

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

MEETING DATE: Thursday, March 13, 2014

TIME: 9:00 —11:00 a.m.

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

MEMBERS: Senator Dean, Chair; Senator Abruzzo, Vice Chair; Senators Altman, Bullard, Gardiner, Grimsley, Latvala, Simpson, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 956 Bean (Similar CS/H 791)	Department of Environmental Protection; Authorizing the department to grant areawide permits for the construction of minor structures; authorizing certain swimming pools and maintenance projects to be eligible for a general permit; requiring the department to promote the public use of aquatic preserves and their associated uplands; authorizing the department to grant privileges, leases, or concessions for the accommodation of visitors in and use of aquatic preserves and their associated uplands, etc. EP 03/13/2014 Fav/CS CA AGG AP	Fav/CS Yeas 8 Nays 0
2	SB 1576 Dean (Similar H 1313)	Springs; Specifying distributions to the Ecosystem Management and Restoration Trust Fund; requiring the Department of Environmental Protection or the governing board of a water management district to establish the minimum flow and water level for an Outstanding Florida Spring; creating the "Florida Springs and Aquifer Act"; specifying prohibited activities within a spring protection and management zone of an Outstanding Florida Spring; repealing provisions relating to periodic evaluation and assessment of onsite sewage treatment and disposal systems, etc. EP 03/13/2014 Temporarily Postponed AG AP	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Environmental Preservation and Conservation
Thursday, March 13, 2014, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1594 Bradley (Identical H 1363)	Vessel Safety; Authorizing the Fish and Wildlife Conservation Commission and certain law enforcement agencies or officers to relocate or remove vessels that unreasonably or unnecessarily constitute a navigation hazard or interfere with another vessel; authorizing the commission and certain law enforcement agencies and officers to relocate or remove a derelict vessel from public waters if such vessel poses a danger to property or persons; abrogating the power of the commission to remove certain abandoned vessels and recover its costs therefor, etc. EP 03/13/2014 Fav/CS CJ AP	Fav/CS Yeas 7 Nays 0
Consideration of proposed committee bill:			
4	SPB 7084	Ratification of Rules of the Department of Environmental Protection; Ratifying specified rules relating to qualifications and performance reviews of contractors performing certain site rehabilitation activities for petroleum contaminated sites and procedures for procurement of such contractors for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs, etc.	Submitted as Committee Bill Yeas 8 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 Committee on Environmental Preservation and Conservation

BILL: CS/SB 956

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Bean

SUBJECT: Coastal Management

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	Fav/CS
2.			CA	
3.			AGG	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 956 authorizes the Department of Environmental Protection (DEP) to grant areawide and general permits for coastal construction activities. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide and general permits. It also allows the DEP to receive gifts and donations for the administration, development, improvement, promotion, and maintenance of aquatic preserves, as well as for the future acquisition or development of aquatic preserves. Lastly, the bill allows the DEP to promote the public use of aquatic preserves by authorizing privileges or concessions for visitor accommodations.

II. Present Situation:

Coastal Construction Control Line

Florida's coastline spans more than 1,260 miles, 825 miles of which is considered sandy beaches fronting the Atlantic Ocean, the Gulf of Mexico and the Straits of Florida.¹ Florida's beach and dune system are vital components of the delicate coastal ecosystem, providing habitat to hundreds of species of plants and animals. The beach and dune system is also critical in protecting uplands and coastal development during storm events.² Florida's beaches are a

¹ DEP, *Statistical Abstract, Geographical Summary*, <http://www.dep.state.fl.us/secretary/stats/geographical.htm> (last visited Mar. 10, 2014).

² DEP, *Beaches and Coastal Systems*, <http://dep.state.fl.us/beaches/> (last visited Mar. 10, 2014).

primary tourist destination, attracting 38 million visitors in 2012 and providing \$55 billion in sales to the state's economy.³

In 1965, the Legislature enacted the Florida Beaches and Shores Preservation Act (Act). The Act authorized the Department of Natural Resources (DNR) to regulate construction and physical activity on or seaward of the state's beaches and required individuals, municipalities, and counties to obtain a permit for any coastal construction seaward of the mean high water line.⁴

In 1970, the Legislature established a setback line for coastal construction and excavation. The coastal construction setback line prohibited coastal construction and excavation within 50 feet of the mean high water line at any riparian coastal location fronting the Gulf of Mexico and Atlantic Ocean. The law provided waivers and variances for the setback requirement and provided an exemption for shore protection structures.⁵

Section 161.053, F.S., enacted in 1971, required setback lines on a county by county basis along the sandy beaches of the Atlantic Ocean and the Gulf of Mexico. The DNR was required to conduct a comprehensive engineering study and topographic survey to establish the setback lines necessary for the protection of upland properties and to control coastal erosion. The law required that a public hearing be held for each setback line established and that the established setback lines be recorded in the public records of the county and municipality affected.⁶

In 1978, s. 161.052, F.S., was amended to change the construction setback lines to Coastal Construction Control Lines (CCCLs) and provided the DNR with authority to issue permits for construction activities that previously required a waiver or variance.

The CCCL requirements, established in s. 161.053, F.S., were significantly amended in 1996, to exempt proposed construction located seaward of the CCCL and landward of existing armoring from specific siting and design criteria. The law also allowed the DEP to grant areawide permits to local governments, governmental agencies, and utilities for specific activities, including, but not limited to, road repairs, utility repairs and replacements, beach cleaning, and emergency response. To qualify for an areawide permit, the statute requires that the activities "will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites."⁷ The DEP is authorized to establish rules and criteria to administer this section; however, rules have not been adopted for areawide permits.

Section 161.053, F.S., also provides the DEP with the authority to issue general permits. General permits may be issued where a general permit line has been established and the activity "will not cause measureable interference with the natural functioning of the beach dune system or with

³ Florida Shore and Beach Preservation Association, *Healthy Beaches Drive Florida's Economy*, available at <http://www.fsbpa.com/EconomicFactSheet.pdf> (last visited Mar. 10, 2014).

⁴ Chapter 65-408, Laws of Fla.

⁵ Chapter 70-231, Laws of Fla.

⁶ Chapter 71-136, Laws of Fla.

⁷ Chapter 96-371, Laws of Fla.

marine turtles or their nesting sites.”⁸ Activities that may be authorized under a general permit include: dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures. A single-family habitable structure may qualify for a general permit as long as it does not advance the existing line of construction and satisfies all siting and design requirements. Multi-family habitable structures do not qualify for a general permit. The DEP adopted Rule 62B-34, F.A.C., to establish the criteria and guidelines for the issuance of a general permit.

Aquatic Preserves

The Florida Aquatic Preserve Act was enacted in 1975 to set aside and protect state-owned submerged lands that have “exceptional biological, aesthetic, and scientific value.”⁹ There are 41 aquatic preserves protecting approximately 2.2 million acres in Florida.¹⁰

Aquatic preserves serve many valuable ecological and economic functions. The aquatic preserves provide nurseries for juvenile fish and other aquatic life, maintain water quality, and provide habitat for shorebirds. The aquatic preserves are also valuable tourist destinations, providing a host of outdoor activities such as fishing, diving, snorkeling, swimming, bird watching, and boating.¹¹

The DEP is responsible for managing the state’s aquatic preserves by maintaining a healthy balance of resource protection and promoting public access to the preserves.¹² The DEP adopted Rules 18-18 and 18-20, F.A.C., which specify the additional resource protections, management criteria, and regulations related to human activity that are permitted within an aquatic preserve.

III. Effect of Proposed Changes:

Section 1 amends s. 161.053, requiring the DEP to adopt rules for areawide and general permits and expanding the types of activities allowed under each type of permit.

For areawide permits, the bill authorizes construction of minor structures and specifies dune restoration and on-grade walkovers qualify under this type of permit. For general permits, the bill expands the types of activities to include dune restoration, construction of swimming pools associated with single-family habitable structures that do not advance the existing line of construction and comply with siting and design requirements, and minor reconstruction of existing coastal armoring structures.

Section 2 creates s. 258.435, promoting the use of aquatic preserves and their associated uplands. The bill allows the DEP to receive gifts and donations in order to promote the use of aquatic preserves. The funds received are to be deposited into the Land Acquisition Trust Fund and

⁸ Rule 62B-34.010(7), F.A.C., defines the general permit line as “the line that defines the seaward limit where General Permits can be issued for activities authorized by this rule chapter, is established pursuant to the provisions of s. 161.053(18), F.S., and is recorded in the official records of the county.”

⁹ Sections 258.35-258.394 and 258.40-258.46, F.S.

¹⁰ DEP, *Florida’s Aquatic Preserves*, <http://www.dep.state.fl.us/coastal/programs/aquatic.htm> (last visited Mar. 3, 2014).

¹¹ DEP, *Florida’s Aquatic Preserves, Protecting Our Most Valued Resource: A Program Overview*, available at http://www.dep.state.fl.us/coastal/downloads/Aquatic_Preserve_Overview_Jun06.pdf (last visited Mar. 3, 2014).

¹² Sections 258.35-258.394 and 258.40-258.46, F.S.

appropriated to the DEP for the administration, development, improvement, promotion, and maintenance of the preserves and their associated uplands. The gifts and donations may also be used for future acquisitions or development of aquatic preserves and their associated uplands.

The bill authorizes the DEP to grant a privilege or concession for the accommodation of visitors to an aquatic preserve as long as the privilege or concession does not interfere with the public's access to the preserve and is compatible with the preserve's management plan. It specifies that a privilege or concession may be granted without advertisement or a competitive bidding process but may not be assigned or transferred by the recipient without consent from the DEP.

Section 3 provides an effective date of July 1, 2014.

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 private sector could anticipate a reduction in permit fees due to the decrease in required individual permits.¹³

Private entities that enter into agreements with the DEP to provide vending services, accommodations, and recreational opportunities within an aquatic preserve will experience an indeterminate positive fiscal impact.¹⁴

C. Government Sector Impact:

The DEP will experience a reduction in revenue from reduced permit fees. Activities that currently require administrative permits may now qualify for general permits or areawide

¹³ DEP, *Senate Bill 956 Agency Analysis*, 7 (Mar. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁴ *Id.* at 5-6.

permits. The DEP estimates approximately \$66,000 in lost revenues based on the number of permit applications and permit application fees from 2013.¹⁵ Conversely, local governments applying for coastal construction permits will realize a cost savings as the number of required individual permits is decreased.

The state will realize an indeterminate positive fiscal impact from promoting the public use of aquatic preserves and their associated uplands. The DEP agency analysis includes examples of revenue generated from agreements with private entities. At Little St. George Island, the DEP contracts with a concessionaire to provide an “all inclusive” primitive camping experience. The five year agreement allows the state to receive 13 percent of all gross receipts, excluding sales tax, providing approximately \$148,000 over five years. At St. Joseph Bay Aquatic Preserve, the DEP contracts with a private entity to provide kayak and paddle boat excursions. The five year agreement allows for the state to receive 10 percent of gross revenue per year, providing approximately \$50,000 over the next five years.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DEP to grant areawide permits for construction of minor structures, including dune restoration and on-grade dune walkovers, which expands the allowable activities under an areawide permit. The statute states an areawide permit may be granted to local governments, governmental agencies, and utility companies as long as the activity does “not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” The DEP has not defined “dune restoration” in statute or rule; therefore, it is unclear if this type of activity will cause measureable interference with the beach dune system and marine turtles. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide permit applications, which may resolve this issue.

The bill allows swimming pools to be permitted under a general permit as long as they do not advance the existing line of construction and “will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” Rule 62B-33.002(60)(c) F.A.C., specifies a structure is considered a “major structure” if “as a result of design, location, or size [it] could cause an adverse impact to the beach and dune system.” Rule 62B-33.002(60)(c)1, F.A.C., clarifies a swimming pool is considered a “nonhabitable major structure.” The swimming pool provision in the bill conflicts with the swimming pool criteria established in rule.

Swimming pools associated with single-family homes produce an illuminating artificial light that may interfere with sea turtle nesting as sea turtles prefer to nest on darker beaches and avoid

¹⁵ *Id.*

¹⁶ *Id.*

nesting in areas with artificial lights.¹⁷ The Florida Fish and Wildlife Conservation Commission (FWC) is responsible for reviewing and commenting on administrative permits for coastal construction activities and reviewing beach lighting ordinances. Authorizing a swimming pool under a general permit instead of an administrative permit eliminates the FWC's involvement in the permitting process, which could result in measureable impacts to sea turtles.

The DEP is coordinating with FWC to establish lighting guidelines, which include lighting requirements for swimming pools. The DEP intends to include these lighting provisions in the general permit rule.¹⁸

VIII. **Statutes Affected:**

This bill substantially amends section 161.053 of the Florida Statutes.

This bill creates section 258.435 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 Environmental Preservation and Conservation on March 13, 2014:

The committee substitute:

- Requires the DEP to adopt rules to establish criteria and guidelines for areawide and general permits;
- Allows the DEP to issue a general permit for dune reconstruction, construction of swimming pools associated with single family habitable structures, and minor reconstruction of existing coastal armoring structures; and
- Deletes the term “lease” from the types of agreements the DEP may grant for visitor accommodations to aquatic preserves.

B. **Amendments:**

None.

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

¹⁷ Univ. of Fla., Levin College of Law, *The Sea Turtle Friendly Lighting Initiative*, available at http://www.law.ufl.edu/pdf/academics/clinics/conservation-clinic/Legal_and_Biological_Introduction.pdf (last visited Mar. 11, 2014).

¹⁸ Danielle Irwin, DEP, Deputy Division Director, Division of Water Resource Management, *Public Testimony at the Senate Committee on Environmental Preservation and Conservation* (Mar. 13, 2014).



783246

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (17) and (18) of section 161.053, Florida
Statutes, are amended to read:

161.053 Coastal construction and excavation; regulation on
county basis.—

(17) The department may grant areawide permits to local
governments, other governmental agencies, and utility companies



783246

11 for special classes of activities in areas under their general
12 jurisdiction or responsibility or for the construction of minor
13 structures, if these activities or structures, due to the type,
14 size, or temporary nature of the activity or structure, will not
15 cause measurable interference with the natural functioning of
16 the beach-dune system or with marine turtles or their nesting
17 sites. Such activities or structures must comply with this
18 section and may include, but are not limited to: road repairs,
19 not including new construction; utility repairs and
20 replacements, or other minor activities necessary to provide
21 utility services; beach cleaning; dune restoration; on-grade
22 walkovers for enhancing accessibility or usage in compliance
23 with the Americans with Disabilities Act; and emergency
24 response. The department shall ~~may~~ adopt rules to establish
25 criteria and guidelines for permit applicants. The department
26 must require notice provisions appropriate to the type and
27 nature of the activities for which the areawide permits are
28 sought.

29 (18) (a) The department may grant general permits for
30 projects, including dune restoration, dune walkovers, decks,
31 fences, landscaping, sidewalks, driveways, pool resurfacing,
32 minor pool repairs, and other nonhabitable structures, if the
33 projects, due to type, size, or temporary nature, will not cause
34 a measurable interference with the natural functioning of the
35 beach-dune system or with marine turtles or their nesting sites.
36 Multifamily habitable structures do not qualify for general
37 permits. However, single-family habitable structures and
38 swimming pools associated with such single-family habitable
39 structures that do not advance the line of existing construction



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40 and satisfy all siting and design requirements of this section
41 and minor reconstruction for existing coastal armoring
42 structures may be eligible for a general permit.

43 (b) The department shall ~~may~~ adopt rules to establish
44 criteria and guidelines for permit applicants.

45 (c) ~~(a)~~ Persons wishing to use the general permits must, at
46 least 30 days before beginning any work, notify the department
47 in writing on forms adopted by the department. The notice must
48 include a description of the proposed project and supporting
49 documents depicting the proposed project, its location, and
50 other pertinent information as required by rule, to demonstrate
51 that the proposed project qualifies for the requested general
52 permit. Persons who undertake projects without proof of notice
53 to the department, but whose projects would otherwise qualify
54 for general permits, shall be considered to have undertaken a
55 project without a permit and are subject to enforcement pursuant
56 to s. 161.121.

57 (d) ~~(b)~~ Persons wishing to use a general permit must provide
58 notice as required by the applicable local building code where
59 the project will be located. If a building code does not require
60 ~~requires no~~ notice, a ~~any~~ person wishing to use a general permit
61 must, at a minimum, post a sign describing the project on the
62 property at least 5 days before commencing construction. The
63 sign must be at least 88 square inches, with letters no smaller
64 than one-quarter inch.

65 Section 2. Section 258.435, Florida Statutes, is created to
66 read:

67 258.435 Use of aquatic preserves for the accommodation of
68 visitors.-



69 (1) The Department of Environmental Protection shall
70 promote the public use of aquatic preserves and their associated
71 uplands. The department may receive gifts and donations to carry
72 out the purposes of this part. Money received in trust by the
73 department by gift, devise, appropriation, or otherwise, subject
74 to the terms of such trust, shall be deposited into the Land
75 Acquisition Trust Fund and appropriated to the department for
76 the administration, development, improvement, promotion, and
77 maintenance of aquatic preserves and their associated uplands
78 and for any future acquisition or development of aquatic
79 preserves and their associated uplands.

