services will be discussed. The representative shall be invited to attend and participate in that portion of the meeting designated for the discussion of such changes.

(4) At a quarterly meeting prior to the implementation of any increase in the monthly maintenance fee, the designated representative of the provider must provide the reasons, by department cost centers, for any increase in the fee that exceeds the most recently published Consumer Price Index for All Urban Consumers, all items, Class A Areas of the Southern Region. Nothing in this subsection shall be construed as placing a cap or limitation on the amount of any increase in the monthly maintenance fee, establishing a presumption of the appropriateness of the Consumer Price Index as the basis for any increase in the monthly maintenance fee, or limiting or restricting the right of a provider to establish or set monthly maintenance fee increases.

(5) The board of directors or governing board of a licensed provider may at its sole discretion allow a resident of the facility to be a voting member of the board or governing body of the facility. The board of directors or governing board of a licensed provider may establish specific criteria for the

nomination, selection, and term of a resident as a member of the board or governing body. If the board or governing body of a licensed provider operates more than one licensed facility, regardless of whether the facility is in-state or out-of-state, the board or governing body may select at its sole discretion one resident from among its facilities to serve on the board of directors or governing body on a rotating basis.

Section 7. Paragraph (d) of subsection (2) of section 651.091, Florida Statutes, is amended to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

(2) Every continuing care facility shall:

(d) Distribute a copy of the full annual statement and 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 office, and designate a staff person to provide explanation thereof.

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

SB 1126
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Bob Asztalos

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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.

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

1126
Bill Number (if applicable)

Topic Continuing Care Retirement Communities
Amendment Barcode (if applicable)

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Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing LeadingAge FL

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.

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.)

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

BILL:	SB 1138
INTRODUCER:	Senator Brandes
SUBJECT:	Unclaimed Property
DATE:	April 7, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Favorable**
2.	Betta	DeLoach	AGG	**Recommend: Favorable**
3.			AP	

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).[1] 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.[2] 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

[1] 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)
[2] 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.[3] 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.[4] 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.[5] 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.[6]

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.[7] 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.[8] 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.[9]

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.[10] 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.[11]

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.[12]

[3] s. 717.102(1), F.S.
[4] s. 717.117(4), F.S.
[5] s. 717.117, F.S.
[6] s. 717.119, F.S.
[7] s. 717.1201, F.S.
[8] ss.717.117 and 717.124, F.S.
[9] s.717.124, F.S.
[10] s. 717.123, F.S.
[11] Id.
[12] 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[13]

Pursuant to its constitutional power "to borrow money on the credit of the United States,"[14] 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."[15] 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.[16]

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.[17]

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.[18] 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

[13] 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).
[14] U.S. CONST. art. I, s. 8, cl. 2.
[15] 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)
[16] 91 C.J.S. United States s. 249 (Government bonds, generally).
[17] TREASURYDIRECT, *The Volunteer Program and Series E Savings Bonds*, 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.
[18] 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. (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.[19]

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.[20]

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.[21] 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.[22] A registered owner of a bond is presumed conclusively to be its owner, absent errors in registration.[23]

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),[24] 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.[25]

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.[26] In 2000, the Treasury published online guidance consistent with the 1952 Escheat Decision.[27] 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.[28] On the other hand, the Treasury guidance appears to

[19] TREASURYDIRECT, *Treasury Hunt*, at http://www.treasurydirect.gov/indiv/tools/tools_treasuryhunt.htm. (Last visited March 26, 2014)
[20] Department of Financial Services Agency Analysis, March 17, 2015. (On file with the Banking and Insurance Committee.)
[21] 31 C.F.R. ss. 315.15, 353.15.
[22] 31 C.F.R. ss. 315.20(b), 353.20(b).
[23] 31 C.F.R. ss. 315.15, 353.15.
[24] 31 U.S.C. s. 3105.
[25] 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.
[26] *New Jersey v. Treasury*, at 390-391.
[27] TREASURYDIRECT, *EE/E Savings Bonds FAQs*, http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds_eefaq.htm (Last visited March 26, 2014)
[28] 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,[29] 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).[30]

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.[31] 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.[32]

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,[33] seeking payment for $151 million in unclaimed absent bonds and for

[29] Kan. Stat. Ann. ss. 58-3979 and 3980 (2014).
[30] 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)
[31] The constitutional issues in *New Jersey v. Treasury* involved preemption, intergovernmental immunity, and waiver of sovereign immunity under the federal Administrative Procedures Act.
[32] *New Jersey v. Treasury*, at 389. The plaintiff states were New Jersey, North Carolina, Montana, Kentucky, Oklahoma, Missouri, and Pennsylvania.
[33] *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.[34] 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.[35]

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.[36] 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.[37]

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[34] 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)

[35] Supplemental briefs in *Estes v. United States* (On file with the Banking and Insurance committee).

[36] Service of process by publication is set forth in ch. 49, F.S. (Constructive Service of Process).

[37] 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.

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

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

is not entitled to the bonds claimed by such claimant, the court shall enter a judgment that such bonds, or proceeds from such bonds, have escheated to the state.

3. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is entitled to the bonds claimed by such claimant, the court shall enter a judgment in favor of the claimant.

(3) The department may redeem a United States savings bond escheated to the state pursuant to this section or, in the event that the department is not in possession of the bond, seek to obtain the proceeds from such bond. Proceeds received by the department shall be deposited in accordance with s. 717.123.

Section 2. Section 717.1383, Florida Statutes, is created to read:

717.1383 United States savings bond; claim for bond.—A person claiming a United States savings bond escheated to the state under s. 717.1382, or for the proceeds from such bond, may file a claim with the department. The department may approve the claim if the person is able to provide sufficient proof of the validity of the person's claim. Once a bond, or the proceeds from such bond, are remitted to a claimant, no action thereafter may be maintained by any other person against the department, the state, or any officer thereof, for or on account of such funds. The person's sole remedy, if any, shall be against the claimant who received the bond or the proceeds from such bond.

Section 3. This act applies to any United States savings bond that reaches maturity on, before, or after the effective date of this act.

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

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Tallahassee FL 32399
City *State* *Zip*

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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.

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.)

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

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.	Johnson	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Pre-meeting**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

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.[1] 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[2] 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.[3] 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.[4]

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.[5] 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,[6] and since 1998 for HMOs.[7]

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)[8] must file risk-based capital reports and plans with the National Association of Insurance Commissioners (NAIC), while all

[1] Section 20.121(3)(a), F.S.
[2] 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.
[3] Section 624.407, F.S.
[4] Sections 25 and 26, ch. 89-360, Laws of Florida (insurers); s. 5, ch. 88-388, Laws of Florida (HMOs).
[5] Section 624.407, F.S.
[6] Section 26, ch. 89-360, Laws of Florida.
[7] Section 20, ch. 98-159, Laws of Florida. The change to $1.5 million enacted in 1998 was phased in over three years.
[8] 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.[9] As of September 30, 2014, there was one multi-state HMO and four multi-state PLHSOs in Florida. [10]

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.[11] 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.[12] 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.[13] 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 4th quarter financial report, in

[9] Section 624.4085, F.S.
[10] Office of Insurance Regulation, Senate Bill 1190 Analysis (March 5, 2015) (on file with Banking and Insurance Committee).
[11] 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.
[12] 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.
[13] *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.[14] 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[15] 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

[14] Section 628.231, F.S.
[15] 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.[16]

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.[17] 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).[18] 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.[19] 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

[16] Section 628.391, F.S.
[17] Section 641.27, F.S.
[18] Section 624.320, F.S.
[19] Section 624.407, F.S.

As of the end of the 3rd 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 4th quarter report—a report insurers and HMOs are not currently required to file. The financial information in the 4th 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

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

A bill to be entitled

An act relating to insurer solvency; amending s. 624.407, F.S.; revising the amount of surplus which must be possessed by insurers applying for an original certificate of authority; defining the term "health benefit plan"; amending s. 624.408, F.S.; revising the amount of surplus which must be possessed by insurers in order to retain a certificate of authority; authorizing the Office of Insurance Regulation to reduce certain surplus requirements under specified circumstances; defining the term "health benefit plan"; amending s. 624.4085, F.S.; revising the term "life and health insurer" to include specified health maintenance and prepaid limited health service organizations; amending s. 636.043, F.S.; revising the due date and required content for the mandatory annual report of a prepaid limited health service organization to the office; revising the time periods to be covered by such organization's required quarterly reports to the office; amending s. 641.19, F.S.; defining the term "management services organization"; amending s. 641.201, F.S.; 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,

597-02405-15 20151190c1

and certain restrictions on premiums written; providing that health maintenance organizations are considered life and health insurers for purposes of specified provisions of law relating to insurer surplus requirements; amending s. 641.225, F.S.; conforming provisions to changes made by the act; amending s. 641.26, F.S.; revising the due date and required content for the mandatory annual report and audited financial statement of a health maintenance organization which must be submitted to the office; amending s. 641.27, F.S.; revising the annual limit applicable to health maintenance organizations for the examination expenses incurred by the office; amending s. 641.35, F.S.; excluding receivables from a management services organization from being included in the assets of a health maintenance organization for purposes of determining the organization's financial condition; repealing s. 641.365, F.S., relating to the payment of dividends and distributions of other property by health maintenance organizations; amending ss. 817.234 and 817.50, F.S.; conforming cross-references; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 624.407, Florida Statutes, is amended to read:

624.407 Surplus required of~~; new~~ insurers applying for an original certificate of authority.—

(1) To receive authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer applying for its original certificate of authority in this state must ~~shall~~ possess surplus as to policyholders in at least the following amount ~~greater of~~:

(a) For a property and casualty insurer, $5 million or 10 percent of the insurer's total liabilities, whichever is greater, except for a domestic insurer that transacts residential property insurance and is:

1. Not a wholly owned subsidiary of an insurer domiciled in any other state, which must have a surplus of $15 million.

2. A wholly owned subsidiary of an insurer domiciled in any other state, which must have a surplus of $50 million.~~, or $2.5 million for any other insurer;~~

(b) For a life insurer ~~insurers~~, $2.5 million or 4 percent of the insurer's total liabilities, whichever is greater.~~;~~

(c) For a life and health insurer that will issue a health benefit plan or a long-term care insurance policy on or after the effective date of this act, the greater of:

1. The sum of $10 million plus the amount of startup losses, excluding profits, projected to be incurred on the insurer's startup projection until the projection reflects statutory net profits for 12 consecutive months; ~~insurers,~~

2. Four ~~4~~ percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance, based on the insurer's startup projection; or

3. Two percent of the insurer's total projected premiums

relative to health insurance, based on the insurer's startup projection.