80 (2) The department may grant a privilege or concession for
81 the accommodation of visitors in and the use of aquatic
82 preserves and their associated state-owned uplands if the
83 privilege or concession does not deny or interfere with the
84 public's access to such lands and is compatible with the aquatic
85 preserve's management plan as approved by the Acquisition and
86 Restoration Council. A privilege or concession may be granted
87 without advertisement or without using a competitive bidding
88 process. A privilege or concession may not be assigned or
89 transferred by the grantee without the consent of the
90 department.

91 Section 3. This act shall take effect July 1, 2014.

92
93 ===== T I T L E A M E N D M E N T =====

94 And the title is amended as follows:

95 Delete everything before the enacting clause
96 and insert:

97 A bill to be entitled



783246

98 An act relating to coastal management; amending s.
99 161.053, F.S.; authorizing the department to grant
100 areawide permits for the construction of minor
101 structures; requiring that such activities and
102 structures comply with this section; authorizing
103 certain swimming pools and maintenance projects to be
104 eligible for a general permit; creating s. 258.435,
105 F.S.; requiring the department to promote the public
106 use of aquatic preserves and their associated uplands;
107 authorizing the department to grant privileges,
108 leases, or concessions for the accommodation of
109 visitors in and use of aquatic preserves and their
110 associated uplands; authorizing the department to
111 grant a privilege, lease, or concession without
112 advertisement or without using a competitive bidding
113 process and prohibiting a privilege, lease, or
114 concession from being assigned or transferred without
115 the department's consent; authorizing the department
116 to receive gifts and donations; providing restrictions
117 for such moneys received; providing an effective date.

By Senator Bean

4-00930-14

2014956__

1 A bill to be entitled
2 An act relating to the Department of Environmental
3 Protection; amending s. 161.053, F.S.; authorizing the
4 department to grant areawide permits for the
5 construction of minor structures; requiring that such
6 activities and structures comply with this section;
7 authorizing certain swimming pools and maintenance
8 projects to be eligible for a general permit; creating
9 s. 258.435, F.S.; requiring the department to promote
10 the public use of aquatic preserves and their
11 associated uplands; authorizing the department to
12 grant privileges, leases, or concessions for the
13 accommodation of visitors in and use of aquatic
14 preserves and their associated uplands; authorizing
15 the department to grant a privilege, lease, or
16 concession without advertisement or without using a
17 competitive bidding process and prohibiting a
18 privilege, lease, or concession from being assigned or
19 transferred without the department's consent;
20 authorizing the department to receive gifts and
21 donations; providing restrictions for such moneys
22 received; providing an effective date.

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

25
26 Section 1. Subsections (17) and (18) of section 161.053,
27 Florida Statutes, are amended to read:

28 161.053 Coastal construction and excavation; regulation on
29 county basis.—

4-00930-14

2014956__

30 (17) The department may grant areawide permits to local
31 governments, other governmental agencies, and utility companies
32 for special classes of activities in areas under their general
33 jurisdiction or responsibility or for the construction of minor
34 structures, if these activities or structures, due to the type,
35 size, or temporary nature of the activity or structure, will not
36 cause measurable interference with the natural functioning of
37 the beach-dune system or with marine turtles or their nesting
38 sites. Such activities or structures must comply with this
39 section and may include, but are not limited to: road repairs,
40 not including new construction; utility repairs and
41 replacements, or other minor activities necessary to provide
42 utility services; beach cleaning; dune restoration; on-grade
43 walkovers for enhancing accessibility or usage in compliance
44 with the Americans with Disabilities Act; and emergency
45 response. The department may adopt rules to establish criteria
46 and guidelines for permit applicants. The department must
47 require notice provisions appropriate to the type and nature of
48 the activities for which the areawide permits are sought.

49 (18) (a) The department may grant general permits for
50 projects, including dune walkovers, decks, fences, landscaping,
51 sidewalks, driveways, pool resurfacing, minor pool repairs, and
52 other nonhabitable structures, if the projects, due to type,
53 size, or temporary nature, will not cause a measurable
54 interference with the natural functioning of the beach-dune
55 system or with marine turtles or their nesting sites.
56 Multifamily habitable structures do not qualify for general
57 permits. However, single-family habitable structures or swimming
58 pools that do not advance the line of existing construction and

4-00930-14

2014956__

59 satisfy all siting and design requirements of this section, and
60 maintenance projects for existing coastal armoring structures
61 may be eligible for a general permit.

62 (b) The department may adopt rules to establish criteria
63 and guidelines for permit applicants.

64 (c) ~~(a)~~ Persons wishing to use the general permits must, at
65 least 30 days before beginning any work, notify the department
66 in writing on forms adopted by the department. The notice must
67 include a description of the proposed project and supporting
68 documents depicting the proposed project, its location, and
69 other pertinent information as required by rule, to demonstrate
70 that the proposed project qualifies for the requested general
71 permit. Persons who undertake projects without proof of notice
72 to the department, but whose projects would otherwise qualify
73 for general permits, shall be considered to have undertaken a
74 project without a permit and are subject to enforcement pursuant
75 to s. 161.121.

76 (d) ~~(b)~~ Persons wishing to use a general permit must provide
77 notice as required by the applicable local building code where
78 the project will be located. If a building code does not require
79 ~~requires no~~ notice, a ~~any~~ person wishing to use a general permit
80 must, at a minimum, post a sign describing the project on the
81 property at least 5 days before commencing construction. The
82 sign must be at least 88 square inches, with letters no smaller
83 than one-quarter inch.

84 Section 2. Section 258.435, Florida Statutes, is created to
85 read:

86 258.435 Use of aquatic preserves and their associated
87 uplands.—The Department of Environmental Protection shall

4-00930-14

2014956__

88 promote the public use of aquatic preserves and their associated
89 uplands.

90 (1) The department may grant a privilege, lease, or
91 concession for the accommodation of visitors in and use of
92 aquatic preserves and their associated uplands if the privilege,
93 lease, or concession does not deny or interfere with the
94 public's access to such lands.

95 (2) A privilege, lease, or concession may be granted
96 without advertisement or without using a competitive bidding
97 process. A privilege, lease, or concession may not be assigned
98 or transferred by the grantee without the consent of the
99 department.

100 (3) The department may receive gifts and donations to carry
101 out the purpose of this section. Money received in trust by the
102 department by gift, devise, appropriation, or otherwise, subject
103 to the terms of such trust, shall be deposited into the Land
104 Acquisition Trust Fund and appropriated to the department for
105 the administration, development, improvement, promotion, and
106 maintenance of aquatic preserves and their associated uplands
107 and for any future acquisition or development of aquatic
108 preserves and their associated uplands.

109 Section 3. This act shall take effect July 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

BILL: SB 1576

INTRODUCER: Senator Dean and others

SUBJECT: Springs

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	Pre-meeting
2.			AG	
3.			AP	

I. Summary:

SB 1576 provides for the protection of springs in Florida. Specifically, the bill:

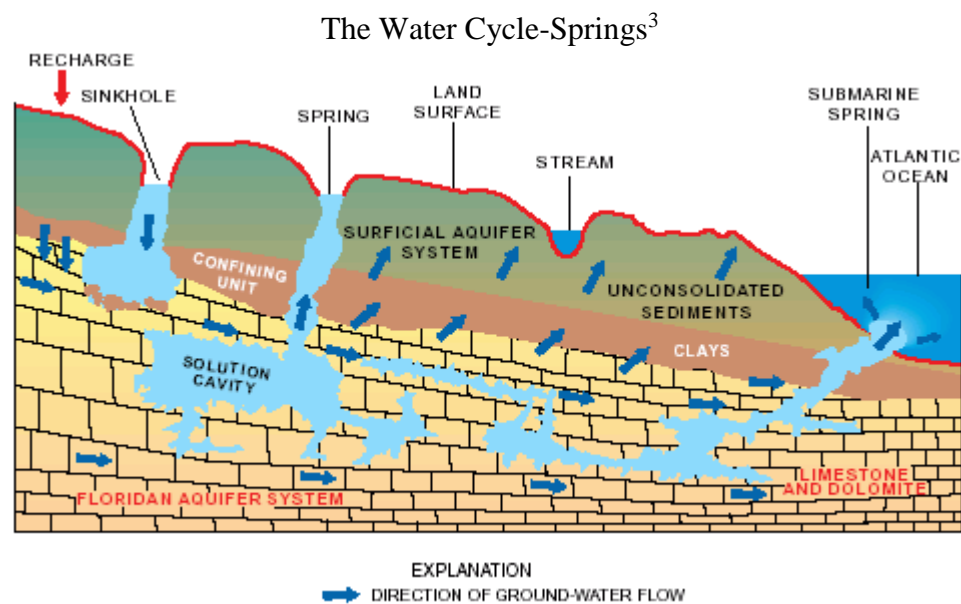
- provides for funding from documentary stamp revenues to pay for the provisions of the bill;
- makes changes to the makeup and mission of the Acquisition and Restoration Council (ARC);
- requires the establishment of minimum flows and levels (MFLs) in Outstanding Florida Springs (OFSs);
- creates Part VIII of ch. 373, F.S.
- provides definitions;
- directs the Department of Environmental Protection (DEP) and the Water Management Districts (WMDs) to delineate spring protection and management zones;
- directs the WMDs to establish MFLs for any OFS within its jurisdiction by July 1, 2015;
- directs the DEP to make determinations of impairment for OFS;
- prohibits the issuance of consumptive use permits (CUP) under certain conditions;
- assigns duties to several agencies for carrying out the provisions of Part VIII of ch. 373, F.S.
- provides for variances and exceptions;
- defines “responsible management entities”;
- allows the creation of basin management action plans (BMAPs) to address potential violations of water quality standards (WQSs);
- repeals s. 381.00651, F.S.; and
- requires a study of nutrient reduction improvement for row crops and the beneficial use of reclaimed water, stormwater, and excess surface water.

II. Present Situation:

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. The springs are major sources of stream flow in a number of rivers such as the Rainbow, Chassahowitzka, Homosassa, and Ichetucknee.¹ 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 downward movement of water. Springs form when groundwater is forced out through natural openings in the ground.²



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,

¹ 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. 7, 2014).

² *Id.* at 3-1 to 3-2.

³ U.S. Environmental Protection Agency, *The Water Cycle: Springs*, <http://water.usgs.gov/edu/watercyclesprings.html> (last visited Mar. 10, 2014).

the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.⁴

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
- If necessary, regulatory action.⁵

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 issues. 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.⁶

Phosphorus and nitrogen are derived from natural and anthropogenic sources. Natural inputs of these nutrients 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.

⁴ 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. 11, 2014).

⁵ 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. 9, 2014).

⁶ EPA, *Health and Environmental Effects Research*, http://www.epa.gov/nheerl/research/aquatic_stressors/nutrient_loading.html#decreased_o2 (last visited Mar. 10, 2014).

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.⁷

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 ordinances 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
- 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.⁸

Water Pollution Control Programs

Total Maximum Daily Loads and Water Quality Standards

Under s. 303 of the federal Clean Water Act (CWA), states are incentivized to adopt 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.⁹

In 1999, the Legislature passed the Florida Watershed Restoration Act (WRA),¹⁰ which codified the establishment of total maximum daily loads (TMDLs) for pollutants of waterbodies as

⁷ *Supra* note 1, at 3-4.

⁸ 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. 9, 2014).

⁹ 33 U.S.C. s. 1313(c)(2)(A) (2014); 40 C.F.R. ss. 131.6 and 131.10-131.12.

¹⁰ Chapter 99-223, Laws of Fla.

required by the CWA.¹¹ 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.¹² 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.¹³

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

Basin Management Action Plans

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 WQBELs;
- 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;¹⁴
- Public works, including capital facilities; and
- Land acquisition.¹⁵

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

¹¹ Section 403.067, F.S.

¹² *Id.*

¹³ Chapter 62-620.200(37), F.A.C. 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.

¹⁴ 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.

¹⁵ Section 403.067(7)(b), F.S.

sources.¹⁶ 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.¹⁷

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.¹⁸

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.¹⁹ A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district based upon a failure to implement these responsibilities.²⁰

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 a NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.²¹

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.²²

For an individual point source, reducing pollutant loads established under the TMDL and WQBEL regulatory programs can be difficult to accomplish. It may require investment in expensive technology or other costly measures to reduce pollutant loads.²³

Best Management Practices on Agricultural Lands

¹⁶ Section 403.067(7), F.S.

¹⁷ DEP, *Basin Management Action Plans (BMAPs)*, <http://www.dep.state.fl.us/central/Home/Watershed/BMAP.htm> (last visited Mar. 10, 2014).

¹⁸ Section 403.067(7)(a)5., F.S.

¹⁹ BMPs for agriculture, for example, include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

²⁰ Section 403.067(7)(b)1.h., F.S.

²¹ 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. 10, 2014).

²² *Id.*

²³ *Id.*

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.²⁴

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.²⁵

The Office of Agricultural Water Policy, a division of the Department of Agriculture and Consumer Services (DACS), is actively involved in developing BMPs. The DACS works cooperatively with agricultural producers, industry groups, the DEP, the university system, the WMDs, and other interested parties to develop and implement BMP programs that are economically and technically feasible.²⁶

Onsite Sewage Treatment and Disposal Systems

In Florida, septic systems are referred to as onsite sewage treatment and disposal systems (OSTDSs). 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 sanitary pit privy.²⁷ 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.²⁸ 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.²⁹

Onsite Sewage Programs, part of the Department of Health (DOH), develops statewide rules and provides training and standardization for county health department employees responsible for

²⁴ University of Florida Institute of Food and Agricultural Sciences, *Best Management Practices*, http://solutionsforyourlife.ufl.edu/hot_topics/agriculture/bmps.html (last visited Mar. 7, 2013).

²⁵ *Id.* IFAS - BMPS

²⁶ Florida Department of Agriculture and Consumer Services: Office of Agricultural Water Policy, *Home Page* (Jan. 8, 2014), <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Water-Policy> (last visited Mar. 9, 2014).

²⁷ DEP, *Wastewater: Septic Systems*, <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm> (last visited Mar. 9, 2014).

²⁸ 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. 9, 2014).

²⁹ See Rules 64E-6.003 and 6.004, F.A.C.

issuing permits for the installation and repair of OSTDSs within the state.³⁰ The Bureau also licenses over 700 septic tank contractors and oversees 2.6 million onsite wastewater systems in Florida.³¹

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.” In Florida, development is dependent on OSTDSs due to the cost and time it takes to install central sewer. 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 generally only receive maintenance when they fail, often leading to costly repairs that could have been avoided with routine tank pump outs and service.³²

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, engineers have included the drainfield as part of the treatment process, usually as a means to achieve fecal coliform reduction.³³

Advanced systems differ in three respects from conventional treatment systems that consist of a septic tank with 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.³⁴ Advanced systems are significantly more expensive to purchase, install, and operate.

Aerobic Treatment Units (ATUs) offer advanced treatment for wastewater. ATUs force compressed air through the liquid effluent in the tank to create a highly oxygenated (aerobic)

³⁰ 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.

³¹ 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. 9, 2014).

³² DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, 1 (Oct. 1, 2008), available at <http://www.noticeandcomment.com/Report-on-Range-of-Costs-to-Implement-a-Mandatory-Statewide-5-Year-Septic-Tank-Inspection-Program-October-fn-14050.aspx> (last visited Mar. 7, 2014).

³³ 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. 7, 2014).

³⁴ 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. 7, 2014).

environment for bacteria. Bacteria that thrive in oxygen-rich environments work to break down and digest the wastewater inside the aerobic treatment unit. 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.³⁵

Responsible Management Entities

Responsible Management Entities (RMEs) are entities that have responsibilities for local OSTDS operation and maintenance, typically in environmentally sensitive areas or areas with dense clusters of OSTDSs. The EPA has described two types of RME models. In Model 4, referred to as the Operation and Maintenance Model, the RME is responsible for the operation and maintenance of the OSTDSs within its jurisdiction. The RME, instead of the owner, receives the permit for the OSTDS with the intent of providing greater assurance of control over performance compliance. The owner of the OSTDS pays a fee for the RME to regularly inspect and maintain the owner's OSTDS.³⁶

In Model 5, referred to as the Ownership Model, the RME owns, operates, and manages the OSTDSs in a manner similar to central sewer. One advantage of this model is that it allows the RME to more easily replace existing systems with higher-performance units or clustered systems when necessary.³⁷ The RME Ownership Model relieves the property owner of responsibility for the system and it provides the greatest assurance of system performance in sensitive environments.³⁸ This model is more expensive for the property owner.

Water Pollution Management

Urban Stormwater Management

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface waters and groundwaters and can lead to:

- Compaction of soil;
- Addition of 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.³⁹

³⁵ Florida Health, Lee County, *Aerobic Treatment Unit Homeowner Education*, <http://www.floridahealth.gov/chdlee/EH/OSTDSatu.html> (last visited Mar. 7, 2014).

³⁶ EPA, *Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems*, Report No. 832-B-03-001, 20 (Mar. 2003), available at http://water.epa.gov/scitech/wastetech/upload/septic_guidelines.pdf (last visited Mar. 9, 2014).

³⁷ *Id.*

³⁸ *Id.* at 5.

³⁹ DEP, *State Stormwater Treatment Rule Development Background*, <http://www.dep.state.fl.us/water/wetlands/erp/rules/stormwater/background.htm> (last visited Mar. 8, 2014).

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 stormwater discharged from developed areas leads to flooding, water quality problems, and loss of habitat.⁴⁰

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 designed in accordance with the BMP design criteria would meet WQSs.⁴¹ The performance standard was to reduce post-development stormwater pollutant loading of total suspended solids⁴² by 80 percent, or by 95 percent for Outstanding Florida Waters.⁴³

In 1990, the DEP developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).⁴⁴ 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."⁴⁵

The DEP and the WMDs jointly administer the Environmental Resource Permitting (ERP) program for activities that alter surface water flows.⁴⁶ 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 ch. 373, Part IV, 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.⁴⁷

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Total Suspended Solids is listed as a conventional pollutant under s. 304(a)(4) of the federal Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

⁴³ Rule 62-302.700, F.A.C., 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.

⁴⁴ *Supra* note 39. See also Rule. 62-40, F.A.C.

⁴⁵ *Supra* note 39.

⁴⁶ Chapter 373, Part IV, F.S. See also Florida Dep't of Environmental Protection, *Environmental Resource Permitting (ERP) Program*, <http://www.dep.state.fl.us/water/wetlands/erp/index.htm> (last visited Mar. 8, 2014).

⁴⁷ 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. 9, 2014).

The basic function of wastewater treatment is to speed up the natural processes by which water is purified. Typically, sewage is treated by primary and secondary processes. In the primary stage, solids are allowed to settle and are removed from the wastewater. The secondary stage uses biological processes to further purify wastewater.⁴⁸

Limits in Florida for effluent to surface water from wastewater treatment plants are required to contain no more than 20 mg/L CBOD5⁴⁹ and 20 mg/L TSS⁵⁰, or 90 percent removal of each from the wastewater influent, whichever is more stringent.⁵¹ There are other limits depending on where the effluent is being sent.

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.⁵²

Minimum Flows and Levels

MFLs are established for water bodies in order to prevent significant harm as a result of 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 shifts the hydrologic conditions below levels defined by MFLs, significant ecological harm can occur.⁵³ The goal of establishing an MFL is to ensure there is enough water to satisfy the consumptive use of the water resource without

⁴⁸ *Id.*

⁴⁹ Rule 62-601.200(6), F.A.C. The rule defines carbonaceous biochemical oxygen demand (CBOD5) as the quantity of oxygen utilized in the carbonaceous biochemical oxidation of organic matter present in water or wastewater, reported as a five-day value determined using approved methods.

⁵⁰ Rule 62-601.200(54), F.A.C. The rule defines total suspended solids (TSS) as solids that either float on the surface of, or are suspended in, water or wastewater. It is measured by quantity of material removed from a sample in a laboratory test, referred to as nonfilterable residue.

⁵¹ Rule 62-600.420, F.A.C.

⁵² Section 403.086(4), F.S.

⁵³ St. Johns River Water Management District, *Water Supply: An Overview of Minimum Flows and Levels*, <http://www.sjrwm.com/minimumflowsandlevels/> (last visited Mar. 8, 2014).

causing significant harm to the resource.⁵⁴ Consumptive uses of water draw down water levels and reduce pressure in the aquifer.⁵⁵ 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 CUP application.⁵⁶

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.⁵⁷

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 currently does not or is anticipated to not meet an established MFL. Water uses cannot be permitted that cause any MFL to be violated.⁵⁸

Consumptive Use Permits

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.

Documentary Stamp Tax

Florida’s documentary stamp tax was first enacted in 1931, at the rate of \$0.10 per \$100 of consideration.⁵⁹ The tax is now levied at the rate of \$0.70 per \$100 (or portion thereof) on documents that transfer interest in Florida real property, such as warranty deeds and quit claim

⁵⁴ DEP, *Minimum Flows and Levels*, <http://www.dep.state.fl.us/water/waterpolicy/mfl.htm> (last visited Mar. 6, 2014).

⁵⁵ *Supra* note 1, 3-5.

⁵⁶ 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. 7, 2014).

⁵⁷ *Id.*

⁵⁸ *Supra* note 53.

⁵⁹ Office of Economic and Demographic Research, The Florida Legislature et al., *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 73 (2013), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2013.pdf> (last visited Mar. 6, 2014).

deeds. However, the Miami-Dade County rate is \$0.60 on all documents plus \$0.45 surtax on documents transferring anything other than a single-family residence. This tax is usually paid to the Clerk of Court when the document is recorded. The Clerks of Court send the funds to the Department of Revenue, which distributes the funds according to law.⁶⁰

The documentary stamp tax is also levied at the rate of \$0.35 per \$100 on documents that are executed or delivered in Florida including notes and other written obligations to pay mortgages and liens.⁶¹

The latest Florida Tax Handbook estimates that revenue from the documentary stamp tax for the 2013-14 fiscal year is estimated to be approximately \$1,627,700,000.⁶² Before the funds may be distributed, eight percent of total collections are deducted as a service charge, the costs of collection and enforcement of the tax are deducted, and debt service for Preservation 2000, Florida Forever, and Everglades Restoration must be paid. The remainder is distributed pursuant to s. 201.15, F.S.

Land Acquisition Process and Goals

Acquisition and Restoration Council

The ARC is responsible for evaluation, selection, and ranking of state land acquisition projects on the Florida Forever priority list. ARC also reviews management plans and land uses for all state-owned conservation land.⁶³

The ARC is a 10-member group with representatives made up of:

- Four appointees by the Governor;
- The Secretary of Environmental Protection;
- The director of the Florida Forest Service of the Department of Agriculture and Consumer Services;
- The executive director of the Fish and Wildlife Conservation;
- The executive director of the Division of Historical Resources of the Department of State;
- One appointee by the FWC;
- One appointed by the Commissioner of Agriculture and Consumer Services.⁶⁴

The DEP and the Florida Natural Areas Inventory assist the ARC in carrying out its duties.⁶⁵

The ARC has several responsibilities including:

- Acquisition Responsibilities:
 - Reviewing Florida Forever project proposals and deciding evaluation needs;

⁶⁰ Florida Department of Revenue, *Documentary Stamp Tax*, http://dor.myflorida.com/dor/taxes/doc_stamp.html (last visited Mar. 6, 2014).

⁶¹ *Id.*

⁶² *Supra* note 60, at 71.

⁶³ DEP, *Acquisition and Restoration Council Responsibilities*, <http://www.dep.state.fl.us/lands/arc.htm> (last visited Mar. 8, 2014).

⁶⁴ Section 259.035, F.S.

⁶⁵ *Supra* note 63.

- Determining final project boundaries; and
- Establishing priority ranking of projects and adopting annual land acquisition work plans.
- Management Responsibilities:
 - Reviewing all management plans for state-owned lands; and
 - Reviewing land use requests on state conservation lands, including easements, subleases and others.

Ecosystem Management and Restoration Trust Fund

The Ecosystem Management and Restoration Trust Fund was created to fund:

- Detailed planning for implementation of programs for the management and restoration of ecosystems;
- The development and implementation of surface water improvement and management plans and programs;
- Activities to restore polluted areas of the state, as defined by the DEP, to their condition before pollution occurred or to otherwise enhance pollution control activities;
- Activities to restore or rehabilitate injured or destroyed coral reefs;
- Activities by the DEP to recover moneys as a result of actions against any person for a violation of ch. 373, F.S.;
- Activities authorized for the implementation of the Leah Schad Memorial Ocean Outfall Program; and
- Activities to preserve and repair the state's beaches.⁶⁶

Yearly, the trust fund receives the lesser of 2.12 percent or \$30 million of remaining documentary stamp revenues.

III. Effect of Proposed Changes:

Section 1 amends s. 201.15, F.S., providing that the provisions of the bill will be paid for by a portion of documentary stamp revenues distributed to the Ecosystem Management and Restoration Fund.

The bill directs 36.9 percent of the remainder of the collected documentary stamp funds be distributed to the Ecosystem Management and Restoration Trust Fund, after the service charge and costs of collection have been paid from total revenues and after the debt service has been paid out of the 63.31 percent of the remainder of documentary stamp revenues. The revenues distributed to the Ecosystem Management and Restoration Trust Fund will be used for restoration and protection of OFSs, and for the acquisition of lands that protect essential parcels necessary for projects designed to improve water quality or conserve water in spring protection and management zones of OFSs. Projects are chosen from the most current Board of Trustees Florida Forever Priority List or projects requested by WMDs. The 36.9 percent distributed for Florida springs protection is approximately 20 percent of net documentary stamp revenues per fiscal year. In FY 2014-2015, this will be approximately \$378.8 million. While existing distributions in s. 201.15, F.S., will not be affected, the remainder that would have gone to the general revenue fund will be nearly eliminated.

⁶⁶ Section 403.1651, F.S.

Section 2 amends s. 259.035, F.S. to make changes to the ARC. The bill:

- Expands the number of voting members from 10 to 11. The additional member is appointed by the Secretary of Environmental Protection and must represent a discipline related to water quality management, including the study of dissolved oxygen levels and nutrient pollution of groundwater and surface water.
- Directs the ARC to develop and recommend rules by December 31, 2014, to fund pilot projects to test innovative or existing nutrient reduction technologies. The ARC is directed to fund at least two pilot projects if there are at least two projects to choose from provided they are not harmful to the ecological resources in the study area.
- Directs the ARC to develop and recommend rules to competitively evaluate, select, and rank projects eligible for funding under s. 373.807, F.S. (s. 373.807, F.S., is a section created under this bill and is detailed in “Section 10” of this section of the bill analysis). The council is directed to give preference to water quantity and quality projects that result in the greatest improvement. The minimum criteria for the ARC to use in selecting projects are:
 - Whether the project is within a spring protection zone of an OFS impaired by nutrients;
 - The level of nutrient impairment of the OFS where the project is located;
 - The quantity of pollutants, particularly total nitrogen the project is estimated to remove in the spring protection and management zone;
 - Whether the projects is within a spring protection and management zone of an OFS that is not meeting its adopted minimum flow or level;
 - The flow necessary to restore the OFS to its adopted minimum flow or level;
 - The anticipated impact the project will have on restoring or increasing water flow or level;
 - Whether the project aids or improves an existing BMAP adopted by the DEP to address pollutant loadings;
 - Whether the project is identified and prioritized in an adopted regional water supply plan;
 - The percentage by which the amount of matching funds provided by the applicant exceeds the statutory minimum required under s. 373.805, F.S., (s. 373.805, F.S., is also created in this bill and is detailed in “Section 9” of this section of the bill analysis), or under s. 373.807 F.S.;
 - For multiple-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project;
 - The cost of the projects and the length of time it will take to complete relative to its expected benefits; and
 - Whether the applicant, since July 1, 2009, has used its own funds for projects to improve water quality or conserve water use within a springshed or spring protection and management zone of an OFS, with preference given to those applicants that have expended such funds.

This bill also changes the necessary number of affirmative votes by voting members of the ARC from five to six in order to change a project boundary or to place a proposed project on the list of projects eligible for the Conservation and Recreation Lands list and for lands acquired under the Florida Forever program.

Sections 3 and 4 amend ss. 373.042 and 373.0421, F.S., respectively, requiring the standard of “harm” to be applied when determining the minimum flow and water level of an OFS, and makes a conforming change.

Section 5 creates Part VIII of ch. 373, F.S., consisting of ss. 373.801, 373.802, 373.803, 373.805, 373.807, 373.809, 373.811, and 373.813, F.S., and provides the title, “Florida Springs and Aquifer Act.” The requirements of this act are discussed in Sections 6 – 13 of this section of the analysis.

Section 6 creates s. 373.801, F.S., providing legislative intent:

- Detailing the importance of Florida’s springs, and various benefits they provide to the state including providing critical habitat for plants and animals. They provide immeasurable natural, recreational, economic, and inherent value, they are indicators of the health of the Floridan aquifer. They also provide recreational opportunities for Floridians and visitors to the state;
- Stating that water quantity and water quality in springs are directly related. It also specifies the roles of the DEP, WMDs, DACS, and local governments;
- Recognizing that springs are only as healthy as their springsheds and identifies 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 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 local government jurisdictional boundaries, which requires a coordinated response;
- Stating that the DEP and WMDs should take a precautionary approach to spring protection. However, in exigent circumstances, even with a lack of scientific certainty, the DEP or the WMDs should take common-sense actions to protect springs; and
- Recognizing that while comprehensive research is still needed in many of the springs and springsheds, there is enough information to proceed with protective actions that can be adjusted as new information is gathered.

Section 7 creates s. 373.802, F.S., providing definitions for “bedroom,” “department,” “local government,” “onsite sewage and treatment disposal system,” “spring run,” “springshed,” and “spring vent.”

The bill also defines:

- “Outstanding Florida Spring,” meaning all historic first magnitude springs, as determined by the department using the most recent version of the Florida Geological Survey’s springs bulletin. In addition, the following springs are also considered OFSs: Deleon Spring, Peacock Spring, Rock Spring, Wekiwa Spring, and Gemini Spring;
- “Responsible Management Entity,” meaning a legal entity established for the purpose of providing localized management services with the requisite managerial, financial, and technical capacity to ensure long-term management of OSTDSs within its jurisdiction; and

- “Spring protection and management zone,” meaning the areas of a springshed where the Floridan Aquifer is vulnerable to surface sources of contamination or reduced levels, as determined by the DEP in consultation with the appropriate WMD.

Section 8 creates s. 373.803, F.S., directing the DEP, in consultation with the WMDs, to delineate the spring protection and management zone for each OFS, using the best available data. The bill requires the delineation of the zones to be completed by July 1, 2015. It provides a one-year extension if the WMD provides sufficient assurance to the DEP that it is in the best interest of the public to justify extending the deadline for one year.

It directs each WMD to adopt by rule, maps that delineate spring protection and management zones for each OFS within its jurisdiction.

Section 9 creates s. 373.805, F.S., directing each WMD to establish a minimum flow and level for each OFS located partially or fully within its jurisdiction by July 1, 2015. The bill provides for yearly extensions if the WMD provides sufficient evidence to the DEP that it is in the best interest of the public.

If a WMD has not set minimum flow and level for an OFS by July 1, 2015, the WMD may not issue new CUPs unless the entity requesting the CUP provides reasonable assurance that the withdrawal will not cause harm to the OFS.

If there is not enough water to meet an adopted minimum flow and water level, the WMD shall implement a recovery or prevention strategy for the OFS by July 1, 2017. The strategy, at a minimum, must include:

- A listing of all specific projects identified for implementation to achieve the recovery or prevention strategy;
- A priority listing of each project;
- The estimated cost for each listed project; and
- The source and amount of financial assistance from the WMD for each project, which may not be less than 25 percent of the total cost of the project.

Lastly, it authorizes the WMDs to adopt rules to meet the objectives of this section.

Section 10 creates s. 373.807, F.S., providing a deadline of July 1, 2017 for the DEP to assess any OFS for which a determination of impairment has not been made and assess them under the numeric nutrient standards for spring vents. In addition, the bill addresses BMAPS, Requirements, Central Sewerage Systems and OSTDSs, and Funding.

Basin Management Action Plans

The bill provides a deadline of July 1, 2017, for the DEP to develop a BMAP for each OFS impaired by nutrients. For OFSs that had a basin management action plan prior to July 1, 2014, the BMAP must be updated to meet the requirements of the section by July 1, 2017.

Each BMAP required under this subsection must:

- Consider the spring protection and management zone delineations established under s. 373.803, F.S.
- Include a detailed allocation of the pollutant load to each identified point source or category of nonpoint sources, including at least:
 - Agricultural fertilizer;
 - OSTDSs;
 - Animal wastes;
 - Wastewater treatment facilities;
 - Stormwater; and
 - Residential lawn fertilizer.

Requirements

Each local government, wastewater treatment facility, and agricultural producer located partially or fully within a spring protection and management zone of an OFS impaired by nutrients is required to implement the following provisions, as applicable:

- Within six months of the delineation of a spring protection and management zone of an OFS within its jurisdiction, a local government must:
 - Implement an ordinance that meets the minimum requirements of the DEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. The ordinance must require that the nitrogen content of any fertilizer applied to turf or landscape plants contain at least 50 percent slow-release nitrogen and that annual application rates of total nitrogen may not exceed the lowest, basic maintenance rate recommended by the Institute of Food and Agricultural Sciences as of August 2013.
 - The DEP must adopt rules to implement this which set reasonable minimum standards that local governments must impose and that reflect advancements or improvements regarding BMPs.
 - A local government must create or revise its stormwater management plan to address nutrient pollution from point and nonpoint sources of stormwater. The local government must consult with the appropriate WMD, the Department of Transportation, and the DEP before adopting or updating its local government comprehensive plan or public facilities report.
- Each wastewater treatment facility must meet a standard of no more than 3 mg/L Total Nitrogen on an annual basis by July 2019 unless granted a variance or an exemption under s. 373.813, F.S.
- Each agricultural producer, within two years after the adoption of the BMAP, must implement the BMPs or other measures necessary to achieve pollution reduction levels established by the DEP or conduct water quality monitoring prescribed by the DEP or the applicable WMD.
- A local government or wastewater treatment facility must file a plan for achieving the goals listed under the "Requirements" subheading above by July 1, 2015, with the DEP for approval. An extension for two years may be granted by the DEP upon a showing of inordinate expense or that a delay is in the best interest of the public.