(d) For a life and health insurer that is not subject to paragraph (c), the greater of:

1. The sum of $2.5 million; or

2. Four percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance.

(e) For all other insurers, the greater of $2.5 million or ~~other than life insurers and life and health insurers,~~ 10 percent of the insurer's total liabilities.~~; or~~

~~(e) Notwithstanding paragraph (a) or paragraph (d), for a domestic insurer that transacts residential property insurance and is:~~

~~1. Not a wholly owned subsidiary of an insurer domiciled in any other state, $15 million.~~

~~2. A wholly owned subsidiary of an insurer domiciled in any other state, $50 million.~~

(2) Notwithstanding subsection (1), a new insurer may not be required to have surplus as to policyholders greater than $100 million.

(3) The requirements of this section shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, regardless of whether ~~or not~~ only a portion of such kinds of insurance are transacted in this state.

(4) As to surplus as to policyholders required for qualification to transact one or more kinds of insurance, domestic mutual insurers are governed by chapter 628, and

domestic reciprocal insurers are governed by chapter 629.

(5) For the purposes of this section, liabilities do not include liabilities required under s. 625.041(5). For purposes of computing minimum surplus as to policyholders pursuant to s. 625.305(1), liabilities include liabilities required under s. 625.041(5).

(6) As used in this section, the term "health benefit plan" has the same meaning as in s. 627.6699.

Section 2. Section 624.408, Florida Statutes, is amended to read:

624.408 Surplus required for~~; current~~ insurers to maintain a certificate of authority.—

(1) To maintain a certificate of authority to transact any one kind or combinations of kinds of insurance, as defined in part V of this chapter, an insurer in this state must at all times maintain surplus as to policyholders in at least the following amount ~~greater of~~:

(a) ~~Except as provided in paragraphs (c), (f), and (g), $1.5 million.~~

~~(b)~~ For a life insurer ~~insurers~~, $1.5 million or 4 percent of the insurer's total liabilities, whichever is greater.

(b) For a life and health insurer that is authorized to issue a health benefit plan or long-term care insurance policy, the greater of:

1. Four percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance;

2. Two percent of the insurer's total annualized premium relative to health insurance; or

3. If the insurer:

a. Does not hold a certificate of authority before the effective date of this act, $10 million; or

b. Holds a certificate of authority before the effective date of this act, $1.5 million until June 30, 2017; $3 million on or after July 1, 2017, and until June 30, 2021; $6 million on or after July 1, 2021, and until June 30, 2025; and $10 million on or after July 1, 2025.

The office may reduce the surplus requirement imposed under sub-subparagraph 3.a. or sub-subparagraph 3.b. if the office finds the reduction to be in the public interest because the insurer is not writing new business in this state, the insurer is writing business only within a limited geographic service area, the insurer has premiums in force of less than $1 million annually, or the insurer has a policy count of fewer than 6,000, or because of any other factor relevant to making such a finding.

(c) For a life and health insurer that is not subject to paragraph (b) ~~insurers~~, the greater of:

1. The sum of $1.5 million; or

2. Four ~~4~~ percent of the insurer's total liabilities, plus 6 percent of the insurer's liabilities relative to health insurance.

(d) ~~For all insurers other than mortgage guaranty insurers, life insurers, and life and health insurers, 10 percent of the insurer's total liabilities.~~

~~(c)~~ For a property and casualty insurer ~~insurers~~, $4 million, except for a property and casualty insurer ~~insurers~~

authorized to underwrite any line of residential property insurance.

(e)~~(f)~~ For a residential property insurer:

1. ~~insurers~~ Not holding a certificate of authority before July 1, 2011, $15 million.

2.~~(g) For residential property insurers~~ Holding a certificate of authority before July 1, 2011, $5 million ~~and~~ until June 30, 2016~~, $5 million~~; $10 million on or after July 1, 2016, and until June 30, 2021~~, $10 million~~; and $15 million on or after July 1, 2021~~, $15 million~~.

The office may reduce the surplus requirement under this paragraph ~~in paragraphs (f) and (g)~~ if the insurer is not writing new business, has premiums in force of less than $1 million per year in residential property insurance, or is a mutual insurance company.

(f) For all other insurers, the greater of $1.5 million or 10 percent of the insurer's total liabilities.

(2) For purposes of this section, liabilities do not include liabilities required under s. 625.041(5). For purposes of computing minimum surplus as to policyholders pursuant to s. 625.305(1), liabilities include liabilities required under s. 625.041(5).

(3) This section does not require an insurer to have surplus as to policyholders greater than $100 million.

(4) A mortgage guaranty insurer shall maintain a minimum surplus as required by s. 635.042.

(5) As used in this section, the term "health benefit plan" has the same meaning as in s. 627.6699.

Section 3. Effective July 1, 2015, paragraph (g) of subsection (1) of section 624.4085, Florida Statutes, is amended to read:

624.4085 Risk-based capital requirements for insurers.—

(1) As used in this section, the term:

(g) "Life and health insurer" means an insurer authorized or eligible under the Florida Insurance Code to underwrite life or health insurance. The term also includes:

1. A property and casualty insurer that writes accident and health insurance only.

2. Effective January 1, 2015, ~~the term also includes~~ a health maintenance organization that is authorized in this state and one or more other states, jurisdictions, or countries and a prepaid limited health service organization that is authorized in this state and one or more other states, jurisdictions, or countries.

3. A health maintenance organization and a prepaid limited health service organization initially authorized in this state on or after July 1, 2015, and not authorized in any other state, jurisdiction, or country.

As used in this paragraph, the term "health maintenance organization" has the same meaning as in s. 641.19 and the term "prepaid limited health service organization" has the same meaning as in s. 636.003.

Section 4. Effective July 1, 2015, subsection (1), paragraph (a) of subsection (2), and subsections (4) and (6) of section 636.043, Florida Statutes, are amended to read:

636.043 Annual, quarterly, and miscellaneous reports.—

(1) Each prepaid limited health service organization must file an annual report with the office on or before March 1 of each year showing its condition on the last day of the immediately preceding calendar year. The ~~annually, within 3 months after the end of its fiscal year, a~~ report must be verified by the notarized oath of at least two officers covering the preceding calendar year. ~~Any organization licensed prior to October 1, 1993, shall not be required to file a financial statement, as required by paragraph (2)(a), based on statutory accounting principles until the first annual report for fiscal years ending after December 31, 1994.~~

(2) The ~~Such~~ report must be on forms prescribed by the commission and must include:

(a)1. A ~~statutory~~ financial statement of the organization prepared in accordance with statutory accounting principles and filed by electronic means in a computer-readable format acceptable to the office~~, including its balance sheet, income statement, and statement of changes in cash flow for the preceding year, certified by an independent certified public accountant, or a consolidated audited financial statement of its parent company prepared on the basis of statutory accounting principles, certified by an independent certified public accountant, attached to which must be consolidating financial statements of the parent company, including the prepaid limited health service organization~~.

2. Any entity subject to this chapter may make written application to the office for approval to file audited financial statements prepared in accordance with generally accepted accounting principles in lieu of statutory financial statements.

The office shall approve the application if it finds it to be in the best interest of the subscribers. An application for exemption is required each year and must be filed with the office at least 2 months prior to the end of the fiscal year for which the exemption is being requested.

(4)(a) Each authorized prepaid limited health service organization must file a quarterly report for each calendar quarter. The report for the quarter ending March 31 shall be filed with the office on or before May 15, the report for the quarter ending June 30 shall be filed on or before August 15, and the report for the quarter ending September 30 shall be filed on or before November 15. The quarterly report must be verified by the notarized oath of two officers of the organization ~~within 45 days after the end of the quarter~~. The report must ~~shall~~ contain:

1.~~(a)~~ A financial statement prepared in accordance with statutory accounting principles. Any entity licensed before October 1, 1993, is ~~shall~~ not ~~be~~ required to file a financial statement based on statutory accounting principles until the first quarterly filing after the entity files its annual financial statement based on statutory accounting principles as required by subsection (1).

2.~~(b)~~ A listing of providers.

3.~~(c)~~ Such other information relating to the performance of the prepaid limited health service organization as is reasonably required by the commission or office.

(b) On or before June 1, each authorized prepaid limited health service organization shall annually file with the office an audited financial statement of the organization for the

preceding year ending December 31. The office may require the organization to file an audited financial report earlier than June 1 upon notifying the organization at least 90 days in advance. The audited financial statement must include:

1. A balance sheet, income statement, and statement of changes in cash flow for the preceding year, all of which must be certified by an independent certified public accountant; or

2. A consolidated audited financial statement of the organization's parent company, prepared on the basis of statutory accounting principles, which must be certified by an independent certified public accountant and to which are attached the consolidated financial statements of the parent company, including those of the prepaid limited health service organization.

Beginning with the financial statement filed for the year ending December 31, 2015, the audited financial statement or consolidated audited financial statement required by this paragraph is subject to commission rules applicable to insurer audits.

(6) Each authorized prepaid limited health service organization shall retain an independent certified public accountant~~, hereinafter referred to as "CPA,"~~ who agrees by written contract with the prepaid limited health service organization to comply with ~~the provisions of~~ this act. The contract must state that:

(a) The independent certified public accountant must ~~CPA will~~ provide to the prepaid limited health service organization audited statutory financial statements consistent with this act.

(b) Any determination by the independent certified public accountant ~~CPA~~ that the prepaid limited health service organization does not meet minimum surplus requirements as set forth in this act must ~~will~~ be stated by the independent certified public accountant ~~CPA~~, in writing, in the audited financial statement.

(c) The completed workpapers and any written communications between the independent certified public accountant ~~CPA~~ and the prepaid limited health service organization relating to the audit of the prepaid limited health service organization must ~~will~~ be made available for review on a visual-inspection-only basis by the office at the offices of the prepaid limited health service organization, at the office, or at any other reasonable place as mutually agreed between the office and the prepaid limited health service organization. The independent certified public accountant ~~CPA~~ must retain for review the workpapers and written communications for a period of not less than 6 years.