Central Sewerage Systems and OSTDSs

In developing the BMAP for an OFS, the DEP, in consultation with the DOH and local governments, are required to identify OSTDSs serving single-family residential properties of less

than one acre, as well as multi-family residential, commercial, and industrial properties located within a spring protection and management zone. After identification of the systems, the local governments will develop an OSTDS remediation plan in consultation with the DEP.

For each system, the plan must include whether the system requires:

- Upgrading;
- Connection to a central sewerage system; or
- No action.

Identified systems or groups of systems that require remediation must be ranked by priority. Each remediation plan must be submitted to the DEP for approval. When the plan has been approved, the local government will begin implementing the plan.

The bill specifies the costs of connection or upgrading the OSTDS may not be imposed on the owner.

Funding

In order to satisfy the requirements of the bill, project proposals may be submitted to the ARC by:

- State agencies;
- WMDs;
- Local governments;
- Special districts;
- Utilities;
- Regional management entities; and
- Agricultural producers in cooperation with agricultural producers and property owners.

Approved projects may be funded up to 75 percent of the total project cost, except in the case of a project for upgrading OSTDSs or connecting an OSTDS to a central sewerage system. Projects submitted by fiscally constrained counties or municipalities in fiscally constrained counties are eligible for funding of up to 100 percent of the total project cost.

The bill authorizes the DEP to distribute funds deposited into the Ecosystem Management and Restoration Trust Fund for projects approved by the ARC. The funds may be distributed for administrative costs associated with the act to state agencies and WMDs.

The bill specifies if there are any funds available after all obligations under this section have been met, they are deposited to the credit of the Ecosystem Management and Restoration Trust Fund. Funds may be invested and interest received shall be credited back to the fund for springs protection and restoration.

Section 11 creates s. 373.809, F.S., prohibiting the issuance of the following permits in spring protection and management zones of an OFS:

- Municipal or industrial wastewater disposal systems, including rapid infiltration basins,⁶⁷ except systems that meet an AWT standard of no more than 3 mg/L Total Nitrogen on an annual basis, or a higher treatment standard if the DEP determines a higher treatment standard is necessary to protect the resource;
- OSTDSs, except a system on a lot with a ratio of one bedroom per acre or greater or an active or passive performance-based OSTDS that can achieve 3 mg/L or less total nitrogen at the property boundary; or
- A facility for the transfer, storage, or disposal of hazardous waste.

The bill specifies affected local governments are responsible for ensuring that their comprehensive plans reflect these prohibitions and that they are implemented through passage of local ordinances.

Section 12 creates s. 373.811, F.S. allowing the DEP, DOH, DACS, WMDs, ARC, and RMEs to adopt rules to carry out the provisions of 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 BMPs, in cooperation with applicable county and municipal governments, and stakeholders. The purpose of the rules is to implement new or revised BMPs for improving and protecting OFSs and requiring the implementation of such practices within a reasonable time, as specified by rule.

The bill directs the DEP, DACS, and the IFAS 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 BMPs adopted by rule by the DACS.

Section 13 creates s. 373.813, F.S., providing for variances and exceptions.

The bill specifies variances or exceptions may be granted by agencies or the DACS if the person applying for the variance can provide reasonable assurance that the person's proposed activity, either individually or as part of cumulative impacts, will not cause or contribute to violations of WQSs or MFLs.

The bill directs that absent funding for the provisions of Part VIII of ch. 373, F.S., remedial actions under Part VIII are not required unless they are required as part of the development, or to comply with a BMAP. This provision allows entities with responsibilities under this part to wait to expend resources to comply with this part until funding is made available, unless they are already required to take action by the development of a BMAP or to comply with the provisions of a BMAP.

⁶⁷ Rapid Infiltration Systems, or RIBs, are permeable earthen basins, designed and operated to treat and disperse municipal wastewater. RIBs are typically operated in conjunction with either a primary wastewater pond, or a primary and secondary wastewater pond system.

Section 14 amends s. 381.0065, defining “responsible management entity” for use in ss. 381.0065 to 381.0067, F.S., and requiring a study to be performed by the DOH and DEP.

The bill requires the DOH and DEP to perform a study of RMEs within spring protection and management zones of OFSs impaired by nutrients. The report is required to focus on the feasibility of different management models to prevent, reduce, and control nutrient pollution from OSTDSs. In addition, the report must examine the results of different management models and how they well they address mandatory OSTDS evaluation and assessment programs, or any other options that may accomplish similar nutrient pollution reductions, both in the short and long term. The report and recommendations must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2015.

The bill also allows a municipality, county, or appointed regional entity to establish an RME for the prevention, reduction, and control of nutrient pollution from OSTDSs while the study is being performed. It specifically allows RMEs to:

- Implement rules and maintenance programs in coordination with the DOH;
- Permit development of system performance standards;
- Develop the standards for construction, operation, and inspection of OSTDSs;
- Develop maintenance programs for OSTDSs;
- Coordinate planning with other local wastewater service providers for nutrient reduction; and
- Consolidate multiple, smaller individual projects into a single project proposal for submission to the ARC.

The bill directs the DEP to ensure that RMEs adopt rules and policies that are at least as restrictive as state law.

Section 15 amends s. 403.067, F.S., allowing the development of BMAPs for waterbodies to either achieve compliance with WQs or to prevent noncompliance with WQs. Additionally, if the waterbody is an OFS, the BMAP must allocate pollutant reductions, including loads to groundwater, to each point source or category of nonpoint sources within the delineation of a spring protection and management zone.

The bill changes the BMAP process from just a recovery process to both a recovery process and a preventative process. When a waterbody is degrading but has not yet violated WQs, this provision gives stakeholders the opportunity to address problems through a formal, coordinated process before WQs are violated.

Section 16 repeals s. 381.00651, F.S. The section of law being repealed mandated the creation of an OSTDS evaluation and assessment program in counties or municipalities that contain first magnitude springs. The section contained an opt-out provision that all affected counties and municipalities utilized. The repealed section also contains preemption language that will likely conflict with other requirements in the bill.

Section 17 creates an unnumbered section of Florida law that requires a comprehensive study on nutrient reduction improvement for row crops and the beneficial use of reclaimed water, stormwater, and excess surface water. The report must be submitted to the Governor, the

President of the Senate, and the Speaker of the House of Representatives by December 1, 2015.

The study must:

- Describe factors that currently prohibit or otherwise complicate the expansion of the beneficial use of reclaimed water and provide recommendations for mitigating those factors;
- Identify factors that affect potable and reclaimed water that includes:
 - Environmental;
 - Public health;
 - Public perception;
 - Engineering;
 - Fiscal issues; and
 - User fee amounts.
- Identify areas where reclaimed water needs to be used to accommodate constraints on the use of traditional water supplies;
- Evaluate the costs to users of reclaimed water compared to traditional water sources, including an examination of the nutrient concentrations in reclaimed water and the necessity for additional fertilizer supplementation;
- Evaluate permitting incentives that will encourage switching from traditional water supplies to reclaimed water, and to allow users to switch to traditional water supplies if reclaimed water becomes unavailable;
- Describe the basic feasibility, benefit, and cost to construct regional water features on public or private lands for reclaimed water, stormwater, or excess surface water. The study must also address delivery mechanisms for beneficial uses rather than discharge to tide;
- Describe any other alternative processes, systems, or technology that may be comparable or preferable to a regional storage system or that may complement or substitute for a regional storage system;
- Evaluate the impact of implementation of a comprehensive reclaimed water plan on traditional water sources and aquifer levels; and
- Evaluate strategies to reduce nutrient loading from row crops in areas sensitive to nutrient pollution, including the application of organic fertilizers, or provide incentives for agricultural producers to plant crops that require less fertilizing.

The bill requires DACS and DEP to hold a joint public meeting to get input on the design of the comprehensive study and to provide a chance for public comment before publishing the final report. The bill specifies this section expires on December 1, 2015.

Section 18 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Existing regulatory programs require local governments to expend funds to comply with MFLs, WQSs, and BMAPs. This bill requires additional expenditures but also provides significant funding for projects required under existing law; therefore, it is not clear whether this bill will constitute a mandate. A comprehensive fiscal analysis is required to determine the total impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill would require the distribution of 36.9 percent of the remainder of documentary stamp tax revenues on a yearly basis for springs protection.

B. Private Sector Impact:

The exact impact of the bill on the private sector and individuals cannot be calculated because many of the costs are dependent on activities, such as delineation of spring protection and management zones that have not occurred. Below are some examples of potential private sector impacts.

The bill contains provisions that will require some property owners in spring protection zones to upgrade their 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. ATUs are also more costly to operate than conventional OSTDSs.

Agricultural producers will pay 25 percent of costs for BMPs, but those costs may be offset by savings or increased productivity.

Rate payers may pay for ongoing operation and maintenance for AWT plants and 25 percent of upgrade costs, through rate increases.

Property owners may have to pay for more expensive OSTDSs to install in new developments with lots of less than one acre.

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.

C. Government Sector Impact:

The exact impact on the government sector cannot be calculated for the reasons noted above.

The bill requires significant financial outlays on the part of the state and local governments in order to carry out the provisions of the bill. The exact amount cannot be calculated at this time.

The DEP and WMDs will be subject to short timelines to complete work that may be difficult to accomplish within the timelines required in the bill. This could result in increased outlays for personnel and research.

VI. Technical Deficiencies:

Line 523 refers to "...sufficient and appropriate evidence..." Line 539 refers to "...sufficient evidence..." Appropriate was supposed to be removed in the current version of the bill.

Line 586 – the word "are" should be "is."

Line 643 provides an indeterminate timeline for the identification of OSTDSs within a spring protection and management zone. It should be clarified as to when the OSTDSs must be identified by.

Lines 661 and 662 both mention "agricultural producers" The phrase needs to be removed from line 661.

Line 666 contains a period that changes the meaning of the provision. As written, projects to upgrade or connect OSTDSs are not eligible for funding. The intent was to fully fund those projects.

Line 706 – the words "disposal" and "treatment" are transposed.

VII. Related Issues:

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.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 201.15, 259.035, 373.042, 373.0421, 381.0065, and 403.067.

This bill creates the following sections of the Florida Statutes: 373.801, 373.802, 373.803, 373.805, 373.807, 373.809, 373.811, and 373.813.

This bill repeals section 381.00651 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

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.

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

By Senator Dean

5-01172-14

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1
2 A bill to be entitled
3 An act relating to springs; amending s. 201.15, F.S.;
4 specifying distributions to the Ecosystem Management
5 and Restoration Trust Fund; amending s. 259.035, F.S.;
6 adding a member to the Acquisition and Restoration
7 Council to be appointed by the Secretary of
8 Environmental Protection; expanding duties to include
9 the ranking of spring protection projects; requiring
10 the council to develop and recommend rules for the
11 competitive evaluation, selection, and ranking of
12 projects eligible for partial or complete funding to
13 protect the water quality of an Outstanding Florida
14 Spring; amending s. 373.042, F.S.; requiring the
15 Department of Environmental Protection or the
16 governing board of a water management district to
17 establish the minimum flow and water level for an
18 Outstanding Florida Spring; specifying minimum flows
19 and water levels for an Outstanding Florida Spring;
20 amending s. 373.0421, F.S.; conforming a cross-
21 reference; creating part VIII of chapter 373, F.S.;
22 entitled "Florida Springs and Aquifer Act"; creating
23 s. 373.801, F.S.; providing legislative findings and
24 intent; creating s. 373.802, F.S.; defining terms;
25 creating s. 373.803, F.S.; requiring the Department of
26 Environmental Protection to delineate the spring
27 protection and management zone for each Outstanding
28 Florida Spring; requiring each water management
29 district to adopt by rule maps that depict the

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30 delineation of each spring protection and management
31 zone for each Outstanding Florida Spring within its
32 jurisdiction; creating s. 373.805, F.S.; requiring the
33 water management districts to adopt minimum flows and
34 levels for Outstanding Florida Springs; requiring a
35 water management district to implement a recovery or
36 prevention strategy under certain circumstances;
37 authorizing the water management districts to adopt
38 rules; creating s. 373.807, F.S.; providing procedures
39 for improving water quality in Outstanding Florida
40 Springs; providing a funding mechanism; creating s.
41 373.809, F.S.; specifying prohibited activities within
42 a spring protection and management zone of an
43 Outstanding Florida Spring; requiring local
44 governments to ensure that their comprehensive plans
45 and ordinances reflect such prohibitions; creating s.
46 373.811, F.S.; providing rulemaking authority;
47 creating s. 373.813, F.S.; providing for variances and
48 exemptions under certain circumstances; amending s.
49 381.0065, F.S.; defining the term "responsible
50 management entity"; requiring the Department of Health
51 to submit a report to the Governor and the Legislature
52 on responsible management entities; authorizing the
53 establishment of responsible management entities;
54 amending s. 403.067, F.S.; specifying criteria for
55 development of a basin management action plan for an
56 Outstanding Florida Spring; conforming provisions to
57 changes made by the act; conforming cross-references;
58 repealing s. 381.00651, F.S., relating to periodic

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59 evaluation and assessment of onsite sewage treatment
60 and disposal systems; requiring the Department of
61 Agriculture and Consumer Services and the Department
62 of Environmental Protection to conduct a comprehensive
63 study on nutrient reduction improvements and the
64 expansion of the beneficial use of reclaimed water;
65 requiring the departments to jointly hold a public
66 meeting to gather input on the design of the
67 comprehensive study and provide an opportunity for
68 public comment; requiring the final report to be
69 submitted to the Governor and the Legislature by a
70 certain date; providing an effective date.

71
72 Be It Enacted by the Legislature of the State of Florida:

73
74 Section 1. Paragraph (c) of subsection (1) of section
75 201.15, Florida Statutes, is amended to read:

76 201.15 Distribution of taxes collected.—All taxes collected
77 under this chapter are subject to the service charge imposed in
78 s. 215.20(1). Prior to distribution under this section, the
79 Department of Revenue shall deduct amounts necessary to pay the
80 costs of the collection and enforcement of the tax levied by
81 this chapter. Such costs and the service charge may not be
82 levied against any portion of taxes pledged to debt service on
83 bonds to the extent that the costs and service charge are
84 required to pay any amounts relating to the bonds. After
85 distributions are made pursuant to subsection (1), all of the
86 costs of the collection and enforcement of the tax levied by
87 this chapter and the service charge shall be available and

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88 transferred to the extent necessary to pay debt service and any
89 other amounts payable with respect to bonds authorized before
90 January 1, 2013, secured by revenues distributed pursuant to
91 subsection (1). All taxes remaining after deduction of costs and
92 the service charge shall be distributed as follows:

93 (1) Sixty-three and thirty-one hundredths percent of the
94 remaining taxes shall be used for the following purposes:

95 (c) After the required payments under paragraphs (a) and
96 (b), the remainder shall be paid into the State Treasury to the
97 credit of:

98 1. The State Transportation Trust Fund in the Department of
99 Transportation in the amount of the lesser of 38.2 percent of
100 the remainder or \$541.75 million in each fiscal year. Out of
101 such funds, the first \$50 million for the 2012-2013 fiscal year;
102 \$65 million for the 2013-2014 fiscal year; and \$75 million for
103 the 2014-2015 fiscal year and all subsequent years, shall be
104 transferred to the State Economic Enhancement and Development
105 Trust Fund within the Department of Economic Opportunity. The
106 remainder shall ~~is to~~ be used for the following specified
107 purposes, notwithstanding any other law ~~to the contrary~~:

108 a. For the purposes of capital funding for the New Starts
109 Transit Program, authorized by Title 49, U.S.C. s. 5309 and
110 specified in s. 341.051, 10 percent of these funds;

111 b. For the purposes of the Small County Outreach Program
112 specified in s. 339.2818, 5 percent of these funds. Effective
113 July 1, 2014, the percentage allocated under this sub-
114 subparagraph shall be increased to 10 percent;

115 c. For the purposes of the Strategic Intermodal System
116 specified in ss. 339.61, 339.62, 339.63, and 339.64, 75 percent

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117 of these funds after allocating for the New Starts Transit
118 Program described in sub-subparagraph a. and the Small County
119 Outreach Program described in sub-subparagraph b.; and

120 d. For the purposes of the Transportation Regional
121 Incentive Program specified in s. 339.2819, 25 percent of these
122 funds after allocating for the New Starts Transit Program
123 described in sub-subparagraph a. and the Small County Outreach
124 Program described in sub-subparagraph b. Effective July 1, 2014,
125 the first \$60 million of the funds allocated pursuant to this
126 sub-subparagraph shall be allocated annually to the Florida Rail
127 Enterprise for the purposes established in s. 341.303(5).

128 2. The Grants and Donations Trust Fund in the Department of
129 Economic Opportunity in the amount of the lesser of 0.23 ~~23~~
130 percent of the remainder or \$3.25 million in each fiscal year to
131 fund technical assistance to local governments.

132 3. The Ecosystem Management and Restoration Trust Fund in
133 the amount of:

134 a. The lesser of 2.12 percent of the remainder or \$30
135 million in each fiscal year, to be used for the preservation and
136 repair of the state's beaches as provided in ss. 161.091-
137 161.212; and

138 b. Thirty-six and nine-tenths percent of the remainder in
139 each fiscal year to be used for restoration and protection of
140 Outstanding Florida Springs, as defined in s. 373.802, and for
141 the acquisition of lands identified on the most current Board of
142 Trustees Florida Forever Priority List, or by a water management
143 district, which protect the essential parcels of the named
144 spring projects that improve water quality or conserve water use
145 and are located partially or fully within a spring protection

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146 and management zone of an Outstanding Florida Spring.

147 4. General Inspection Trust Fund in the amount of the
148 lesser of 0.02 ~~-.02~~ percent of the remainder or \$300,000 in each
149 fiscal year to be used to fund oyster management and restoration
150 programs as provided in s. 379.362(3).

151
152 Moneys distributed pursuant to this paragraph may not be pledged
153 for debt service unless such pledge is approved by referendum of
154 the voters.

155 Section 2. Section 259.035, Florida Statutes, is amended to
156 read:

157 259.035 Acquisition and Restoration Council.—

158 (1) ~~There is created~~ The Acquisition and Restoration
159 Council is created and is composed of 11 voting members, as
160 follows:-

161 (a) Four members ~~The council shall be composed of 10 voting~~
162 ~~members, 4 of whom~~ shall be appointed by the Governor to serve
163 4-year terms. Of these four appointees, three must ~~shall~~ be from
164 scientific disciplines related to land, water, or environmental
165 sciences and the fourth must ~~shall~~ have at least 5 years of
166 experience in managing lands for both active and passive types
167 of recreation. ~~They shall serve 4-year terms, except that,~~
168 ~~initially, to provide for staggered terms, two of the appointees~~
169 ~~shall serve 2-year terms. All subsequent appointments shall be~~
170 ~~for 4-year terms.~~ An appointee may not serve more than 6 years.
171 The Governor may at any time fill a vacancy for the unexpired
172 term of a member appointed under this paragraph.

173 (b) ~~The Four~~ members ~~remaining appointees~~ shall be ~~composed~~
174 ~~of~~ the Secretary of Environmental Protection, the director of

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175 the Florida Forest Service of the Department of Agriculture and
176 Consumer Services, the executive director of the Fish and
177 Wildlife Conservation Commission, and the director of the
178 Division of Historical Resources of the Department of State, or
179 their respective designees.

180 (c) One member shall be appointed by the Commissioner of
181 Agriculture representing ~~with~~ a discipline related to
182 agriculture, including silviculture; ~~one member shall be~~
183 appointed by the Fish and Wildlife Conservation Commission
184 representing ~~with~~ a discipline related to wildlife management or
185 wildlife ecology; and one member shall be appointed by the
186 Secretary of Environmental Protection representing a discipline
187 related to water quality management which includes the study of
188 dissolved oxygen levels and nutrient pollution of groundwater
189 and surface water.

190 (d) The Governor shall appoint the chair of the council,
191 and a vice chair shall be elected from among the members.

192 (e) The council shall hold periodic meetings at the request
193 of the chair.

194 (f) The Department of Environmental Protection shall
195 provide primary staff support to the council and shall ensure
196 that council meetings are electronically recorded. Such
197 recording shall be preserved pursuant to chapters 119 and 257.

198 (g) The board of trustees may ~~has authority to~~ adopt rules
199 pursuant to ss. 120.536(1) and 120.54 to implement ~~the~~
200 ~~provisions of~~ this section.

201 (2) The four members of the council appointed pursuant to
202 paragraph (a) and the three ~~two~~ members of the council appointed
203 pursuant to paragraph (c) shall receive reimbursement for

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204 expenses and per diem for travel, to attend council meetings, as
205 provided in ~~allowed state officers and employees while in the~~
206 ~~performance of their duties, pursuant to~~ s. 112.061.

207 (3) The council shall provide assistance to the board of
208 trustees in reviewing the recommendations and plans for state-
209 owned lands required under ss. 253.034 and 259.032. The council
210 shall, in reviewing such recommendations and plans, consider the
211 optimization of multiple-use and conservation strategies to
212 accomplish the provisions funded pursuant to ss. 259.101(3)(a)
213 and 259.105(3)(b).

214 (4)(a) The council may use existing rules adopted by the
215 board of trustees, until it develops and recommends amendments
216 to those rules, to competitively evaluate, select, and rank
217 projects eligible for the Conservation and Recreation Lands list
218 pursuant to ss. 259.032(3) and 259.101(4).

219 (b) By December 1, 2009, the ~~Acquisition and Restoration~~
220 council shall develop rules defining specific criteria and
221 numeric performance measures needed for lands that are to be
222 acquired for public purpose under the Florida Forever program
223 pursuant to s. 259.105. Each recipient of Florida Forever funds
224 shall assist the council in the development of such rules. These
225 rules shall be reviewed and adopted by the board and, ~~then~~
226 submitted to the Legislature for consideration by February 1,
227 2010. The Legislature may reject, modify, or take no action
228 relative to the proposed rules. If no action is taken, the rules
229 shall be implemented. Subsequent to their approval, each
230 recipient of Florida Forever funds shall annually report to the
231 Division of State Lands on each of the numeric performance
232 measures accomplished during the previous fiscal year.

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233 (c) By December 31, 2014, the council shall develop and
234 recommend rules to fund pilot projects that test the
235 effectiveness of innovative or existing nutrient reduction
236 technologies designed to minimize nutrient pollution in the
237 springs of this state. The council must approve funding for at
238 least two pilot projects in each project selection cycle if the
239 department determines that there are at least two projects that
240 will not be harmful to the ecological resources in the study
241 area.

242 (d) By December 31, 2014, the council shall develop and
243 recommend rules to competitively evaluate, select, and rank
244 projects eligible for partial or complete funding under s.
245 373.807. In developing these rules, the council shall give
246 preference to the projects that it estimates will result in the
247 greatest improvement to water quality and quantity. At a
248 minimum, the council shall consider the following criteria:

249 1. Whether the project is within a spring protection and
250 management zone of an Outstanding Florida Spring impaired by
251 nutrients.

252 2. The level of nutrient impairment of the Outstanding
253 Florida Spring in which the project is located.

254 3. The quantity of pollutants, particularly total nitrogen,
255 the project is estimated to remove in a spring protection and
256 management zone.

257 4. Whether the project is within a spring protection and
258 management zone of an Outstanding Florida Spring that is not
259 meeting its adopted minimum flow or level.

260 5. The flow necessary to restore the Outstanding Florida
261 Spring to its adopted minimum flow or level.

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262 6. The anticipated impact the project will have on
263 restoring or increasing water flow or level.

264 7. Whether the project facilitates or enhances an existing
265 basin management action plan adopted by the Department of
266 Environmental Protection to address pollutant loadings.

267 8. Whether the project is identified and prioritized in an
268 adopted regional water supply plan.

269 9. The percentage by which the amount of matching funds
270 provided by the applicant exceeds the statutory minimum required
271 under s. 373.805 or s. 373.807.

272 10. For multiple-year projects, whether the project has
273 funding sources that are identified and assured through the
274 expected completion date of the project.

275 11. The cost of the project and the length of time it will
276 take to complete relative to its expected benefits.

277 12. Whether the applicant, since July 1, 2009, has used its
278 own funds for projects to improve water quality or conserve
279 water use within a springshed or spring protection and
280 management zone of an Outstanding Florida Spring, with
281 preference given to those applicants that have expended such
282 funds.

283 (e)~~(e)~~ In developing or amending rules, the council shall
284 give weight to the criteria included in s. 259.105(10). The
285 board of trustees shall review the recommendations and ~~shall~~
286 adopt rules necessary to administer this section.

287 (5) An affirmative vote of six ~~five~~ members of the council
288 is required in order to change a project boundary or to place a
289 proposed project on a list developed pursuant to subsection (4).
290 Any member of the council who by family or a business

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291 relationship has a connection with all or a portion of any
292 proposed project shall declare the interest before voting on its
293 inclusion on a list.

294 (6) The proposal for a project pursuant to this section, ~~or~~
295 s. 259.105(3) (b), or s. 373.807 may be implemented only if
296 adopted by the council and approved by the board of trustees.
297 The council shall consider and evaluate in writing the merits
298 and demerits of each project that is proposed for Conservation
299 and Recreation Lands, Florida Preservation 2000, ~~or~~ Florida
300 Forever funding, or the protection of water quality in
301 Outstanding Florida Springs and ~~shall~~ ensure that each proposed
302 project meets ~~will meet~~ a stated public purpose for the
303 restoration, conservation, or preservation of environmentally
304 sensitive lands and water areas or for providing outdoor
305 recreational opportunities. The council ~~also~~ shall determine
306 whether the project conforms, if where applicable, with the
307 comprehensive plan developed pursuant to s. 259.04(1) (a), the
308 comprehensive multipurpose outdoor recreation plan developed
309 pursuant to s. 375.021, the state lands management plan adopted
310 pursuant to s. 253.03(7), the water resources work plans
311 developed pursuant to s. 373.199, and ~~the provisions of~~ s.
312 259.032, s. 259.101, ~~or~~ s. 259.105, or s. 373.807 ~~whichever is~~
313 ~~applicable~~.

314 Section 3. Subsection (1) of section 373.042, Florida
315 Statutes, is amended to read:

316 373.042 Minimum flows and levels.—

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

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

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

328 (c) Minimum flow and water level for an Outstanding Florida
329 Spring, as defined in s. 373.802. The minimum flow and water
330 level is the limit and level, respectively, at which further
331 withdrawals would be harmful to the water resources or ecology
332 of the area.

333
334 The minimum flow and minimum water level shall be calculated by
335 the department and the governing board using the best
336 information available. When appropriate, minimum flows and
337 levels may be calculated to reflect seasonal variations. The
338 department and the governing board shall ~~also~~ consider, and at
339 their discretion may provide for, the protection of
340 nonconsumptive uses in the establishment of minimum flows and
341 levels.

342 Section 4. Paragraph (a) of subsection (1) of section
343 373.0421, Florida Statutes, is amended to read:

344 373.0421 Establishment and implementation of minimum flows
345 and levels.—

346 (1) ESTABLISHMENT.—

347 (a) *Considerations.*—When establishing minimum flows and
348 levels pursuant to s. 373.042, the department or governing board

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349 shall consider changes and structural alterations to watersheds,
350 surface waters, and aquifers and the effects such changes or
351 alterations have had, and the constraints such changes or
352 alterations have placed, on the hydrology of an affected
353 watershed, surface water, or aquifer, provided that nothing in
354 this paragraph shall allow significant harm as provided by s.
355 373.042(1)(a) and (b), or harm as provided by s. 373.042(1)(c),
356 caused by withdrawals.

357 Section 5. Part VIII of chapter 373, Florida Statutes,
358 consisting of sections 373.801, 373.802, 373.803, 373.805,
359 373.807, 373.809, 373.811, and 373.813, Florida Statutes, is
360 created and entitled the "Florida Springs and Aquifer Act."

361 Section 6. Section 373.801, Florida Statutes, is created to
362 read:

363 373.801 Legislative findings and intent.-

364 (1) Springs are a unique part of this state's scenic
365 beauty, deserving the highest level of protection under Article
366 II, Section 7, of the State Constitution. Springs provide
367 critical habitat for plants and animals, including many
368 endangered or threatened species. They provide immeasurable
369 natural, recreational, economic, and inherent value. Flow level
370 and water quality of springs are indicators of local conditions
371 of the Floridan Aquifer, which is the source of drinking water
372 for many residents of this state. Springs are of great
373 scientific importance in understanding the diverse functions of
374 aquatic ecosystems. In addition, springs provide recreational
375 opportunities for swimming, canoeing, wildlife watching,
376 fishing, cave diving, and many other activities in this state.
377 Because of such recreational opportunities and the accompanying

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378 tourism, state and local economies benefit from many of the
379 springs in this state.

380 (2) Water quantity and water quality in springs are
381 directly related. For regulatory purposes, the department has
382 primary responsibility for water quality; the water management
383 districts have primary responsibility for setting minimum flows
384 and levels; the Department of Agriculture and Consumer Services
385 has primary responsibility for the development and
386 implementation of best management practices; and local
387 governments have primary responsibility for providing wastewater
388 and stormwater management. The foregoing responsible entities
389 must work together in a coordinated manner to restore and
390 maintain the water quantity and water quality for Outstanding
391 Florida Springs.

392 (3) The Legislature recognizes that:

393 (a) Springs are only as healthy as their springsheds. The
394 groundwater that supplies springs is derived from rainfall that
395 recharges the aquifer system in the form of seepage from the
396 land surface and through direct conduits such as sinkholes.
397 Springs are adversely affected by polluted runoff from urban and
398 agricultural lands; discharge resulting from poor wastewater and
399 stormwater management practices; stormwater runoff; and the
400 reduced water levels of the Floridan Aquifer. As a result, the
401 hydrologic and environmental conditions of a spring or spring
402 run are directly influenced by activities and land uses within a
403 springshed and by water withdrawals from the Floridan Aquifer.

404 (b) Springs, whether found in urban or rural settings, or
405 on public or private lands, are threatened by actual or
406 potential flow reductions and declining water quality. Many of

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407 this state's springs are demonstrating signs of significant
408 ecological imbalance, increased nutrient loading, and declining
409 water flow. Without effective remedial action, a further decline
410 in water quality and quantity is expected.

411 (c) The state standards regulating both water quality and
412 quantity, including minimum criteria relating to nutrient
413 concentrations in groundwater, need to protect both human health
414 and the complex biological and ecological systems that
415 contribute to the integrity of springs.

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

419 (e) Because springsheds cross local government
420 jurisdictional boundaries, a coordinated statewide springs
421 protection plan is needed.

422 (f) The aquifers and springs of this state are complex
423 systems affected by many variables and influences and scientific
424 uncertainty exists regarding their present condition, the action
425 required to ensure their recovery and health, and the health and
426 vitality of the ecosystems they support. In implementing this
427 act, the department and the water management districts shall
428 take a precautionary approach to springs protection. Where the
429 possibility of significant or irreversible harm exists, the lack
430 of full scientific certainty may not be used as a reason for
431 postponing common-sense actions required to protect springs
432 under this part.

433 (4) The Legislature recognizes that sufficient information
434 exists to act, action is urgently needed, and action can be
435 continually modified as additional data is acquired. Therefore,

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436 state agencies and water management districts shall work
437 together with local governments to delineate springsheds and
438 spring protection and management zones and develop comprehensive
439 plans and land development regulations that protect the springs
440 of this state for future generations.

441 Section 7. Section 373.802, Florida Statutes, is created to
442 read:

443 373.802 Definitions.—As used in this part, the term:

444 (1) "Bedroom" means a room that can be used for sleeping
445 and that:

446 (a) For site-built dwellings, has a minimum of 70 square
447 feet of conditioned space;

448 (b) For manufactured homes, is constructed according to the
449 standards of the United States Department of Housing and Urban
450 Development and has a minimum of 50 square feet of floor area;

451 (c) Is located along an exterior wall;

452 (d) Has a closet and a door or an entrance where a door
453 could be reasonably installed; and

454 (e) Has an emergency means of escape and a rescue opening
455 in accordance with the Florida Building Code.

456
457 A room may not be considered a bedroom if it is used to access
458 another room except a bathroom or closet and the term does not
459 include a hallway, bathroom, kitchen, living room, family room,
460 dining room, den, breakfast nook, pantry, laundry room, sunroom,
461 recreation room, media/video room, or exercise room.

462 (2) "Department" means the Department of Environmental
463 Protection, which includes the Florida Geological Survey or its
464 successor agency or agencies.

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465 (3) "Local government" means a county or municipal
466 government the jurisdictional boundaries of which include an
467 Outstanding Florida Spring, or any part of a delineated
468 springshed or spring protection and management zone for an
469 Outstanding Florida Spring.

470 (4) "Onsite sewage treatment and disposal system" means a
471 system that contains a standard subsurface, filled, or mound
472 drainfield system; an aerobic treatment unit; a graywater system
473 tank; a laundry wastewater system tank; a septic tank; a grease
474 interceptor; a pump tank; a solids or effluent pump; a
475 waterless, incinerating, or organic waste-composting toilet; or
476 a sanitary pit privy that is installed or proposed to be
477 installed beyond the building sewer on land of the owner or on
478 other land to which the owner has the legal right to install a
479 system. The term includes any item placed within, or intended to
480 be used as a part of or in conjunction with, the system. The
481 term does not include package sewage treatment facilities and
482 other treatment works regulated under chapter 403.