Section 5. Present subsections (14) through (22) of section 641.19, Florida Statutes, are redesignated as subsections (15) through (23), respectively, and a new subsection (14) is added to that section, to read:

641.19 Definitions.—As used in this part, the term:

(14) "Management services organization" means an entity that provides 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.

Section 6. Section 641.201, Florida Statutes, is amended to read:

641.201 Applicability of other laws.—

(1) Except as provided in this part, health maintenance organizations are ~~shall be~~ governed by ~~the provisions of~~ this part and part III of this chapter and are ~~shall be~~ exempt from all other provisions of the Florida Insurance Code except those ~~provisions of the Florida Insurance Code~~ that are explicitly made applicable to health maintenance organizations.

(2) Health maintenance organizations are considered insurers for purposes of:

(a) Sections 624.4073, 628.231, 628.371, and 628.391.

(b) Section 624.4095, except that:

1. The ratio of actual or projected annual gross written premiums to current or projected surplus as to policyholders for a health maintenance organization holding a certificate of authority before the effective date of this act, may not exceed 30 to 1 on or after July 1, 2017, until June 30, 2021; 20 to 1 on or after July 1, 2021, until June 30, 2025; and 10 to 1 on or after July 1, 2025.

2. In calculating the premium-to-surplus ratio of a health maintenance organization pursuant to s. 624.4095(1), actual or projected risk revenue must be added to actual or projected written premiums.

(3) Health maintenance organizations are considered life and health insurers for purposes of ss. 624.407 and 624.408.

Section 7. Subsections (1) and (2) of section 641.225, Florida Statutes, are amended to read:

641.225 Surplus requirements.—

(1) Each health maintenance organization shall at all times maintain a minimum surplus as provided in s. 624.408 ~~in an~~

~~amount that is the greater of $1,500,000, or 10 percent of total liabilities, or 2 percent of total annualized premium~~.

(2) The office may ~~shall~~ not issue a certificate of authority, except as provided in subsection (3), unless the health maintenance organization has at least the ~~a~~ minimum surplus required in s. 624.407 ~~in an amount which is the greater of:~~

~~(a) Ten percent of their total liabilities based on their startup projection as set forth in this part;~~

~~(b) Two percent of their total projected premiums based on their startup projection as set forth in this part; or~~

~~(c) $1,500,000, plus all startup losses, excluding profits, projected to be incurred on their startup projection until the projection reflects statutory net profits for 12 consecutive months~~.

Section 8. Effective July 1, 2015, subsections (1), (3), and (5) of section 641.26, Florida Statutes, are amended to read:

641.26 Annual and quarterly reports.—

(1) Each ~~Every~~ health maintenance organization must file an annual report with the office on or before March 1 of each year showing its condition on the last day of the immediately preceding calendar year. The report must be ~~shall, annually within 3 months after the end of its fiscal year, or within an extension of time therefor as the office, for good cause, may grant, in a form prescribed by the commission, file a report with the office,~~ verified by the notarized oath of two officers of the organization or, if not a corporation, of two persons who are principal managing directors of the affairs of the

organization, on a form prescribed by the commission. For good cause, the office may grant the organization an extension of time to file the report. The report must ~~properly notarized, showing its condition on the last day of the immediately preceding reporting period. Such report shall~~ include:

(a) A financial statement of the health maintenance organization filed by electronic means in a computer-readable form using a format acceptable to the office.

(b) A financial statement of the health maintenance organization filed on forms acceptable to the office.

~~(c) An audited financial statement of the health maintenance organization, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant, prepared in accordance with statutory accounting principles.~~

(c) ~~(d)~~ The number of health maintenance contracts issued and outstanding and the number of health maintenance contracts terminated.

(d) ~~(c)~~ The number and amount of damage claims for medical injury initiated against the health maintenance organization and any of the providers engaged by it during the reporting year, broken down into claims with and without formal legal process, and the disposition, if any, of each such claim.

(e) ~~(f)~~ An actuarial certification that:

1. The health maintenance organization is actuarially sound, which certification must ~~shall~~ consider the rates, benefits, and expenses of, and any other funds available for the payment of obligations of, the organization.

2. The rates being charged or to be charged are actuarially

adequate to the end of the period for which rates have been guaranteed.

3. Incurred but not reported claims and claims reported but not fully paid have been adequately provided for.

4. The health maintenance organization has adequately provided for all obligations required by s. 641.35(3)(a).

~~(g) A report prepared by the certified public accountant and filed with the office describing material weaknesses in the health maintenance organization's internal control structure as noted by the certified public accountant during the audit. The report must be filed with the annual audited financial report as required in paragraph (c). The health maintenance organization shall provide a description of remedial actions taken or proposed to correct material weaknesses, if the actions are not described in the independent certified public accountant's report.~~

(f) ~~(h)~~ Such other information relating to the performance of health maintenance organizations as is required by the commission or office.

(3)(a) Each ~~Every~~ health maintenance organization shall file quarterly, for the first three calendar quarters of each year, an unaudited financial statement of the organization as described in paragraphs (1)(a) and (b). The statement for the quarter ending March 31 shall be filed with the office on or before May 15, the statement for the quarter ending June 30 shall be filed on or before August 15, and the statement for the quarter ending September 30 shall be filed on or before November 15. The quarterly report must ~~shall~~ be verified by the notarized oath of two officers of the organization~~, properly notarized~~.

(b) Each health maintenance organization shall file annually, for the preceding year ending December 31, an audited financial statement of the organization. The statement for the year ending December 31 must be filed with the office on or before the following June 1. The office may require a health maintenance organization to file an audited financial report earlier than June 1 upon notifying the organization at least 90 days in advance. The audited financial statement must include a balance sheet and statement of operations for the preceding year certified by an independent certified public accountant and must be prepared in accordance with statutory accounting principles. The audited financial statement filed for the year ending December 31, 2015, is subject to commission rules applicable to insurer audits.

(5) Each authorized health maintenance organization shall retain an independent certified public accountant~~, referred to in this section as "CPA,"~~ who agrees by written contract with the health maintenance organization to comply with ~~the provisions of~~ this part.

(a) The independent certified public accountant ~~CPA~~ shall provide to the health maintenance organization ~~HMO~~ audited financial statements consistent with this part.

(b) Any determination by the independent certified public accountant ~~CPA~~ that the health maintenance organization does not meet minimum surplus requirements as set forth in this part must ~~shall~~ be stated by the independent certified public accountant ~~CPA~~, in writing, in the audited financial statement.

(c) The completed work papers and any written communications between the independent certified public

accountant ~~CPA~~ firm and the health maintenance organization relating to the audit of the health maintenance organization shall be made available for review on a visual-inspection-only basis by the office at the offices of the health maintenance organization, at the office, or at any other reasonable place as mutually agreed between the office and the health maintenance organization. The independent certified public accountant ~~CPA~~ must retain for review the work papers and written communications for a period of not less than 6 years.

(d) The independent certified public accountant ~~CPA~~ shall provide to the office a written report describing material weaknesses in the health maintenance organization's internal control structure as noted during the audit. The report must be filed with the annual audited financial statement required under paragraph (3)(b). The health maintenance organization must provide a description of remedial actions taken or proposed to be taken to correct material weaknesses, if the actions are not described in the written report provided to the office by the independent certified public accountant.

Section 9. Effective July 1, 2015, section 641.27, Florida Statutes, is amended to read:

641.27 Examination by the office ~~department~~.—

(1) The office shall examine the affairs, transactions, accounts, business records, and assets of any health maintenance organization as often as it deems it expedient for the protection of the people of this state, but not less frequently than once every 5 years. However, except when the medical records are requested and copies furnished pursuant to s. 456.057, medical records of individuals and records of

physicians providing service under contract to the health maintenance organization are ~~shall~~ not ~~be~~ subject to audit, although they may be subject to subpoena by court order upon a showing of good cause. For the purpose of examinations, the office may administer oaths to and examine the officers and agents of a health maintenance organization concerning its business and affairs. The examination of each health maintenance organization by the office shall be subject to the same terms and conditions as apply to insurers under chapter 624. In no event shall expenses of all examinations exceed a maximum of $100,000 ~~$50,000~~ for any 1-year period. Any rehabilitation, liquidation, conservation, or dissolution of a health maintenance organization shall be conducted under the supervision of the department, which shall have all power with respect thereto granted to it under the laws governing the rehabilitation, liquidation, reorganization, conservation, or dissolution of life insurance companies.

(2) The office may contract, at reasonable fees for work performed, with qualified, impartial outside sources to perform audits or examinations or portions thereof pertaining to the qualification of an entity for issuance of a certificate of authority or to determine continued compliance with the requirements of this part, in which case the payment must be made directly to the contracted examiner by the health maintenance organization examined, in accordance with the rates and terms agreed to by the office and the examiner. Any contracted assistance shall be under the direct supervision of the office. The results of any contracted assistance are ~~shall be~~ subject to the review of, and approval, disapproval, or

modification by, the office.

Section 10. Paragraph (j) is added to subsection (2) of section 641.35, Florida Statutes, to read:

641.35 Assets, liabilities, and investments.—

(2) ASSETS NOT ALLOWED.—In addition to assets impliedly excluded by the provisions of subsection (1), the following assets are ~~expressly shall~~ not ~~be~~ allowed as assets in any determination of the financial condition of a health maintenance organization:

(j) Beginning on or after January 1, 2016, any receivables from a management services organization pursuant to contract with the health maintenance organization.

Section 11. Section 641.365, Florida Statutes, is repealed.

Section 12. Paragraph (b) of subsection (2) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.—

(2)

(b) In addition to any other provision of law, systematic upcoding by a provider, as defined in s. 641.19~~(14)~~, with the intent to obtain reimbursement otherwise not due from an insurer is punishable as provided in s. 641.52(5).

Section 13. Subsection (1) of section 817.50, Florida Statutes, is amended to read:

817.50 Fraudulently obtaining goods, services, etc., from a health care provider.—

(1) Whoever shall, willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from any health care provider in this state, as defined in s. 641.19~~(14)~~, commits a misdemeanor of the second degree,

punishable as provided in s. 775.082 or s. 775.083.

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 a law.