483 (5) "Outstanding Florida Spring" includes all historic
484 first magnitude springs, as determined by the department using
485 the most recent version of the Florida Geological Survey's
486 springs bulletin, and the following springs and their associated
487 spring runs:

- 488 (a) DeLeon Spring;
489 (b) Peacock Spring;
490 (c) Rock Springs;
491 (d) Wekiwa Spring; and
492 (e) Gemini Spring.
493 (6) "Responsible management entity" means a legal entity

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494 established for the purpose of providing localized management
495 services with the requisite managerial, financial, and technical
496 capacity to ensure long-term management of an onsite sewage
497 treatment and disposal system within its jurisdiction.

498 (7) "Spring protection and management zone" means the areas
499 of a springshed where the Floridan Aquifer is vulnerable to
500 surface sources of contamination or reduced levels, as
501 determined by the department in consultation with the
502 appropriate water management districts.

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

506 (9) "Springshed" means the areas within the groundwater and
507 surface water basins which have historically contributed to the
508 discharge of a spring as defined by potentiometric surface maps
509 and surface watershed boundaries.

510 (10) "Spring vent" means a location where groundwater flows
511 out of a natural, discernable opening in the ground onto the
512 land surface or into a predominantly fresh surface water.

513 Section 8. Section 373.803, Florida Statutes, is created to
514 read:

515 373.803 Delineation of spring protection and management
516 zones for Outstanding Florida Springs.—

517 (1) Using the best data available from the water management
518 districts and other credible sources, the department, in
519 consultation with the water management districts, shall
520 delineate the spring protection and management zone for each
521 Outstanding Florida Spring. The delineation of spring protection
522 and management zones must be completed by July 1, 2015, unless a

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523 water management district provides sufficient and appropriate
524 evidence to the department that it is in the best interest of
525 the public to justify extending the deadline for up to 1 year.

526 (2) Each water management district shall adopt by rule,
527 pursuant to ss. 120.536(1) and 120.54, maps that depict the
528 delineated spring protection and management zones for each
529 Outstanding Florida Spring within its jurisdiction.

530 Section 9. Section 373.805, Florida Statutes, is created to
531 read:

532 373.805 Minimum flow and level for Outstanding Florida
533 Springs.—

534 (1) By July 1, 2015, each water management district shall
535 establish a minimum flow and a minimum water level for each
536 Outstanding Florida Springs located partially or fully within
537 its jurisdiction in accordance with ss. 373.042 and 373.0421.
538 The deadline may be extended each year if a water management
539 district provides sufficient evidence to the department that an
540 extension is in the best interest of the public.

541 (2) If a minimum flow and a minimum water level have not
542 been set for an Outstanding Florida Spring by July 1, 2015, a
543 water management district may only approve a consumptive use
544 permit application if the applicant provides reasonable
545 assurance that the withdrawal will not cause harm to the
546 Outstanding Florida Spring.

547 (3) If sufficient water is not available to meet an adopted
548 minimum flow and water level, the water management district,
549 pursuant to s. 373.0421(2), shall implement a recovery or
550 prevention strategy for the Outstanding Florida Spring by July
551 1, 2017. The recovery or prevention strategy for each

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552 Outstanding Florida Spring must include, at a minimum:

553 (a) A listing of all specific projects identified for
554 implementation to achieve the recovery or prevention strategy;

555 (b) A priority listing of each project;

556 (c) The estimated cost for each listed project; and

557 (d) The source and amount of financial assistance from the
558 water management district for each project, which may not be
559 less than 25 percent of the total project cost.

560 (4) The water management districts may adopt rules to meet
561 the objectives of this subsection.

562 Section 10. Section 373.807, Florida Statutes, is created
563 to read:

564 373.807 Protection of water quality in Outstanding Florida
565 Springs.—By July 1, 2015, the department shall assess each
566 Outstanding Florida Spring for which an impairment determination
567 has not been made under the numeric nutrient standards in effect
568 for springs vents.

569 (1) BASIN MANAGEMENT ACTION PLAN.—

570 (a) By July 1, 2017, the department shall develop a basin
571 management action plan as specified in s. 403.067(7) for each
572 Outstanding Florida Spring impaired by nutrients. A plan for
573 such spring completed prior to July 1, 2014, must be revised to
574 meet the requirements of this section by July 1, 2017.

575 (b) Each basin management action plan required under this
576 subsection must consider the spring protection and management
577 zone delineations established pursuant to s. 373.803 and include
578 a detailed allocation of the pollutant load to each identified
579 point source or category of nonpoint sources, including, but not
580 limited to, agricultural fertilizer, onsite treatment and

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581 disposal systems, animal wastes, wastewater treatment
582 facilities, stormwater, and residential lawn fertilizer.

583 (2) REQUIREMENTS.—Each local government, wastewater
584 treatment facility, and agricultural producer located partially
585 or fully within a spring protection and management zone of an
586 Outstanding Florida Spring impaired by nutrients are required to
587 abide by the following provisions, as applicable:

588 (a) Within six months of the delineation of the spring
589 protection and management zone of an Outstanding Florida Spring
590 within its jurisdiction, a local government must:

591 1. Develop and implement an ordinance that meets the
592 minimum requirements of the department's Model Ordinance for
593 Florida-Friendly Fertilizer Use on Urban Landscapes. Such
594 ordinance must require that, within a spring protection and
595 management zone of an Outstanding Florida Spring impaired by
596 nutrients, the nitrogen content of any fertilizer applied to
597 turf or landscape plants must contain at least 50 percent slow-
598 release nitrogen per guaranteed analysis label and that annual
599 application rates of total nitrogen may not exceed the lowest,
600 basic maintenance rate recommended by the Institute of Food and
601 Agricultural Sciences as of August 2013. The department shall
602 adopt rules to implement this subparagraph which set reasonable
603 minimum standards that local governments must impose and reflect
604 advancements or improvements regarding best management
605 practices.

606 2. Create or revise its stormwater management plan to
607 address nutrient pollution from point sources and nonpoint
608 sources of stormwater in accordance with s. 403.0891.
609 Notwithstanding s. 403.0891(3)(b), a local government must

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610 consult with the appropriate water management district, the
611 Department of Transportation, and the department before adopting
612 or updating its local government comprehensive plan or public
613 facilities report, as applicable, as required under s. 189.415.

614 (b) Each wastewater treatment facility must meet a standard
615 of no more than 3 mg/L Total Nitrogen, expressed as N, on an
616 annual basis by July 1, 2019, unless granted a variance or an
617 exemption under s. 373.813.

618 (c) Each agricultural producer, within 2 years after the
619 adoption of a basin management action plan, must:

620 1. Implement the best management practices or other
621 measures necessary to achieve pollution reduction levels
622 established by the department pursuant to s. 403.067(7)(c); or
623 conduct water quality monitoring prescribed by the department or
624 the applicable water management district.

625 2. The Department of Agriculture and Consumer Services, in
626 consultation with the department, shall develop rules to
627 implement this paragraph.

628 (d) A local government or wastewater treatment facility
629 shall file a plan for achieving the goals required under this
630 subsection by July 1, 2015, with the department for approval.
631 Upon a showing to the department of inordinate expense or that a
632 delay is in the best interest of the public. The department may
633 grant a local government or wastewater treatment facility an
634 extension of up to two years.

635 (3) CENTRAL SEWERAGE SYSTEMS AND ONSITE SEWAGE TREATMENT
636 AND DISPOSAL SYSTEMS.—In developing a basin management action
637 plan for an Outstanding Florida Spring, the department, in
638 consultation with the Department of Health and local

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639 governments, must identify onsite sewage treatment and disposal
640 systems serving single-family residential properties of less
641 than 1 acre and multi-family residential, commercial, and
642 industrial properties located within a spring protection and
643 management zone. Within 1 year of identification of these
644 systems, and in consultation with the department, the local
645 governments in which they are located shall develop an onsite
646 sewage treatment and disposal system remediation plan. For each
647 onsite sewage treatment and disposal system, the plan must
648 include whether the system requires upgrading, connection to a
649 central sewerage system, or no action. The plan must also
650 include a priority ranking for each system or group of systems
651 that requires remediation. Each remediation plan must be
652 submitted to the department for approval. Following approval of
653 the remediation plan, the local government shall begin
654 implementing the approved remediation plan. The costs of
655 connection to or upgrading the onsite sewage treatment and
656 disposal systems may not be imposed upon the property owner.

657 (4) FUNDING.—

658 (a) In order to satisfy the requirements under this
659 section, state agencies, water management districts, local
660 governments, special districts, utilities, regional management
661 entities, and agricultural producers, in cooperation with
662 property owners and agricultural producers, may submit a project
663 proposal to the Acquisition and Restoration Council, pursuant to
664 s. 259.035, in order to receive funding for up to 75 percent of
665 the total project cost, except for projects to upgrade or
666 connect onsite sewage treatment and disposal systems. Projects
667 submitted by a fiscally constrained county, as described in s.

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668 218.67(1), or a municipality located therein, are eligible for
669 funding for up to 100 percent of the total project cost.

670 (b) Projects approved by the Acquisition and Restoration
671 Council shall be funded by moneys from documentary stamp tax
672 revenues deposited into the Ecosystem Management and Restoration
673 Trust Fund in accordance with s. 201.15(1)(c). The Legislature
674 may use other sources of revenues to fund projects submitted to
675 the Acquisition and Restoration Council pursuant to this part.

676 (c) The department may distribute moneys deposited into the
677 Ecosystem Management and Restoration Trust Fund pursuant to
678 paragraph (b) to any entity that submits a project proposal
679 application to the Acquisition and Restoration Council for which
680 funding is approved. The department shall distribute moneys to
681 state agencies and water management districts for all reasonable
682 administrative costs related to implementing this part.

683 (d) Moneys in the fund not needed to meet obligations
684 incurred under this section shall be deposited to the credit of
685 the fund and may be invested in the manner provided by law.
686 Interest received on such investments shall be credited to the
687 Ecosystem Management and Restoration Trust Fund for springs
688 protection and restoration.

689 Section 11. Section 373.809, Florida Statutes, is created
690 to read:

691 373.809 Prohibited activities within a spring protection
692 and management zone of an Outstanding Florida Spring.—

693 (1) The issuance of new permits for the following
694 activities is prohibited within a spring protection and
695 management zone of an Outstanding Florida Spring:

696 (a) A municipal or industrial wastewater disposal system,

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697 including rapid infiltration basins, except systems that meet an
698 advanced wastewater treatment standard of no more than 3 mg/L
699 Total Nitrogen, expressed as N, on an annual permitted basis, or
700 a higher treatment standard if the department determines that
701 the higher standard is necessary to prevent impairment or aid in
702 the recovery of an Outstanding Florida Spring.

703 (b) An onsite sewage treatment and disposal system, except
704 a system on a lot with a ratio of one bedroom per acre or
705 greater or an active or passive performance-based onsite sewage
706 disposal and treatment system that can achieve 3 mg/L or less
707 total nitrogen at the property boundary.

708 (c) A facility for the transfer, storage, or disposal of
709 hazardous waste.

710 (2) Each local government shall ensure that its
711 comprehensive plan reflects such prohibitions and that they are
712 implemented through passage of local ordinances.

713 Section 12. Section 373.811, Florida Statutes, is created
714 to read:

715 373.811 Rules.—

716 (1) The department, the Department of Health, the
717 Department of Agriculture and Consumer Services, water
718 management districts, the Acquisition and Restoration Council,
719 and responsible management entities may adopt rules pursuant to
720 ss. 120.536(1) and 120.54 to administer this part, as
721 applicable.

722 (2) (a) The Department of Agriculture and Consumer Services
723 is the lead agency coordinating the reduction of agricultural
724 nonpoint sources of pollution for Outstanding Florida Springs
725 protection. The Department of Agriculture and Consumer Services

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726 and the department, pursuant to s. 403.067(7)(c)4., shall study
727 and, if necessary, in cooperation with applicable county and
728 municipal governments, and stakeholders, initiate rulemaking to
729 implement new or revised best management practices for improving
730 and protecting Outstanding Florida Springs and for requiring the
731 implementation of such practices within a reasonable time period
732 as specified by rule.

733 (b) The department, the Department of Agriculture and
734 Consumer Services, and the University of Florida's Institute of
735 Food and Agricultural Sciences shall cooperate in conducting the
736 necessary research and demonstration projects to develop
737 improved or additional nutrient management tools, including the
738 use of controlled release fertilizer that can be used by
739 agricultural producers as part of an agricultural best
740 management practices program. The development of such tools must
741 reflect a balance between water quality improvements and
742 agricultural productivity and, when applicable, must be
743 incorporated into the revised best management practices adopted
744 by rule of the Department of Agriculture and Consumer Services.

745 Section 13. Section 373.813, Florida Statutes, is created
746 to read:

747 373.813 Variances and exemptions.—

748 (1) A person may apply to the appropriate agency or a water
749 management district for a variance or an exemption from any
750 requirement in this part. An agency or a water management
751 district may approve the application upon receiving reasonable
752 assurance that the applicant's proposed activity, evaluated
753 individually or as part of cumulative impacts, will not cause or
754 contribute to violations of water quality standards or minimum

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755 flows or levels in an Outstanding Florida Spring.

756 (2) Until funding becomes available as provided for in s.
757 201.15(1)(c)3.b., or the Legislature provides another source of
758 funding, remedial actions are not required under this part,
759 unless required as a component in the development of or
760 compliance with a basin management action plan.

761 Section 14. Present paragraphs (n) through (q) of
762 subsection (2) of section 381.0065, Florida Statutes, are
763 redesignated as paragraphs (o) through (r), respectively, a new
764 paragraph (n) is added to that subsection, and subsection (7) is
765 added to that section, to read:

766 381.0065 Onsite sewage treatment and disposal systems;
767 regulation.—

768 (2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the
769 term:

770 (n) "Responsible management entity" means a legal entity
771 established to be responsible for providing localized management
772 services that have the requisite managerial, financial, and
773 technical capacity to ensure long-term management of onsite
774 sewage treatment and disposal systems within its jurisdiction.

775 (7) RESPONSIBLE MANAGEMENT ENTITIES.—

776 (a) By March 1, 2015, the department and the Department of
777 Environmental Protection shall submit a report and
778 recommendations to the Governor, the President of the Senate,
779 and the Speaker of the House of Representatives on the creation
780 and operation of responsible management entities within spring
781 protection and management zones of Outstanding Florida Springs,
782 as defined in s. 373.802, which are impaired by nutrients. The
783 report must focus on the feasibility of different management

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784 models to prevent, reduce, and control nutrient pollution from
785 onsite sewage treatment and disposal systems, including the
786 costs associated with each model. In addition, the report must
787 compare the results of the differing management models to a
788 mandatory onsite sewage treatment and disposal system evaluation
789 and assessment program or any other option that would achieve
790 similar nutrient pollution reductions in the short and long
791 term.

792 (b) Notwithstanding paragraph (a), a municipality, county,
793 or appointed regional entity may establish, upon approval by the
794 department, a responsible management entity for the prevention,
795 reduction, and control of nutrient pollution caused by
796 discharges from onsite sewage treatment and disposal systems.
797 Responsible management entities may implement rules and
798 maintenance programs in coordination with the department. The
799 authority of the responsible management entity includes, but is
800 not limited to, permitting development of system performance
801 standards; development of standards for construction, operation,
802 and inspections; maintenance programs for onsite sewage
803 treatment and disposal systems; coordinated planning with other
804 local wastewater service providers for nutrient reduction; and
805 consolidation of multiple, smaller individual projects into a
806 single project proposal for submission to the Acquisition and
807 Restoration Council pursuant to s. 373.807.

808 (c) The department shall ensure that responsible management
809 entities adopt rules and policies that are at least as
810 restrictive as state law.

811 Section 15. Paragraphs (a) and (c) of subsection (7) of
812 section 403.067, Florida Statutes, are amended to read:

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813 403.067 Establishment and implementation of total maximum
814 daily loads.—

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

817 (a) *Basin management action plans.*—

818 1. ~~In developing and implementing the total maximum daily~~
819 ~~load for a water body,~~ The department, or the department in
820 conjunction with a water management district, if not otherwise
821 required to do so under applicable law, may develop a basin
822 management action plan that addresses some or all of the
823 watersheds and basins tributary to the water body. Such plan
824 must integrate the appropriate management strategies available
825 to the state through existing water quality protection programs
826 to achieve compliance or to prevent noncompliance with water
827 quality standards ~~the total maximum daily loads~~ and may provide
828 for phased implementation of these management strategies to
829 promote timely, cost-effective actions as provided for in s.
830 403.151. The plan must establish a schedule implementing the
831 management strategies, establish a basis for evaluating the
832 plan's effectiveness, and identify feasible funding strategies
833 for implementing the plan's management strategies. The
834 management strategies may include regional treatment systems or
835 other public works, where appropriate, and voluntary trading of
836 water quality credits to achieve the needed pollutant load
837 reductions.

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

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842 water body is an Outstanding Florida Spring, the plan must
843 allocate pollutant reductions, including loads to groundwater,
844 to each identified point source or category of nonpoint sources
845 within a spring protection and management zone delineated
846 pursuant to s. 373.803. For nonpoint sources for which best
847 management practices have been adopted, the initial requirement
848 specified by the plan must be those practices developed pursuant
849 to paragraph (c). If ~~Where~~ appropriate, the plan may take into
850 account the benefits of pollutant load reduction achieved by
851 point or nonpoint sources that have implemented management
852 strategies to reduce pollutant loads, including best management
853 practices, before the development of the basin management action
854 plan. The plan must also identify the mechanisms that will
855 prevent ~~address~~ potential future increases in pollutant loading.

856 3. The basin management action planning process is intended
857 to involve the broadest possible range of interested parties,
858 with the objective of encouraging the greatest amount of
859 cooperation and consensus possible. In developing a basin
860 management action plan, the department shall assure that key
861 stakeholders, including, but not limited to, applicable local
862 governments, water management districts, the Department of
863 Agriculture and Consumer Services, other appropriate state
864 agencies, local soil and water conservation districts,
865 environmental groups, regulated interests, and affected
866 pollution sources, are invited to participate in the process.
867 The department shall hold at least one public meeting in the
868 vicinity of the watershed or basin to discuss and receive
869 comments during the planning process and shall otherwise
870 encourage public participation to the greatest practicable

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871 extent. Notice of the public meeting must be published in a
872 newspaper of general circulation in each county in which the
873 watershed or basin lies not less than 5 days nor more than 15
874 days before the public meeting. A basin management action plan
875 does not supplant or otherwise alter any assessment made under
876 subsection (3) or subsection (4) or any calculation or initial
877 allocation.

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

882 5. The basin management action plan must include milestones
883 for implementation and water quality improvement, and an
884 associated water quality monitoring component sufficient to
885 evaluate whether reasonable progress in pollutant load
886 reductions is being achieved over time. An assessment of
887 progress toward these milestones shall be conducted every 5
888 years, and revisions to the plan shall be made as appropriate.
889 Revisions to the basin management action plan shall be made by
890 the department in cooperation with basin stakeholders. Revisions
891 to the management strategies required for nonpoint sources must
892 follow the procedures set forth in subparagraph (c)4. Revised
893 basin management action plans must be adopted pursuant to
894 subparagraph 4.

895 6. In accordance with procedures adopted by rule under
896 paragraph (9)(c), basin management action plans, and other
897 pollution control programs under local, state, or federal
898 authority as provided in subsection (4), may allow point or
899 nonpoint sources that will achieve greater pollutant reductions

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900 than required by an adopted total maximum load or wasteload
901 allocation to generate, register, and trade water quality
902 credits for the excess reductions to enable other sources to
903 achieve their allocation; however, the generation of water
904 quality credits does not remove the obligation of a source or
905 activity to meet applicable technology requirements or adopted
906 best management practices. Such plans must allow trading between
907 NPDES permittees, and trading that may or may not involve NPDES
908 permittees, where the generation or use of the credits involve
909 an entity or activity not subject to department water discharge
910 permits whose owner voluntarily elects to obtain department
911 authorization for the generation and sale of credits.

912 7. ~~The provisions of~~ The department's rule relating to the
913 equitable abatement of pollutants into surface waters do not
914 apply to water bodies or water body segments for which a basin
915 management plan that takes into account future new or expanded
916 activities or discharges has been adopted under this section.

917 (c) *Best management practices.*—

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

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929 2. The Department of Agriculture and Consumer Services may
930 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
931 suitable interim measures, best management practices, or other
932 measures necessary to achieve the level of pollution reduction
933 established by the department for agricultural pollutant sources
934 in allocations developed pursuant to subsection (6) and this
935 subsection or for programs implemented pursuant to paragraph
936 (12) (b) ~~(13) (b)~~. These practices and measures may be implemented
937 by those parties responsible for agricultural pollutant sources
938 and the department, the water management districts, and the
939 Department of Agriculture and Consumer Services shall assist
940 with implementation. In the process of developing and adopting
941 rules for interim measures, best management practices, or other
942 measures, the Department of Agriculture and Consumer Services
943 shall consult with the department, the Department of Health, the
944 water management districts, representatives from affected
945 farming groups, and environmental group representatives. Such
946 rules must also incorporate provisions for a notice of intent to
947 implement the practices and a system to assure the
948 implementation of the practices, including recordkeeping
949 requirements.

950 3. Where interim measures, best management practices, or
951 other measures are adopted by rule, the effectiveness of such
952 practices in achieving the levels of pollution reduction
953 established in allocations developed by the department pursuant
954 to subsection (6) and this subsection or in programs implemented
955 pursuant to paragraph (12) (b) ~~(13) (b)~~ must be verified at
956 representative sites by the department. The department shall use
957 best professional judgment in making the initial verification

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958 that the best management practices are reasonably expected to be
959 effective and, if ~~where~~ applicable, must notify the appropriate
960 water management district or the Department of Agriculture and
961 Consumer Services of its initial verification before the
962 adoption of a rule proposed pursuant to this paragraph.
963 Implementation, in accordance with rules adopted under this
964 paragraph, of practices that have been initially verified to be
965 effective, or verified to be effective by monitoring at
966 representative sites, by the department, shall provide a
967 presumption of compliance with state water quality standards and
968 release from ~~the provisions of~~ s. 376.307(5) for those
969 pollutants addressed by the practices, and the department is not
970 authorized to institute proceedings against the owner of the
971 source of pollution to recover costs or damages associated with
972 the contamination of surface water or groundwater caused by
973 those pollutants. Research projects funded by the department, a
974 water management district, or the Department of Agriculture and
975 Consumer Services to develop or demonstrate interim measures or
976 best management practices shall be granted a presumption of
977 compliance with state water quality standards and a release from
978 the provisions of s. 376.307(5). The presumption of compliance
979 and release is limited to the research site and applies only for
980 those pollutants addressed by the interim measures or best
981 management practices. Eligibility for the presumption of
982 compliance and release is limited to research projects on sites
983 where the owner or operator of the research site and the
984 department, a water management district, or the Department of
985 Agriculture and Consumer Services have entered into a contract
986 or other agreement that, at a minimum, specifies the research

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987 objectives, the cost-share responsibilities of the parties, and
988 a schedule that details the beginning and ending dates of the
989 project.

990 4. Where water quality problems are demonstrated, despite
991 the appropriate implementation, operation, and maintenance of
992 best management practices and other measures required by rules
993 adopted under this paragraph, the department, a water management
994 district, or the Department of Agriculture and Consumer
995 Services, in consultation with the department, shall institute a
996 reevaluation of the best management practice or other measure.
997 If ~~Should~~ the reevaluation determines ~~determine~~ that the best
998 management practice or other measure requires modification, the
999 department, a water management district, or the Department of
1000 Agriculture and Consumer Services, as appropriate, shall revise
1001 the rule to require implementation of the modified practice
1002 within a reasonable time period as specified in the rule.

1003 5. Agricultural records relating to processes or methods of
1004 production, costs of production, profits, or other financial
1005 information held by the Department of Agriculture and Consumer
1006 Services pursuant to subparagraphs 3. and 4. or pursuant to any
1007 rule adopted pursuant to subparagraph 2. are confidential and
1008 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
1009 Constitution. Upon request, records made confidential and exempt
1010 pursuant to this subparagraph shall be released to the
1011 department or any water management district provided that the
1012 confidentiality specified by this subparagraph for such records
1013 is maintained.

1014 6. ~~The provisions of~~ Subparagraphs 1. and 2. do not
1015 preclude the department or water management district from

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1016 requiring compliance with water quality standards or with
1017 current best management practice requirements set forth in any
1018 applicable regulatory program authorized by law for the purpose
1019 of protecting water quality. Additionally, subparagraphs 1. and
1020 2. are applicable only to the extent that they do not conflict
1021 with ~~any~~ rules adopted by the department which ~~that~~ are
1022 necessary to maintain a federally delegated or approved program.

1023 Section 16. Section 381.00651, Florida Statutes, is
1024 repealed.

1025 Section 17. Comprehensive study on nutrient reduction
1026 improvements and the beneficial use of reclaimed water,
1027 stormwater, and excess surface water.-

1028 (1) The Department of Agriculture and Consumer Services and
1029 the Department of Environmental Protection, in cooperation with
1030 the five water management districts, shall conduct a
1031 comprehensive study on nutrient reduction improvements for row
1032 crops and for the expansion of the beneficial use of reclaimed
1033 water, stormwater, and excess surface water in this state. The
1034 final report of the study must:

1035 (a) Describe factors that currently prohibit or otherwise
1036 complicate the expansion of the beneficial use of reclaimed
1037 water and include recommendations for the mitigation or
1038 elimination of such factors.

1039 (b) Identify environmental, public health, public
1040 perception, engineering, and fiscal issues, and user fee
1041 amounts, including utility rate structures for potable and
1042 reclaimed water.

1043 (c) Identify areas in the state where making reclaimed
1044 water available for irrigation or other uses is necessary

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1045 because the use of traditional water supply sources is
1046 constrained by limitations on availability.

1047 (d) Evaluate the costs to users of reclaimed water compared
1048 to the cost associated with traditional water sources, including
1049 an examination of the nutrient concentrations in reclaimed water
1050 and the necessity for additional fertilizer supplementation.

1051 (e) Evaluate permitting incentives, such as further
1052 extending current authorization for long-term consumptive
1053 permits to all entities substituting reclaimed water for
1054 traditional water sources or including in such permits a
1055 provision that authorizes conversion to traditional water
1056 sources if reclaimed water becomes unavailable or cost
1057 prohibitive.

1058 (f) Describe the basic feasibility, benefit, and cost
1059 estimates for the infrastructure needed to construct regional
1060 storage features on public or private lands for reclaimed water,
1061 stormwater, or excess surface water, including collection and
1062 delivery mechanisms for beneficial uses rather than discharge to
1063 tide, such as agricultural irrigation, power generation, public
1064 water supply, wetland restoration, groundwater recharge, and
1065 water body base flow augmentation.

1066 (g) Describe any other alternative processes, systems, or
1067 technology that may be comparable or preferable to a regional
1068 storage system or that may effectively complement or be a
1069 substitute for a regional storage system.

1070 (h) Evaluate the impact of implementation of a
1071 comprehensive reclaimed water plan on traditional water sources
1072 and aquifer levels.

1073 (i) Evaluate strategies to reduce nutrient loading from row

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1074 crops in areas sensitive to nutrient pollution, including the
1075 application of organic fertilizers, or provide incentives for
1076 agricultural producers to plant crops that require less
1077 fertilization.

1078 (2) The Department of Agriculture and Consumer Services and
1079 the Department of Environmental Protection shall jointly hold a
1080 public meeting to gather input on the design of the
1081 comprehensive study and to provide an opportunity for public
1082 comment before publishing the final report of the study.

1083 (3) The final report shall be submitted to the Governor,
1084 the President of the Senate, and the Speaker of the House of
1085 Representatives by December 1, 2015.

1086 (4) This section expires on December 1, 2015.

1087 Section 18. This act shall take effect July 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

BILL: CS/SB 1594

INTRODUCER: Environmental Preservation and Conservation Committee and Senators Bradley and Dean

SUBJECT: Vessel Safety

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1594 authorizes the relocation or removal of a vessel that interferes with another vessel or constitutes a navigational hazard. It authorizes the relocation or removal of a derelict vessel that constitutes a danger to property or persons. The bill requires owners to pay the costs, including those owed to third parties, for relocation or removal of a derelict vessel. It specifies the Florida Fish and Wildlife Commission (FWC), other law enforcement agencies, and officers, under certain circumstances, are not responsible for damages resulting from relocation or removal of a derelict vessel unless the damages occur due to gross negligence or willful misconduct. Lastly, the bill directs the Department of Legal Affairs to represent the FWC in actions to recover costs.

II. Present Situation:

Section 327.70, F.S., allows the Division of Law Enforcement of the FWC, and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law

enforcement officer as defined in s. 943.10, F.S.,¹ to order the removal of vessels deemed to be an interference or hazard to public safety.²

Section 327.44, F.S., prohibits anchoring or operating a vessel in a manner that unreasonably constitutes a navigational hazard or interferes with another vessel.

Section 376.15, F.S., authorizes the FWC, its officers and all law enforcement officers as specified in S. 327.70 to remove a derelict vessel and provides for the recovery of any costs incurred in the removal of a derelict vessel.

Section 823.11, F.S., authorizes the FWC, its officers, and all law enforcement officers as specified in s. 327.70 to remove any abandoned or derelict vessel when it threatens to obstruct navigation or constitutes a danger to the environment. It also allows for the recovery of the costs of removal from the owner of the vessel.

Florida law does not authorize law enforcement agencies to relocate vessels that create a navigational hazard or that interfere with other vessels.³ An unoccupied vessel may break free of its anchor or mooring and either remain adrift, come to rest in a location that is unsafe for other vessel traffic, or cause damage to other boats or maritime infrastructure. There is no specific authorization for law enforcement agencies to act by relocating and attempting to secure the vessel in a more appropriate location. Relocating the vessel would benefit the boat owner, the operators and owners of boats in the area, and the owners of maritime infrastructure.⁴

Section 823.11, F.S., defines “derelict vessel” to mean any vessel that is left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of this state;
- At any port in this state without the consent of the agency having jurisdiction over the port; or
- Docked or grounded at or beached upon the property of another without the consent of the property owner.

The statute provides that anyone who stores, leaves, or abandons a derelict vessel is subject to a fine of up to \$50,000 per day.⁵

¹ Section 943.10, F.S., defines other law enforcement officers as, “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.”

² Section 327.70, F.S.

³ FWC, *Senate Bill 1594 Agency Analysis*, 1 (Mar. 7, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁴ *Id.*

⁵ See ss. 376.15 and 376.16, F.S.

Due to liability concerns, costs, and the difficulty of removing a derelict vessels, law enforcement agencies and local governments will sometimes leave a derelict vessel where it is found until such time as the notification period has elapsed, investigation into ownership of the vessel has been completed, criminal charges (if any) have been disposed of, and transport to a disposal facility has been arranged. The FWC reports that by the time the physical removal of a derelict vessel begins, the vessel may have already sunk, leading to much greater costs for removal.⁶

According to the FWC, one of the concerns that may delay resolving problems with derelict vessels is the possibility of incurring liability for damages. In addition, the majority of derelict vessel removals in Florida are performed by local governments. The cost of removal is infrequently recovered from the owner, leaving local governments responsible for the costs of removal and potentially any liability for damages during the removal process.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 327.44, F.S., providing the FWC, officers of the commission, and any law enforcement agency or officer specified in s. 327.70, F.S., authority to relocate or remove a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel.

It provides that those authorized to act under this section are held harmless for damages to a derelict vessel as a result of relocating or removing the vessel unless the damage is the result of gross negligence or willful misconduct.

The bill provides for the recovery of costs, including those owed to a third party, incurred as a result of removing or relocating a vessel from the vessel owner and directs the Department of Legal Affairs to represent the FWC in actions to recover those costs.

Section 2 amends s. 376.15, F.S. providing the FWC, officers of the commission, and any law enforcement agency or officer specified in s. 327.70, F.S., authority to relocate a derelict vessel to its existing authority to remove such vessels. It holds anyone acting under the section harmless for any damages to the derelict vessel resulting from relocating or removing the vessel, unless it is the result of gross negligence or willful misconduct. It defines “Commission” as the Fish and Wildlife Conservation Commission.

Section 3 amends s. 823.11, F.S., providing the FWC, officers of the commission, and any law enforcement agency or officer specified in s. 327.70, F.S., authority to relocate a derelict vessel when it obstructs or threatens to obstruct navigation or constitutes a danger to the environment, property, or persons. It does not affect the FWC’s existing authority to remove such vessels.

The bill clarifies that “Commission” means the Fish and Wildlife Conservation Commission. It holds the FWC, other law enforcement agencies, and officers acting under the section harmless for all damages to the derelict vessel resulting from relocation or removal of the vessel, unless

⁶ *Supra* note 3, at 1.

⁷ *Supra* note 3, at 2.

the damages are the result of gross negligence or willful misconduct. It provides for the recovery of costs, including those owed to a third party, as a result of relocating a derelict vessel. Lastly, the bill removes references to “abandoned vessels,” narrowing the scope of the statute to derelict vessels.

Section 4 provides an effective date of July 1, 2014.

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:

Vessel owners will be liable for all costs associated with relocating or removing their derelict vessels, including costs owed to third parties.

Providing liability protection to those authorized to relocate or remove a derelict vessel will shift the costs of damages to the individual whose property is damaged.

The bill will benefit property owners and the boating community as a whole if the provisions of the bill lead to more timely removal of vessels, which may limit damage to marine infrastructure and other property.

C. Government Sector Impact:

Providing authority to relocate vessels and providing liability protection to those authorized to relocate vessels, except in the cases of gross negligence or willful misconduct, will encourage more timely removal or relocation of vessels. It is generally more expensive to remove or relocate a vessel that has sunk. In addition, any costs owed to third parties as a result of removing or relocating a derelict vessel will not be borne by any of the entities authorized to do so if the owner of the vessel can be located.

VI. Technical Deficiencies:

The definition of “derelict vessel” in s. 823.11, F.S., was renumbered in the bill; therefore, references to the definition of “derelict vessel” in ss. 376.15 and 705.101, F.S., are incorrect. In addition, because s. 376.15, F.S., is reordered in the bill, a cross reference in s. 376.11(4)(g), F.S., is incorrect, relating to a grant program to local governments for removing derelict vessels.