Section 15. Except as otherwise provided, this act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

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.	Peacock	McVaney	GO	**Fav/CS**
2.	Davis	DeLoach	AGG	**Recommend: Favorable**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

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),[1] 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.[2]
- 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.[3]

The definition of "agency" also includes the Governor[4] 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,[5] 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

[1] Section 120.51, F.S.
[2] Section 20.04, F.S., sets the structure of the executive branch of state government.
[3] 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.
[4] Section 120.52(1)(a), F.S.
[5] Section 120.54, F.S.

challenges to agency reliance on unadopted rules,[6] as well as challenges to other proposed agency actions which affect substantial interests of any party.[7] In addition to disputes, agency action occurs when the agency acts on a petition for a declaratory statement[8] or settles a dispute through mediation.[9]

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,[10] 120.565,[11] 120.569,[12] 120.57,[13] 120.573,[14] or 120.574, F.S.,[15] 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.[16] One purpose of the requirement was to enhance public notice of agency policy expressed in precedents.[17] 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.[18]

Currently, state agencies must index the following within 120 days of rendering:[19]

- 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.,[20] 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.

[6] Section 120.56, F.S.
[7] Section 120.569, F.S.
[8] Section 120.565, F.S.
[9] Section 120.573, F.S.
[10] 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.
[11] 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.
[12] Section 120.569, F.S., governs procedures which affect substantial interests.
[13] 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.
[14] Section 120.573, F.S., governs procedures for the mediation of disputes of agency action that affects substantial interests.
[15] Section 120.574, F.S., governs summary hearing procedures.
[16] Section 120.53(1)(a)2.a., F.S.
[17] *McDonald v. Department of Banking and Finance*, 346 So.2d 569, 582 (1st DCA 1977). Also, see *Gessler v. Dep't of Bus. & Prof. Reg.*, 627 So.2d 501, 503 (Fla. 4th DCA 1993) ("Persons have the right to examine agency precedent and the right to know the factual basis and policy reasons for agency action.").
[18] Section 120.53(1)(a)2.b., F.S.
[19] Section 120.53(1)(b), F.S.
[20] 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[21] 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.[22] 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.[23]

Coordination of Indexing of Final Orders by Department of State

In addition to its supervisory role in the archiving of state records,[24] 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.[25] The DOS has rulemaking authority over the system of indexing that agencies may use[26] and the storage and retrieval systems used to provide access.[27] The DOS may approve more than one system.[28] Authorized storage and retrieval systems for agencies include reporters, microfilm, automated systems or any other system considered appropriate by the DOS.[29] Also, the DOS is required to determine which final orders agencies must index.[30] Agencies must receive approval in writing from the DOS regarding various provisions for indexing final orders.[31]

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.[32] The DOAH is placed administratively under the Department of Management Services (DMS);[33] however, DOAH is not subject to any control, supervision, or direction by the DMS. The director of the DOAH, who

[21] 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 . . ."
[22] 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.flaadminlaw.org/pdf/information-about-accessing-agency-final-orders.pdf.
[23] Section 119.021(3), F.S.
[24] Section 257.35, F.S., Also, see s. 15.02, F.S.
[25] Section 120.533(1), F.S.
[26] Section 120.533(2), F.S.
[27] Section 120.533(3), F.S.
[28] *Id*.
[29] *Id*.
[30] Section 120.533(4), F.S. The rules adopted under this section are found in ch. 1B-32, F.A.C.
[31] Section 120.53(1)(c), F.S.
[32] Section 120.65, F.S.
[33] Section 120.65(1), F.S.

also serves as chief administrative law judge, has effective administrative control over DOAH, its resources and operations.[34]

Since the 2008 amendments to the APA,[35] 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.[36] Many agencies use the DOAH alternative.[37] 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.[38]

Department of Revenue (DOR) Technical Assistance Advisements

Upon request, the DOR issues informal technical assistance regarding certain tax consequences.[39] 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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[34] *Id*.
[35] Ch. 2008-104, L.O.F.
[36] 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/.
[37] 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.
[38] Chapter 1B-32.002(2)(e), F.A.C.
[39] 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[40] 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.

[40] 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.[41]

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.[42]

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.

[41] *See* DOAH legislative bill analysis dated February 12, 2015. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.
[42] 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 20151284c1

A bill to be entitled

An act relating to the maintenance of agency final orders; amending s. 119.021, F.S.; conforming a provision to changes made by the act; amending s. 120.53, F.S.; requiring agencies to electronically transmit certain agency final orders to a centralized electronic database maintained by the Division of Administrative Hearings; providing the methods by which such final orders can be searched; requiring each agency to maintain a list of final orders that are not required to be electronically transmitted to the database; providing a timeframe for electronically transmitting or listing the final orders; authorizing agencies to maintain subject matter indexes of final orders issued before a specified date or to electronically transmit such orders to the database; providing that the centralized electronic database is the official compilation of administrative final orders issued on or after a specified date for each agency; requiring an agency to redact information exempt from public records requirements before electronically transmitting final orders to the database; deleting obsolete provisions regarding filing, indexing, and publishing final orders; amending s. 120.533, F.S.; 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; authorizing the department to adopt rules;

585-02413-15 20151284c1

authorizing the department to provide for an alternative official compiler of agency final orders under certain circumstances; conforming provisions to changes made by the act; amending s. 213.22, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (3) of section 119.021, Florida Statutes, is amended to read:

119.021 Custodial requirements; maintenance, preservation, and retention of public records.—

(3) Agency final orders rendered before July 1, 2015, which were indexed or listed pursuant to s. 120.53, and agency final orders rendered on or after July 1, 2015, which must be listed or copies of which must be transmitted to the Division of Administrative Hearings ~~orders that comprise final agency action and that must be indexed or listed~~ pursuant to s. 120.53, have continuing legal significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency shall permanently maintain records of such orders pursuant to the applicable rules of the Department of State.

Section 2. Section 120.53, Florida Statutes, is amended to read:

120.53 Maintenance of agency final orders~~; indexing; listing; organizational information~~.—

(1) In addition to maintaining records contained in s. 119.021(3), each agency shall also electronically transmit a

certified text-searchable copy of each agency final order listed in subsection (2) rendered on or after July 1, 2015, to a centralized electronic database of agency final orders maintained by the division. The database must allow users to research and retrieve the full texts of agency final orders by:

(a) The name of the agency that issued the final order.

(b) The date the final order was issued.

(c) The type of final order.

(d) The subject of the final order.

(e) Terms contained in the text of the final order.

~~(a) Each agency shall maintain:~~

~~1. All agency final orders.~~

~~2.a. A current hierarchical subject matter index, identifying for the public any rule or order as specified in this subparagraph.~~

~~b. In lieu of the requirement for making available for public inspection and copying a hierarchical subject-matter index of its orders, an agency may maintain and make available for public use an electronic database of its orders that allows users to research and retrieve the full texts of agency orders by devising an ad hoc indexing system employing any logical search terms in common usage which are composed by the user and which are contained in the orders of the agency or by descriptive information about the order which may not be specifically contained in the order.~~

(2)~~c.~~ The agency final orders that must be electronically transmitted to the centralized electronic database ~~indexed, unless excluded under paragraph (c) or paragraph (d),~~ include:

(a)~~(I)~~ Each final ~~agency~~ order resulting from a proceeding

under s. 120.57 or s. 120.573.

(b)~~(II)~~ Each final ~~agency~~ order rendered pursuant to s. 120.57(4) 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.

(c)~~(III)~~ Each declaratory statement issued by an agency.

(d)~~(IV)~~ Each final order resulting from a proceeding under s. 120.56 or s. 120.574.

(3)~~3.~~ Each agency shall maintain a list of all final orders rendered pursuant to s. 120.57(4) that are not required to be electronically transmitted to the centralized electronic database ~~which have been excluded from the indexing requirement of this section, with the approval of the Department of State,~~ because they do not contain statements of agency policy or statements of precedential value. The list must include the name of the parties to the proceeding and the number assigned to the final order.

~~4. All final orders listed pursuant to subparagraph 3.~~

(4)~~(b)~~ Each ~~An agency~~ final order, whether rendered by the agency or the division, that must be electronically transmitted to the centralized electronic database or maintained on a list pursuant to subsection (3) must be electronically transmitted to the database or added to the list within 90 days after the final ~~indexed or listed pursuant to paragraph (a) must be indexed or listed within 120 days after the~~ order is rendered. Each final order that must be electronically transmitted to the database or added to the list ~~indexed or listed pursuant to paragraph (a)~~ must have attached a copy of the complete text of any materials incorporated by reference; however, if the quantity of the

materials incorporated makes attachment of the complete text of the materials impractical, the final order may contain a statement of the location of such materials and the manner in which the public may inspect or obtain copies of the materials incorporated by reference. ~~The Department of State shall establish by rule procedures for indexing final orders, and procedures of agencies for indexing orders must be approved by the department.~~

(5) Nothing in this section relieves an agency from its responsibility for maintaining a subject matter index of final orders rendered before July 1, 2015, and identifying the location of the subject matter index on the agency's website. In addition, an agency may electronically transmit to the centralized electronic database certified copies of all of the final orders that were rendered before July 1, 2015, which were required to be in the subject matter index. The centralized electronic database constitutes the official compilation of administrative final orders rendered on or after July 1, 2015, for each agency.

(6) Before electronically transmitting agency final orders to the centralized electronic database, each agency shall redact all information in a final order which is exempt or confidential and exempt from public records requirements.

~~(c) Each agency must receive approval in writing from the Department of State for:~~

~~1. The specific types and categories of agency final orders that may be excluded from the indexing and public inspection requirements, as determined by the department pursuant to paragraph (d).~~

~~2. The method for maintaining indexes, lists, and final orders that must be indexed or listed and made available to the public.~~

~~3. The method by which the public may inspect or obtain copies of indexes, lists, and final orders.~~

~~4. A sequential numbering system which numbers all final orders required to be indexed or listed pursuant to paragraph (a), in the order rendered.~~

~~5. Proposed rules for implementing the requirements of this section for indexing and making final orders available for public inspection.~~

~~(d) In determining which final orders may be excluded from the indexing and public inspection requirements, the Department of State may consider all factors specified by an agency, including precedential value, legal significance, and purpose. Only agency final orders that are of limited or no precedential value, that are of limited or no legal significance, or that are ministerial in nature may be excluded.~~

~~(e) Each agency shall specify the specific types or categories of agency final orders that are excluded from the indexing and public inspection requirements.~~

~~(f) Each agency shall specify the location or locations where agency indexes, lists, and final orders that are required to be indexed or listed are maintained and shall specify the method or procedure by which the public may inspect or obtain copies of indexes, lists, and final orders.~~

~~(g) Each agency shall specify all systems in use by the agency to search and locate agency final orders that are required to be indexed or listed, including, but not limited to,~~

~~any automated system. An agency shall make the search capabilities employed by the agency available to the public subject to reasonable terms and conditions, including a reasonable charge, as provided by s. 119.07. The agency shall specify how assistance and information pertaining to final orders may be obtained.~~

~~(h) Each agency shall specify the numbering system used to identify agency final orders.~~

~~(2)(a) An 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, or by electronically transmitting to the division a copy of such orders for posting on the division's website. An agency is in compliance with subparagraph (1)(a)3. if it publishes in its designated reporter a list of each agency final order that must be listed and preserves each listed order and makes it available for public inspection and copying.~~

~~(b) An agency may publish its official reporter or may contract with a publishing firm to publish its official reporter; however, if an agency contracts with a publishing firm to publish its reporter, the agency is responsible for the quality, timeliness, and usefulness of the reporter. The Department of State may publish an official reporter for an agency or may contract with a publishing firm to publish the reporter for the agency; however, if the department contracts for publication of the reporter, the department is responsible for the quality, timeliness, and usefulness of the reporter. A reporter that is designated by an agency as its official reporter and approved by the Department of State constitutes the~~

~~official compilation of the administrative final orders for that agency.~~

~~(c) A reporter that is published by the Department of State may be made available by annual subscription, and each agency that designates an official reporter published by the department may be charged a space rate payable to the department. The subscription rate and the space rate must be equitably apportioned to cover the costs of publishing the reporter.~~

~~(d) An agency that designates an official reporter need not publish the full text of an agency final order that is rendered pursuant to s. 120.57(4) and that must be indexed pursuant to paragraph (1)(a), if the final order is preserved by the agency and made available for public inspection and copying and the official reporter indexes the final order and includes a synopsis of the order. A synopsis must include the names of the parties to the order; any rule, statute, or constitutional provision pertinent to the order; a summary of the facts, if included in the order, which are pertinent to the final disposition; and a summary of the final disposition.~~

~~(3) Agency orders that must be indexed or listed are documents of continuing legal value and must be permanently preserved and made available to the public. Each agency to which this chapter applies shall provide, under the direction of the Department of State, for the preservation of orders as required by this chapter and for maintaining an index to those orders.~~

~~(4) Each agency must provide any person who makes a request with a written description of its organization and the general course of its operations.~~

Section 3. Section 120.533, Florida Statutes, is amended to

read:

120.533 Coordination of the transmittal, indexing, and listing of agency final orders by Department of State.—The Department of State shall:

(1) Coordinate ~~Administer the coordination of~~ the transmittal, indexing, management, preservation, and availability of agency final orders that must be transmitted, indexed, or listed pursuant to s. 120.53 ~~s. 120.53(1)~~.

(2) Provide~~, by rule,~~ guidelines for ~~the~~ indexing ~~of~~ agency final orders. More than one system for indexing may be approved by the Department of State, including systems or methods in use, or proposed for use, by an agency. More than one system may be approved for use by a single agency as best serves the needs of that agency and the public.

(3) Provide~~, by rule,~~ for storage and retrieval systems to be maintained by agencies pursuant to s. 120.53(5) for indexing, and making available~~,~~ agency final orders by subject matter. The Department of State may authorize ~~approve~~ more than one system, including systems in use~~, or proposed for use,~~ by an agency. Storage and retrieval systems that may be used by an agency include, without limitation, a designated reporter or reporters, a microfilming system, an automated system, or any other system considered appropriate by the Department of State.

(4) Provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to the division as required under s. 120.53, and, to protect the integrity and authenticity of information publicly accessible through the electronic database, coordinate and provide standards and guidelines to ensure the security of copies of

agency final orders transmitted and maintained in the electronic database by the division under s. 120.53(1).

(5)~~(4)~~ For each agency, determine which final orders must be indexed or transmitted ~~for each agency~~.

(6)~~(5)~~ Require each agency to report to the department concerning which types or categories of agency orders establish precedent for each agency.

(7) Adopt rules as necessary to administer its responsibilities under this section, which shall be binding on all agencies, including the division acting in the capacity of official compiler of administrative final orders under s. 120.53, notwithstanding s. 120.65. The Department of State may provide for an alternative official compiler to manage and operate the division's database and related services if the Administration Commission determines that the performance of the division as official compiler is unsatisfactory.

Section 4. Subsection (1) of section 213.22, Florida Statutes, is amended to read:

213.22 Technical assistance advisements.—

(1) The department may issue informal technical assistance advisements to persons, upon written request, as to the position of the department on the tax consequences of a stated transaction or event, under existing statutes, rules, or policies. After the issuance of an assessment, a technical assistance advisement may not be issued to a taxpayer who requests an advisement relating to the tax or liability for tax in respect to which the assessment has been made, except that a technical assistance advisement may be issued to a taxpayer who requests an advisement relating to the exemptions in s.

212.08(1) or (2) at any time. Technical assistance advisements shall have no precedential value except to the taxpayer who requests the advisement and then only for the specific transaction addressed in the technical assistance advisement, unless specifically stated otherwise in the advisement. Any modification of an advisement shall be prospective only. A technical assistance advisement is not an order issued pursuant to s. 120.565 or s. 120.569 or a rule or policy of general applicability under s. 120.54. The provisions of s. 120.53 ~~s. 120.53(1)~~ are not applicable to technical assistance advisements.

Section 5. 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

1284
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Daniel Nordby

Job Title _____

Address 215 S. Monroe Street, Suite 804
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone _____

Email _____

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.

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)

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
Street

Phone 850-488-9675

Tallahassee FL 32301
City *State* *Zip*

Email bob.cohen@doah.state.fl.us

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.)

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

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.	Billmeier	Knudson	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Recommend: Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

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 is 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[1] and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS.[2] 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.[3]

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

[1] *See* Art. IV, s. 4, Fla. Const.
[2] *See* s. 20.121(1), F.S.
[3] *See* s. 20.121(2), F.S.

department.[4] The Department of Management Services and the Executive Office of the Governor review and approve reorganization requests.[5]

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.[6]

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.[7] The Office of Fiscal Integrity has sworn law enforcement officers on staff to conduct investigations or provide investigative assistance to other law enforcement agencies.[8]

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.[9] The division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act, [10] false and fraudulent insurance claims,[11] and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.[12] 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;

[4] *See* s. 20.04(7)(b), F.S.
[5] *See* s. 20.04(7)(c), F.S.
[6] *See* https://www.fltreasurehunt.org/ (discussing the Bureau of Unclaimed Property)(last accessed March 11, 2015).
[7] Section 17.04, F.S.
[8] *See* http://www.myfloridacfo.com/Division/AA/StateAgencies/OfficeofFiscalIntegrity.htm#.VQCOFPnF8eE (last accessed March 11, 2015).
[9] *See* http://www.myfloridacfo.com/Division/Fraud/#.VQDPuPnF8eF (last accessed March 11, 2015).
[10] Section 626.9541, F.S.
[11] Section 817.234, F.S.
[12] 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.[13]

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.[14]

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[15] while employees exempted from the career service system are called "select exempt"[16] or "senior management."[17] 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.[18] 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.,[19] in which service of process is authorized to be made upon the CFO

[13] *See* s. 20.121(2)(h), F.S.
[14] *See* Department of Financial Services, *SB 1402 Analysis* (March 11, 2015)(on file with the Senate Committee on Banking and Insurance).
[15] *See* s. 110.205, F.S.
[16] *See* Part V, ch. 110, F.S.
[17] *See* Part III, ch. 110, F.S.
[18] *See* ss. 110.227, 110.402, and 110.604, F.S.
[19] 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.

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certain surplus lines, domestic reciprocal insurers, fraternal benefit societies, warranty associations, and prepaid limited health service organizations.

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.

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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:

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

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the Department of Financial Services which are directly responsible for performing investigations, audits, or management studies for the purpose of making recommendations for corrective action, such as an employee disciplinary action, a civil recovery action, a criminal prosecution, or a revision of agency operational procedures.

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

And the title is amended as follows:

Delete lines 7 - 19

and insert:

department; amending s. 110.205, F.S.; exempting certain positions within the department's Division of Accounting and Auditing from career service requirements; amending

By the Committee on Banking and Insurance; and Senator Lee

597-02406-15 20151402c1

A bill to be entitled

An act relating to the organization of the Department of Financial Services; amending s. 20.121, F.S.; revising the divisions and functions of the department; authorizing the Chief Financial Officer to establish divisions, bureaus, or offices of the department; amending s. 28.2401, F.S.; providing funding from certain probate petition service charges to the Florida Clerks of Court Operations Corporation for clerk education provided by the corporation; amending s. 28.241, F.S., relating to the deposit of certain filing fees for trial and appellate proceedings, to conform provisions to changes made by the act; amending s. 28.35, F.S.; deleting a requirement that the Florida Clerks of Court Operations Corporation contract with the department for certain audits; amending s. 110.205, F.S.; exempting audit and accounting positions of the department from career service requirements; amending s. 624.26, F.S.; conforming provisions to changes made by the act; amending s. 624.307, F.S.; providing powers and duties of the department's Division of Consumer Services; authorizing the division to impose certain penalties; authorizing the department to adopt rules relating to the division; providing for construction; amending s. 624.502, F.S.; requiring that certain service of process fees be deposited into the Administrative Trust Fund; amending ss. 16.59, 400.9935, 409.91212, 440.105, 440.1051, 440.12,

597-02406-15 20151402c1

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, F.S.; conforming provisions to changes made by act; making technical changes; providing an effective date.

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

Section 1. Subsections (2) and (6) of section 20.121, Florida Statutes, are amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and offices:

(a) The Division of Accounting and Auditing~~, which shall include the following bureau and office:~~

~~1. The Bureau of Unclaimed Property~~.

~~2. The Office of Fiscal Integrity which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The office may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If during an investigation the office has reason to believe that any criminal law of this state has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.~~

(b) The Division of State Fire Marshal.

(c) The Division of Risk Management.

(d) The Division of Treasury, which shall include a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan established under s. 112.215 for state employees.

(e) The Division of Criminal Investigations, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 ~~Insurance Fraud~~.

(f) The Division of Rehabilitation and Liquidation.

(g) The Division of Insurance Agent and Agency Services.

(h) The Division of Consumer Services.

~~1. The Division of Consumer Services shall perform the following functions concerning products or services regulated by the department or by the Office of Insurance Regulation:~~

~~a. Receive inquiries and complaints from consumers.~~

~~b. Prepare and disseminate such information as the department deems appropriate to inform or assist consumers.~~

~~c. Provide direct assistance and advocacy for consumers who request such assistance or advocacy.~~

~~d. With respect to apparent or potential violations of law or applicable rules by a person or entity licensed by the department or office, report apparent or potential violations to the office or the appropriate division of the department, which may take such further action as it deems appropriate.~~

~~e. Designate an employee of the division as primary contact for consumers on issues relating to sinkholes.~~

~~2. Any person licensed or issued a certificate of authority by the department or by the Office of Insurance Regulation shall~~

~~respond, in writing, to the Division of Consumer Services within 20 days after receipt of a written request for information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint. The division may impose an administrative penalty for failure to comply with this subparagraph of up to $2,500 per violation upon any entity licensed by the department or the office and $250 for the first violation, $500 for the second violation, and up to $1,000 per violation thereafter upon any individual licensed by the department or the office.~~

~~3. The department may adopt rules to administer this paragraph.~~

~~4. The powers, duties, and responsibilities expressed or granted in this paragraph do not limit the powers, duties, and responsibilities of the Department of Financial Services, the Financial Services Commission, the Office of Insurance Regulation, or the Office of Financial Regulation set forth elsewhere in the Florida Statutes.~~

(i) The Division of Workers' Compensation.

~~(j) The Division of Administration.~~

~~(k) The Division of Legal Services.~~

~~(l) The Division of Information Systems.~~

(j) ~~(m)~~ The Office of Insurance Consumer Advocate.

(k) ~~(n)~~ The Division of Funeral, Cemetery, and Consumer Services.

(l) ~~(o)~~ The Division of Public Assistance Fraud.

The Chief Financial Officer may establish any other division, bureau, or office of the department that he or she deems

necessary to promote the efficient and effective operation of the department pursuant to s. 20.04.

~~(6) STRATEGIC MARKETS RESEARCH AND ASSESSMENT UNIT.—The Strategic Markets Research and Assessment Unit is established within the Department of Financial Services. The Chief Financial Officer or his or her designee shall report on September 1, 2008, and quarterly thereafter, 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. At a minimum, the report must include a summary of issues, trends, and threats that broadly impact the condition of the financial services industries, along with the effect of such conditions on financial institutions, the securities industries, other financial entities, and the credit market. The Chief Financial Officer shall 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.~~

Section 2. Subsection (3) of section 28.2401, Florida Statutes, is amended to read:

28.2401 Service charges and filing fees in probate matters.—

(3) An additional service charge of $4 on petitions seeking summary administration, formal administration, ancillary administration, guardianship, curatorship, and conservatorship shall be paid to the clerk. The clerk shall transfer $3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall transfer 50 cents to the Department of Revenue for deposit into the Department of Financial Services'

Administrative Trust Fund to fund clerk education provided by the Florida Clerks of Court Operations Corporation. No additional fees, charges, or costs shall be added to the service charges or filing fees imposed under this section, except as authorized by general law.

Section 3. Paragraph (a) of subsection (1) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(1) Filing fees are due at the time a party files a pleading to initiate a proceeding or files a pleading for relief. Reopen fees are due at the time a party files a pleading to reopen a proceeding if at least 90 days have elapsed since the filing of a final order or final judgment with the clerk. If a fee is not paid upon the filing of the pleading as required under this section, the clerk shall pursue collection of the fee pursuant to s. 28.246.

(a)1.a. Except as provided in sub-subparagraph b. and subparagraph 2., the party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of that court a filing fee of up to $395 in all cases in which there are not more than five defendants and an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $199 ~~$200~~ in filing fees, $195 must be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund and~~,~~ $4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35~~, and $1 must be remitted to the Department of~~

~~Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services~~. By the 10th of each month, the clerk shall submit that portion of the filing fees collected in the previous month which is in excess of one-twelfth of the clerk's total budget to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.

b. The party instituting any civil action, suit, or proceeding in the circuit court under chapter 39, chapter 61, chapter 741, chapter 742, chapter 747, chapter 752, or chapter 753 shall pay to the clerk of that court a filing fee of up to $295 in all cases in which there are not more than five defendants and an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $99 ~~$100~~ in filing fees, $95 must be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund and~~,~~ $4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35~~, and $1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services~~.

c. An additional filing fee of $4 shall be paid to the clerk. The clerk shall remit $3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall remit 50 cents to the Department of Revenue for deposit into the

Administrative Trust Fund within the Department of Financial Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation. An additional filing fee of up to $18 shall be paid by the party seeking each severance that is granted. The clerk may impose an additional filing fee of up to $85 for all proceedings of garnishment, attachment, replevin, and distress. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties shall be paid by the party at whose instance service is made. Additional fees, charges, or costs may not be added to the filing fees imposed under this section, except as authorized in this section or by general law.

2.a. Notwithstanding the fees prescribed in subparagraph 1., a party instituting a civil action in circuit court relating to real property or mortgage foreclosure shall pay a graduated filing fee based on the value of the claim.

b. A party shall estimate in writing the amount in controversy of the claim upon filing the action. For purposes of this subparagraph, the value of a mortgage foreclosure action is based upon the principal due on the note secured by the mortgage, plus interest owed on the note and any moneys advanced by the lender for property taxes, insurance, and other advances secured by the mortgage, at the time of filing the foreclosure. The value shall also include the value of any tax certificates related to the property. In stating the value of a mortgage foreclosure claim, a party shall declare in writing the total value of the claim, as well as the individual elements of the value as prescribed in this sub-subparagraph.

c. In its order providing for the final disposition of the

matter, the court shall identify the actual value of the claim. The clerk shall adjust the filing fee if there is a difference between the estimated amount in controversy and the actual value of the claim and collect any additional filing fee owed or provide a refund of excess filing fee paid.

d. The party shall pay a filing fee of:

(I) Three hundred and ninety-five dollars in all cases in which the value of the claim is $50,000 or less and in which there are not more than five defendants. The party shall pay an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $199 ~~$200~~ in filing fees, $195 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund and~~,~~ $4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35~~, and $1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services~~;

(II) Nine hundred dollars in all cases in which the value of the claim is more than $50,000 but less than $250,000 and in which there are not more than five defendants. The party shall pay an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $704 ~~$705~~ in filing fees, $700 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund and~~,~~ $4 must be remitted to the Department of Revenue for deposit into the Administrative

Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35~~, and $1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services~~; or

(III) One thousand nine hundred dollars in all cases in which the value of the claim is $250,000 or more and in which there are not more than five defendants. The party shall pay an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $1,704 ~~$1,705~~ in filing fees, $930 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, $770 must be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund and~~,~~ $4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35~~, and $1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services~~.

e. An additional filing fee of $4 shall be paid to the clerk. The clerk shall remit $3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall remit 50 cents to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial

Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation. An additional filing fee of up to $18 shall be paid by the party seeking each severance that is granted. The clerk may impose an additional filing fee of up to $85 for all proceedings of garnishment, attachment, replevin, and distress. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties shall be paid by the party at whose instance service is made. Additional fees, charges, or costs may not be added to the filing fees imposed under this section, except as authorized in this section or by general law.

Section 4. Paragraphs (e) through (h) of subsection (2) of section 28.35, Florida Statutes, are amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

~~(e) Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks pursuant to s. 17.03.~~

(e)~~(f)~~ Reviewing, certifying, and recommending proposed budgets submitted by clerks of the court pursuant to s. 28.36. As part of this process, the corporation shall:

1. Calculate the minimum amount of revenue necessary for each clerk of the court to efficiently perform the list of court-related functions specified in paragraph (3)(a). The corporation shall apply the workload measures appropriate for determining the individual level of review required to fund the clerk's budget.

2. Prepare a cost comparison of similarly situated clerks

of the court, based on county population and numbers of filings, using the standard list of court-related functions specified in paragraph (3)(a).

3. Conduct an annual base budget review and an annual budget exercise examining the total budget of each clerk of the court. The review shall examine revenues from all sources, expenses of court-related functions, and expenses of noncourt-related functions as necessary to determine that court-related revenues are not being used for noncourt-related purposes. The review and exercise shall identify potential targeted budget reductions in the percentage amount provided in Schedule VIII-B of the state's previous year's legislative budget instructions, as referenced in s. 216.023(3), or an equivalent schedule or instruction as may be adopted by the Legislature.

4. Identify those proposed budgets containing funding for items not included on the standard list of court-related functions specified in paragraph (3)(a).

5. Identify those clerks projected to have court-related revenues insufficient to fund their anticipated court-related expenditures.

6. Use revenue estimates based on the official estimate for funds accruing to the clerks of the court made by the Revenue Estimating Conference.

7. Identify and report pay and benefit increases in any proposed clerk budget, including, but not limited to, cost of living increases, merit increases, and bonuses.

8. Provide detailed explanation for increases in anticipated expenditures in any clerk budget that exceeds the current year budget by more than 3 percent.

9. Identify and report the budget of any clerk which exceeds the average budget of similarly situated clerks by more than 10 percent.

(f) ~~(g)~~ Developing and conducting clerk education programs.

(g) ~~(h)~~ Before ~~Beginning August 1, 2014, and each~~ August 1 of each year ~~thereafter~~, submitting to the Legislative Budget Commission, as provided in s. 11.90, its proposed budget and the information described in paragraph (e) ~~(f)~~, as well as the proposed budgets for each clerk of the court. Before October 1 of each year ~~beginning in 2014~~, the Legislative Budget Commission shall consider the submitted budgets and shall approve, disapprove, or amend and approve the corporation's budget and shall approve, disapprove, or amend and approve the total of the clerks' combined budgets or any individual clerk's budget. If the Legislative Budget Commission fails to approve or amend and approve the corporation's budget or the clerks' combined budgets before October 1, the clerk shall continue to perform the court-related functions based upon the clerk's budget for the previous county fiscal year.

Section 5. 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) All audit and accounting positions of the Division of Accounting and Auditing of the Department of Financial Services.

Section 6. Subsection (4) of section 624.26, Florida Statutes, is amended to read:

624.26 Collaborative arrangement with the Department of

Health and Human Services.—

(4) The department's Division of Consumer Services may respond to complaints by consumers relating to a requirement of PPACA ~~as authorized under s. 20.121(2)(h),~~ and report apparent or potential violations to the office and to the federal Department of Health and Human Services.

Section 7. Subsection (10) is added to section 624.307, Florida Statutes, to read:

624.307 General powers; duties.—

(10)(a) The department's Division of Consumer Services shall perform the following functions concerning products or services regulated by the department or office:

1. Receive inquiries and complaints from consumers.

2. Prepare and disseminate such information as the department deems appropriate to inform or assist consumers.

3. Provide direct assistance and advocacy for consumers who request such assistance or advocacy.

4. With respect to apparent or potential violations of law or applicable rules by a person or entity licensed by the department or office, report apparent or potential violations to the office or the appropriate division of the department, which may take such further action as it deems appropriate.

5. Designate an employee of the division as primary contact for consumers on issues relating to sinkholes.

(b) Any person licensed or issued a certificate of authority by the department or the office shall respond, in writing, to the division within 20 days after receipt of a written request for information from the division concerning a consumer complaint. The response must address the issues and

allegations raised in the complaint. The division may impose an administrative penalty for failure to comply with this paragraph of up to $2,500 per violation upon any entity licensed by the department or the office and $250 for the first violation, $500 for the second violation, and up to $1,000 per violation thereafter upon any individual licensed by the department or the office.

(c) The department may adopt rules to administer this subsection.

(d) The powers, duties, and responsibilities expressed or granted in this subsection do not limit the powers, duties, and responsibilities of the Department of Financial Services, the Financial Services Commission, the Office of Insurance Regulation, or the Office of Financial Regulation as otherwise provided by law.

Section 8. Section 624.502, Florida Statutes, as amended by chapter 2014-53, Laws of Florida, is amended to read:

624.502 Service of process fee.—In all instances as provided in any section of the insurance code and s. 48.151(3) in which service of process is authorized to be made upon the Chief Financial Officer or the director of the office, the plaintiff shall pay to the department or office a fee of $15 for such service of process, which fee shall be deposited into the Administrative Trust Fund ~~Insurance Regulatory Trust Fund~~.

Section 9. Section 16.59, Florida Statutes, is amended to read:

16.59 Medicaid fraud control.—The Medicaid Fraud Control Unit is created in the Department of Legal Affairs to investigate all violations of s. 409.920 and any criminal

violations discovered during the course of those investigations. The Medicaid Fraud Control Unit may refer any criminal violation so uncovered to the appropriate prosecuting authority. The offices of the Medicaid Fraud Control Unit, the Agency for Health Care Administration Medicaid program integrity program, and the Divisions of Criminal Investigations ~~Insurance Fraud~~ and Public Assistance Fraud within the Department of Financial Services shall, to the extent possible, be collocated; however, positions dedicated to Medicaid managed care fraud within the Medicaid Fraud Control Unit shall be collocated with the Division of Criminal Investigations ~~Insurance Fraud~~. The Agency for Health Care Administration, the Department of Legal Affairs, and the Divisions of Criminal Investigations ~~Insurance Fraud~~ and Public Assistance Fraud within the Department of Financial Services shall conduct joint training and other joint activities designed to increase communication and coordination in recovering overpayments.

Section 10. Subsection (9) of section 400.9935, Florida Statutes, is amended to read:

400.9935 Clinic responsibilities.—

(9) In addition to the requirements of part II of chapter 408, the clinic shall display a sign in a conspicuous location within the clinic readily visible to all patients indicating that, pursuant to s. 626.9892, the Department of Financial Services may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Criminal Investigations ~~Insurance Fraud~~ arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234. An

authorized employee of the Division of Criminal Investigations ~~Insurance Fraud~~ may make unannounced inspections of a clinic licensed under this part as necessary to determine whether the clinic is in compliance with this subsection. A licensed clinic shall allow full and complete access to the premises to such authorized employee of the division who makes an inspection to determine compliance with this subsection.

Section 11. Subsection (6) of section 409.91212, Florida Statutes, is amended to read:

409.91212 Medicaid managed care fraud.—

(6) Each managed care plan shall report all suspected or confirmed instances of provider or recipient fraud or abuse within 15 calendar days after detection to the Office of Medicaid Program Integrity within the agency. At a minimum the report must contain the name of the provider or recipient, the Medicaid billing number or tax identification number, and a description of the fraudulent or abusive act. The Office of Medicaid Program Integrity in the agency shall forward the report of suspected overpayment, abuse, or fraud to the appropriate investigative unit, including, but not limited to, the Bureau of Medicaid program integrity, the Medicaid fraud control unit, the Division of Public Assistance Fraud, the Division of Criminal Investigations ~~Insurance Fraud~~, or the Department of Law Enforcement.

(a) Failure to timely report shall result in an administrative fine of $1,000 per calendar day after the 15th day of detection.

(b) Failure to timely report may result in additional administrative, civil, or criminal penalties.

Section 12. Paragraph (a) of subsection (1) of section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

(1)(a) Any insurance carrier, any individual self-insured, any commercial or group self-insurance fund, any professional practitioner licensed or regulated by the Department of Health, except as otherwise provided by law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the insurance code, or any employee thereof, having knowledge or who believes that a fraudulent act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this chapter is being or has been committed shall send to the Division of Criminal Investigations ~~Insurance Fraud~~, Bureau of Workers' Compensation Fraud, a report or information pertinent to such knowledge or belief and such additional information relative thereto as the bureau may require. The bureau shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under this chapter is being committed. The bureau shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction with respect to any such

violations of this chapter. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to such violation is not begun within 60 days of the bureau's report, the state attorney or other prosecuting agency having jurisdiction with respect to such violation shall inform the bureau of the reasons for the lack of prosecution.

Section 13. Subsections (1) and (2) of section 440.1051, Florida Statutes, are amended to read

440.1051 Fraud reports; civil immunity; criminal penalties.—

(1) The Bureau of Workers' Compensation Insurance Fraud of the Division of Criminal Investigations ~~Insurance Fraud~~ of the department shall establish a toll-free telephone number to receive reports of workers' compensation fraud committed by an employee, employer, insurance provider, physician, attorney, or other person.

(2) Any person who reports workers' compensation fraud to the Division of Criminal Investigations ~~Insurance Fraud~~ under subsection (1) is immune from civil liability for doing so, and the person or entity alleged to have committed the fraud may not retaliate against him or her for providing such report, unless the person making the report knows it to be false.

Section 14. Paragraph (c) of subsection (1) of section 440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) Compensation is not allowed for the first 7 days of the disability, except for benefits provided under s. 440.13. However, if the injury results in more than 21 days of

disability, compensation is allowed from the commencement of the disability.

(c) Each carrier shall keep a record of all payments made under this subsection, including the time and manner of such payments, and shall furnish these records or a report based on these records to the Division of Criminal Investigations ~~Insurance Fraud~~ and the Division of Workers' Compensation, upon request.

Section 15. Subsection (1) of section 624.521, Florida Statutes, is amended to read:

624.521 Deposit of certain tax receipts; refund of improper payments.—

(1) The department ~~of Financial Services~~ shall promptly deposit in the State Treasury to the credit of the Insurance Regulatory Trust Fund all "state tax" portions of agents' licenses collected under s. 624.501 necessary to fund the Division of Criminal Investigations ~~Insurance Fraud~~. The balance of the tax shall be credited to the General Fund. All moneys received by the department ~~of Financial Services~~ or the office not in accordance with the provisions of this code or not in the exact amount as specified by the applicable provisions of this code shall be returned to the remitter. The records of the department or office shall show the date and reason for such return.

Section 16. Subsection (4) of section 626.016, Florida Statutes, is amended to read:

626.016 Powers and duties of department, commission, and office.—

(4) Nothing in this section is intended to limit the

authority of the department and the Division of Criminal Investigations ~~Insurance Fraud~~, as specified in s. 626.989.

Section 17. Subsections (2) and (6) of section 626.989, Florida Statutes, are amended to read:

626.989 Investigation by department or Division of Criminal Investigations ~~Insurance Fraud~~; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(2) If, by its own inquiries or as a result of complaints, the department or its Division of Criminal Investigations ~~Insurance Fraud~~ has reason to believe that a person has engaged in, or is engaging in, a fraudulent insurance act, an act or practice that violates s. 626.9541 or s. 817.234, or an act or practice punishable under s. 624.15, it may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence. The department shall not compel the attendance of any person or matter in any such investigation except pursuant to subsection (4).

(6) Any person, other than an insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed may send to the Division of Criminal Investigations ~~Insurance Fraud~~ a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may request. Any professional practitioner licensed or regulated by the Department of Business and Professional Regulation, except as otherwise provided by

law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed shall send to the Division of Criminal Investigations ~~Insurance Fraud~~ a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may require. The Division of Criminal Investigations ~~Insurance Fraud~~ shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being committed. The Division of Criminal Investigations ~~Insurance Fraud~~ shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction with respect to any such violation, as provided in s. 624.310. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to such violation is not begun within 60 days of the division's report, the state attorney or other prosecuting agency having jurisdiction with respect to such violation shall inform the division of the reasons for the lack of prosecution.

Section 18. Subsections (1), (2), and (3) of section 626.9891, Florida Statutes, are amended to read:

626.9891 Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance.—

(1) Each ~~Every~~ insurer admitted to do business in this state who in the previous calendar year, at any time during that year, had $10 million or more in direct premiums written shall:

(a) Establish and maintain a unit or division within the company to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds; or

(b) Contract with others to investigate possible fraudulent claims for services or repairs against policies held by insureds.

An insurer subject to this subsection shall file with the Division of Criminal Investigations ~~Insurance Fraud~~ of the department on or before July 1, 1996, a detailed description of the unit or division established pursuant to paragraph (a) or a copy of the contract and related documents required by paragraph (b).

(2) Every insurer admitted to do business in this state, which in the previous calendar year had less than $10 million in direct premiums written, must adopt an anti-fraud plan and file it with the Division of Criminal Investigations ~~Insurance Fraud~~ of the department on or before July 1, 1996. An insurer may, in lieu of adopting and filing an anti-fraud plan, comply with ~~the provisions of~~ subsection (1).

(3) Each insurer's ~~insurers~~ anti-fraud plan must ~~plans~~

~~shall~~ include all of the following:

(a) A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts.~~;~~

(b) A description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Criminal Investigations ~~Insurance Fraud~~ of the department.~~;~~

(c) A description of the insurer's plan for anti-fraud education and training of its claims adjusters or other personnel.~~; and~~

(d) A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts.

Section 19. Subsection (2) of section 626.9892, Florida Statutes, is amended to read:

626.9892 Anti-Fraud Reward Program; reporting of insurance fraud.—

(2) The department may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Criminal Investigations ~~Insurance Fraud~~ arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

Section 20. Subsection (1) of section 626.9893, Florida Statutes, is amended to read:

626.9893 Disposition of revenues; criminal or forfeiture proceedings.—

(1) The Division of Criminal Investigations ~~Insurance Fraud~~

of the Department of Financial Services may deposit revenues received as a result of criminal proceedings or forfeiture proceedings, other than revenues deposited into the Department of Financial Services' Federal Law Enforcement Trust Fund under s. 17.43, into the Insurance Regulatory Trust Fund. Moneys deposited pursuant to this section shall be separately accounted for and shall be used solely for the division to carry out its duties and responsibilities.

Section 21. Subsection (2) of section 626.9894, Florida Statutes, is amended to read:

626.9894 Gifts and grants.—

(2) All rights to, interest in, and title to such donated or granted property shall immediately vest in the Division of Criminal Investigations ~~Insurance Fraud~~ upon donation. The division may hold such property in coownership, sell its interest in the property, liquidate its interest in the property, or dispose of its interest in the property in any other reasonable manner.

Section 22. Paragraph (a) of subsection (1) of section 626.9895, Florida Statutes, is amended to read:

626.9895 Motor vehicle insurance fraud direct-support organization.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Division" means the Division of Criminal Investigations ~~Insurance Fraud~~ of the Department of Financial Services.

Section 23. Section 626.99278, Florida Statutes, is amended to read:

626.99278 Viatical provider anti-fraud plan.—Every licensed

viatical settlement provider and registered life expectancy provider must adopt an anti-fraud plan and file it with the Division of Criminal Investigations ~~Insurance Fraud~~ of the department. Each anti-fraud plan shall include:

(1) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications.

(2) A description of the procedures for the mandatory reporting of possible fraudulent insurance acts and prohibited practices set forth in s. 626.99275 to the Division of Criminal Investigations ~~Insurance Fraud~~ of the department.

(3) A description of the plan for anti-fraud education and training of its underwriters or other personnel.

(4) A written description or chart outlining the organizational arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and for the investigation of unresolved material inconsistencies between medical records and insurance applications.

(5) For viatical settlement providers, a description of the procedures used to perform initial and continuing review of the accuracy of life expectancies used in connection with a viatical settlement contract or viatical settlement investment.

Section 24. Paragraph (k) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(k)1. The corporation shall establish and maintain a unit

or division to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds; or it may contract with others to investigate possible fraudulent claims for services or repairs against policies held by the corporation pursuant to s. 626.9891. The corporation must comply with reporting requirements of s. 626.9891. An employee of the corporation shall notify the corporation's Office of the Inspector General and the Division of Criminal Investigations ~~Insurance Fraud~~ within 48 hours after having information that would lead a reasonable person to suspect that fraud may have been committed by any employee of the corporation.

2. The corporation shall establish a unit or division responsible for receiving and responding to consumer complaints, which unit or division is the sole responsibility of a senior manager of the corporation.

Section 25. Subsections (4) and (7) of section 627.711, Florida Statutes, are amended to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(4) An authorized mitigation inspector that signs a uniform mitigation form, and a direct employee authorized to conduct mitigation verification inspections under subsection ~~paragraph~~ (3), may not commit misconduct in performing hurricane mitigation inspections or in completing a uniform mitigation form that causes financial harm to a customer or their insurer; or that jeopardizes a customer's health and safety. Misconduct occurs when an authorized mitigation inspector signs a uniform mitigation verification form that:

(a) Falsely indicates that he or she personally inspected the structures referenced by the form;

(b) Falsely indicates the existence of a feature which entitles an insured to a mitigation discount which the inspector knows does not exist or did not personally inspect;

(c) Contains erroneous information due to the gross negligence of the inspector; or

(d) Contains a pattern of demonstrably false information regarding the existence of mitigation features that could give an insured a false evaluation of the ability of the structure to withstand major damage from a hurricane endangering the safety of the insured's life and property.

(7) An insurer, person, or other entity that obtains evidence of fraud or evidence that an authorized mitigation inspector or an employee authorized to conduct mitigation verification inspections under subsection ~~paragraph~~ (3) has made false statements in the completion of a mitigation inspection form shall file a report with the Division of Criminal Investigations ~~Insurance Fraud~~, along with all of the evidence in its possession that supports the allegation of fraud or falsity. An insurer, person, or other entity making the report shall be immune from liability, in accordance with s. 626.989(4), for any statements made in the report, during the investigation, or in connection with the report. The Division of Criminal Investigations ~~Insurance Fraud~~ shall issue an investigative report if it finds that probable cause exists to believe that the authorized mitigation inspector, or an employee authorized to conduct mitigation verification inspections under subsection ~~paragraph~~ (3), made intentionally false or fraudulent

statements in the inspection form. Upon conclusion of the investigation and a finding of probable cause that a violation has occurred, the Division of Criminal Investigations ~~Insurance Fraud~~ shall send a copy of the investigative report to the office and a copy to the agency responsible for the professional licensure of the authorized mitigation inspector, whether or not a prosecutor takes action based upon the report.

Section 26. Paragraph (i) of subsection (4) and subsection (14) of section 627.736, Florida Statutes, are amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(4) PAYMENT OF BENEFITS.—Benefits due from an insurer under ss. 627.730-627.7405 are primary, except that benefits received under any workers' compensation law must be credited against the benefits provided by subsection (1) and are due and payable as loss accrues upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.7405. If the Agency for Health Care Administration provides, pays, or becomes liable for medical assistance under the Medicaid program related to injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle, the benefits under ss. 627.730-627.7405 are subject to the Medicaid program. However, within 30 days after receiving notice that the Medicaid program paid such benefits, the insurer shall repay the full amount of the benefits to the Medicaid program.

(i) If an insurer has a reasonable belief that a fraudulent insurance act, for the purposes of s. 626.989 or s. 817.234, has been committed, the insurer shall notify the claimant, in

writing, within 30 days after submission of the claim that the claim is being investigated for suspected fraud. Beginning at the end of the initial 30-day period, the insurer has an additional 60 days to conduct its fraud investigation. Notwithstanding subsection (10), no later than 90 days after the submission of the claim, the insurer must deny the claim or pay the claim with simple interest as provided in paragraph (d). Interest shall be assessed from the day the claim was submitted until the day the claim is paid. All claims denied for suspected fraudulent insurance acts shall be reported to the Division of Criminal Investigations ~~Insurance Fraud~~.

(14) FRAUD ADVISORY NOTICE.—Upon receiving notice of a claim under this section, an insurer shall provide a notice to the insured or to a person for whom a claim for reimbursement for diagnosis or treatment of injuries has been filed, advising that:

(a) Pursuant to s. 626.9892, the Department of Financial Services may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Criminal Investigations ~~Insurance Fraud~~ arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

(b) Solicitation of a person injured in a motor vehicle crash for purposes of filing personal injury protection or tort claims could be a violation of s. 817.234, s. 817.505, or the rules regulating The Florida Bar and should be immediately reported to the Division of Criminal Investigations ~~Insurance Fraud~~ if such conduct has taken place.

Section 27. Paragraphs (b) and (c) of subsection (1) of

section 627.7401, Florida Statutes, are amended to read:

627.7401 Notification of insured's rights.—

(1) The commission, by rule, shall adopt a form for the notification of insureds of their right to receive personal injury protection benefits under the Florida Motor Vehicle No-Fault Law. Such notice shall include:

(b) An advisory informing insureds that:

1. Pursuant to s. 626.9892, the Department of Financial Services may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the Division of Criminal Investigations ~~Insurance Fraud~~ arising from violations of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

2. Pursuant to s. 627.736(5)(e)1., if the insured notifies the insurer of a billing error, the insured may be entitled to a certain percentage of a reduction in the amount paid by the insured's motor vehicle insurer.

(c) A notice that solicitation of a person injured in a motor vehicle crash for purposes of filing personal injury protection or tort claims could be a violation of s. 817.234, s 817.505, or the rules regulating The Florida Bar and should be immediately reported to the Division of Criminal Investigations ~~Insurance Fraud~~ if such conduct has taken place.

Section 28. Subsection (2) of section 631.156, Florida Statutes, is amended to read:

631.156 Investigation by the department; scope of authority; sharing of materials.—

(2) The department may provide documents, books, and records; other investigative products, work product, and

analysis; and copies of any or all of such materials to the Division of Criminal Investigations ~~Insurance Fraud~~ or any other appropriate government agency. The sharing of these materials shall not waive any work product or other privilege otherwise applicable under law.

Section 29. Subsection (4) of section 641.30, Florida Statutes, is amended to read:

641.30 Construction and relationship to other laws.—

(4) The Division of Criminal Investigations ~~Insurance Fraud~~ of the department is vested with all powers granted to it under the Florida Insurance Code with respect to the investigation of any violation of this part.

Section 30. Paragraph (l) of subsection (6) of section 932.7055, Florida Statutes, is amended to read:

932.7055 Disposition of liens and forfeited property.—

(6) If the seizing agency is a state agency, all remaining proceeds shall be deposited into the General Revenue Fund. However, if the seizing agency is:

(l) The Division of Criminal Investigations ~~Insurance Fraud~~ of the Department of Financial Services, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund as provided in s. 626.9893 or into the Department of Financial Services' Federal Law Enforcement Trust Fund as provided in s. 17.43, as applicable.

Section 31. 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 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@myfloridacfo.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.

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110 **Case:** **Type:**
Caption: Senate Appropriations Subcommittee on General Government **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