VII. Related Issues:

Section 327.44, F.S. concerns vessels that unreasonably or unnecessarily constitute a navigational hazard or that interfere with another vessel. The scope of the statute is broader than derelict vessels; however, section 1 of the bill limits liability for damages to derelict vessels only. This is narrower in scope than s. 327.44, F.S., and liability protection was intended to apply to all vessels in this statute.

In section 2 of the bill, which amends s. 376.15, F.S., the cost recovery provision relating to costs owed to a third party is absent. Since it exists in the other two sections of the bill, it would appear that it was meant to be in this section to make it consistent across all three sections. This would limit recovery of costs to only those incurred directly by agencies and officers.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.44, 376.15, and 823.11.

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 Environmental Preservation and Conservation on March 13, 2014:

The committee substitute:

- Limits the liability protection in the bill to damages to a derelict vessel not caused by gross negligence or willful misconduct;
- Adds “officer” to the entities covered by the liability protection in s. 823.11, F.S.;
- Clarifies “commission” to mean the Fish and Wildlife Conservation Commission; and
- Adds a section to the bill, amending s. 376.15, F.S., providing for the relocation or removal of any abandoned or derelict vessel and associated liability protection for such actions.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 327.44, Florida Statutes, is amended to
read:

327.44 Interference with navigation; relocation or removal;
recovery of costs.—

(1) No person shall anchor, operate, or permit to be
anchored, except in case of emergency, or operated a vessel or



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11 carry on any prohibited activity in a manner which shall
12 unreasonably or unnecessarily constitute a navigational hazard
13 or interfere with another vessel. Anchoring under bridges or in
14 or adjacent to heavily traveled channels shall constitute
15 interference if unreasonable under the prevailing circumstances.

16 (2) The commission, officers of the commission, and any law
17 enforcement agency or officer specified in s. 327.70 is
18 authorized and empowered to relocate, remove, or cause to be
19 relocated or removed a vessel that unreasonably or unnecessarily
20 constitutes a navigational hazard or interferes with another
21 vessel. The commission and any other law enforcement agency or
22 officer acting under this subsection to relocate, remove, or
23 cause to be relocated or removed a vessel that unreasonably or
24 unnecessarily constitutes a navigational hazard or interferes
25 with another vessel shall be held harmless for all damages to
26 the derelict vessel resulting from such relocation or removal,
27 unless the damage results from gross negligence or willful
28 misconduct.

29 (3) All costs, including costs owed to a third party,
30 incurred by the commission or other law enforcement agency in
31 the relocation or removal of a vessel that unreasonably or
32 unnecessarily constitutes a navigational hazard or interferes
33 with another vessel are recoverable against the vessel owner.
34 The Department of Legal Affairs shall represent the commission
35 in actions to recover such costs.

36 Section 2. Section 823.11, Florida Statutes, is amended to
37 read:

38 823.11 ~~Abandoned and~~ Derelict vessels; relocation or
39 removal; penalty.-



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40 (1) For the purposes of this section, the term:
41 (a) "Derelict vessel" means a any vessel, as defined in s.
42 327.02, that is left, stored, or abandoned:
43 1.(a) In a wrecked, junked, or substantially dismantled
44 condition upon any public waters of this state.
45 2.(b) At a any port in this state without the consent of
46 the agency having jurisdiction thereof.
47 3.(c) Docked, or grounded, at or beached upon the property
48 of another without the consent of the owner of the property.
49 (b) "Commission" means the Fish and Wildlife Conservation
50 Commission.
51 (2) It is unlawful for a any person, firm, or corporation
52 to store, leave, or abandon any derelict vessel as defined in
53 this section in this state.
54 (3)(a) The Fish and Wildlife Conservation commission, and
55 its officers of the commission, and any all law enforcement
56 agency or officer officers as specified in s. 327.70 is are
57 authorized and empowered to relocate, remove, or cause to be
58 relocated or removed a any abandoned or derelict vessel from
59 public waters if the derelict vessel in any instance when the
60 same obstructs or threatens to obstruct navigation or in any way
61 constitutes a danger to the environment, property, or persons.
62 The commission or any other law enforcement agency or officer
63 acting under this subsection to relocate, remove, or cause to be
64 relocated or removed a derelict vessel from public waters shall
65 be held harmless for all damages to the derelict vessel
66 resulting from such relocation or removal, unless the damage
67 results from gross negligence or willful misconduct.
68 (a) Removal of derelict vessels under pursuant to this



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69 subsection ~~section~~ may be funded by grants provided in ss.
70 206.606 and 376.15. The Fish and Wildlife Conservation
71 Commission shall ~~is directed to~~ implement a plan for the
72 procurement of any available federal disaster funds and ~~to~~ use
73 such funds for the removal of derelict vessels.

74 (b) All costs, including costs owed to a third party,
75 incurred by the commission or other law enforcement agency in
76 the relocation or removal of a ~~any abandoned or~~ derelict vessel
77 are as set out above shall be recoverable against the vessel
78 owner ~~thereof~~. The Department of Legal Affairs shall represent
79 the commission in ~~such~~ actions to recover such costs. As
80 provided in s. 705.103(4), a ~~any~~ person who neglects or refuses
81 to pay such costs may amount ~~is not entitled to~~ be issued a
82 certificate of registration for such vessel or for any other
83 vessel or motor vehicle until such ~~the~~ costs have been paid.

84 (4)(b) When a derelict vessel is docked, ~~or~~ grounded, ~~at~~ or
85 beached upon private property without the consent of the owner
86 of the property, the owner of the property may remove the vessel
87 at the vessel owner's expense 60 days after compliance with the
88 notice requirements specified in s. 328.17(5). The private
89 property owner may not hinder reasonable efforts by the vessel
90 owner or the vessel owner's agent to remove the vessel. ~~Any~~
91 Notice given pursuant to this subsection is ~~paragraph shall be~~
92 presumed to be delivered when it is deposited with the United
93 States Postal Service, certified, and properly addressed with
94 prepaid postage.

95 (5)(4) A ~~Any~~ person, firm, or corporation violating this
96 section ~~act~~ commits a misdemeanor of the first degree and shall
97 be punished as provided by law. A conviction under this section



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98 does ~~shall~~ not bar the assessment and collection of the civil
99 penalty provided in s. 376.16 for violation of s. 376.15. The
100 court having jurisdiction over the criminal offense,
101 notwithstanding any jurisdictional limitations on the amount in
102 controversy, may order the imposition of such civil penalty in
103 addition to any sentence imposed for the first criminal offense.

104 Section 3. Section 376.15, Florida Statutes, is amended to
105 read

106 376.15 Derelict vessels; relocation or removal from public
107 waters.-

108 (1) For the purposes of this section, "commission" means
109 the Fish and Wildlife Conservation Commission.

110 (2) ~~(1)~~ It is unlawful for any person, firm, or corporation
111 to store, leave, or abandon any derelict vessel as defined in s.
112 823.11(1) in this state.

113 (3) ~~(2)~~ (a) The ~~Fish and Wildlife Conservation~~ commission and
114 its officers and all law enforcement officers as specified in s.
115 327.70 are authorized and empowered to relocate or remove any
116 derelict vessel as defined in s. 823.11(1) from public waters.
117 All costs incurred by the commission or other law enforcement
118 agency in the relocation or removal of any abandoned or derelict
119 vessel shall be recoverable against the owner of the vessel. The
120 Department of Legal Affairs shall represent the commission in
121 such actions.

122 (b) The commission and any other law enforcement agency or
123 officer as specified in s. 327.70 acting under this section to
124 relocate, remove, or cause to be relocated or removed a derelict
125 vessel from public waters shall be held harmless for all damages
126 to the derelict vessel resulting from such relocation or



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127 removal, unless the damage results from gross negligence or
128 willful misconduct.

129 (c)~~(b)~~ The commission may establish a program to provide
130 grants to local governments for the removal of derelict vessels
131 from the public waters of the state. The program shall be funded
132 from the Florida Coastal Protection Trust Fund. Notwithstanding
133 the provisions in s. 216.181(11), funds available for grants may
134 only be authorized by appropriations acts of the Legislature.

135 (d)~~(e)~~ The commission shall adopt by rule procedures for
136 submitting a grant application and criteria for allocating
137 available funds. Such criteria shall include, but not be limited
138 to, the following:

139 1. The number of derelict vessels within the jurisdiction
140 of the applicant.

141 2. The threat posed by such vessels to public health or
142 safety, the environment, navigation, or the aesthetic condition
143 of the general vicinity.

144 3. The degree of commitment of the local government to
145 maintain waters free of abandoned and derelict vessels and to
146 seek legal action against those who abandon vessels in the
147 waters of the state.

148 (e)~~(d)~~ This section shall constitute the authority for such
149 removal but is not intended to be in contravention of any
150 applicable federal act.

151 Section 4. This act shall take effect July 1, 2014.

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

154 And the title is amended as follows:

155 Delete everything before the enacting clause



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156 and insert:

157 A bill to be entitled
158 An act relating to vessel safety; amending s. 327.44,
159 F.S.; authorizing the Fish and Wildlife Conservation
160 Commission and certain law enforcement agencies or
161 officers to relocate or remove vessels that
162 unreasonably or unnecessarily constitute a navigation
163 hazard or interfere with another vessel; exempting the
164 commission or a law enforcement agency or officer from
165 liability for damages to a derelict vessel under
166 certain circumstances caused by the relocation or
167 removal of such a vessel; providing that the
168 commission or a law enforcement agency may recover
169 from the vessel owner its costs for the relocation or
170 removal of such a vessel; requiring the Department of
171 Legal Affairs to represent the commission in actions
172 to recover such costs; amending s. 823.11, F.S.;
173 providing definitions; authorizing the commission and
174 certain law enforcement agencies and officers to
175 relocate or remove a derelict vessel from public
176 waters if such vessel poses a danger to property or
177 persons; exempting the commission or a law enforcement
178 agency or officer from liability for damages caused by
179 its relocation or removal of such a vessel under
180 certain circumstances; expanding costs recoverable by
181 the commission or a law enforcement agency against the
182 owner of a derelict vessel for the relocation or
183 removal of such vessel; abrogating the power of the
184 commission to remove certain abandoned vessels and



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185 recover its costs therefor; amending s. 376.15, F.S.;

186 providing a definition; authorizing relocation of

187 derelict vessels; exempting the commission or a law

188 enforcement agency of officer from liability for

189 damages caused by its relocation or removal of such a

190 vessel under certain circumstances; providing an

191 effective date.

By Senator Bradley

7-00850C-14

20141594__

1 A bill to be entitled
2 An act relating to vessel safety; amending s. 327.44,
3 F.S.; authorizing the Fish and Wildlife Conservation
4 Commission and certain law enforcement agencies or
5 officers to relocate or remove vessels that
6 unreasonably or unnecessarily constitute a navigation
7 hazard or interfere with another vessel; exempting the
8 commission or a law enforcement agency from liability
9 for damages caused by the relocation or removal of
10 such a vessel; providing that the commission or a law
11 enforcement agency may recover from the vessel owner
12 its costs for the relocation or removal of such a
13 vessel; requiring the Department of Legal Affairs to
14 represent the commission in actions to recover such
15 costs; amending s. 823.11, F.S.; authorizing the
16 commission and certain law enforcement agencies and
17 officers to relocate or remove a derelict vessel from
18 public waters if such vessel poses a danger to
19 property or persons; exempting the commission or a law
20 enforcement agency from liability for damages caused
21 by its relocation or removal of such a vessel;
22 expanding costs recoverable by the commission or a law
23 enforcement agency against the owner of a derelict
24 vessel for the relocation or removal of such vessel;
25 abrogating the power of the commission to remove
26 certain abandoned vessels and recover its costs
27 therefor; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

7-00850C-14

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Section 1. Section 327.44, Florida Statutes, is amended to read:

327.44 Interference with navigation; relocation or removal; recovery of costs.—

(1) No person shall anchor, operate, or permit to be anchored, except in case of emergency, or operated a vessel or carry on any prohibited activity in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or interfere with another vessel. Anchoring under bridges or in or adjacent to heavily traveled channels shall constitute interference if unreasonable under the prevailing circumstances.

(2) The commission, officers of the commission, and any law enforcement agency or officer specified in s. 327.70 are authorized and empowered to relocate, remove, or cause to be relocated or removed a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The commission and any other law enforcement agency or officer acting under this subsection to relocate, remove, or cause to be relocated or removed a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel shall be held harmless for all damages resulting from such relocation or removal.

(3) All costs, including costs owed to a third party, incurred by the commission or other law enforcement agency in the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel are recoverable against the vessel owner. The Department of Legal Affairs shall represent the commission

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59 in actions to recover such costs.

60 Section 2. Section 823.11, Florida Statutes, is amended to
61 read:

62 823.11 ~~Abandoned and~~ Derelict vessels; relocation and
63 removal; penalty.—

64 (1) As used in this section, the term “derelict vessel”
65 means a ~~any~~ vessel, as defined in s. 327.02, that is left,
66 stored, or abandoned:

67 (a) In a wrecked, junked, or substantially dismantled
68 condition upon any public waters of this state.

69 (b) At a ~~any~~ port in this state without the consent of the
70 agency having jurisdiction thereof.

71 (c) Docked, ~~or~~ grounded, ~~at~~ or beached upon the property of
72 another without the consent of the owner of the property.

73 (2) It is unlawful for a ~~any~~ person, firm, or corporation
74 to store, leave, or abandon any derelict vessel ~~as defined in~~
75 ~~this section~~ in this state.

76 (3) ~~(a)~~ The Fish and Wildlife Conservation Commission, and
77 ~~its~~ officers of the commission, and any ~~all~~ law enforcement
78 agency or officer ~~officers~~ as specified in s. 327.70 are
79 authorized and empowered to relocate, remove, or cause to be
80 relocated or removed ~~a~~ ~~any~~ ~~abandoned~~ ~~or~~ derelict vessel from
81 public waters if the derelict vessel ~~in any instance when the~~
82 ~~same~~ obstructs or threatens to obstruct navigation or in any way
83 constitutes a danger to the environment, property, or persons.
84 The commission or any other law enforcement agency acting under
85 this subsection to relocate, remove, or cause to be relocated or
86 removed a derelict vessel from public waters shall be held
87 harmless for all damages resulting from such relocation or

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88 removal.

89 (a) Removal of derelict vessels under ~~pursuant to~~ this
90 subsection ~~section~~ may be funded by grants provided in ss.
91 206.606 and 376.15. The Fish and Wildlife Conservation
92 Commission shall ~~is directed to~~ implement a plan for the
93 procurement of any available federal disaster funds and ~~to~~ use
94 such funds for the removal of derelict vessels.

95 (b) All costs, including costs owed to a third party,
96 incurred by the commission or other law enforcement agency in
97 the relocation or removal of a ~~any abandoned or~~ derelict vessel
98 are as set out above shall be recoverable against the vessel
99 owner ~~thereof~~. The Department of Legal Affairs shall represent
100 the commission in ~~such~~ actions to recover such costs. As
101 provided in s. 705.103(4), a ~~any~~ person who neglects or refuses
102 to pay such costs may amount ~~is not entitled to~~ be issued a
103 certificate of registration for such vessel or for any other
104 vessel or motor vehicle until such ~~the~~ costs have been paid.

105 (4) ~~(b)~~ When a derelict vessel is docked, or grounded, at or
106 beached upon private property without the consent of the owner
107 of the property, the owner of the property may remove the vessel
108 at the vessel owner's expense 60 days after compliance with the
109 notice requirements specified in s. 328.17(5). The private
110 property owner may not hinder reasonable efforts by the vessel
111 owner or the vessel owner's agent to remove the vessel. ~~Any~~
112 Notice given pursuant to this subsection is ~~paragraph shall be~~
113 presumed to be delivered when it is deposited with the United
114 States Postal Service, certified, and properly addressed with
115 prepaid postage.

116 (5) ~~(4)~~ A ~~Any~~ person, firm, or corporation violating this

7-00850C-14

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117 section ~~act~~ commits a misdemeanor of the first degree and shall
118 be punished as provided by law. A conviction under this section
119 does ~~shall~~ not bar the assessment and collection of the civil
120 penalty provided in s. 376.16 for violation of s. 376.15. The
121 court having jurisdiction over the criminal offense,
122 notwithstanding any jurisdictional limitations on the amount in
123 controversy, may order the imposition of such civil penalty in
124 addition to any sentence imposed for the first criminal offense.

125 Section 3. This act shall take effect July 1, 2014.

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:

BILL: SPB 7084

INTRODUCER: For consideration by Environmental Preservation and Conservation Committee

SUBJECT: Ratification of Rules of the Department of Environmental Protection

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino		EP Submitted as Committee Bill
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7084 ratifies Rules 62-772.300 and 62-772.400, Florida Administrative Code, relating to competitive bidding and contractor qualifications for the Petroleum Restoration Program.

II. Present Situation:

Petroleum Restoration Program

The Department of Environmental Protection (DEP) Division of Waste Management 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. Florida relies on groundwater for about 92 percent of its drinking water needs.²

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 clean up of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund (IPTF), which is funded by a tax on petroleum products imported or produced in Florida. The SUPER Act established the Early Detection Incentive Program (EDI), which provided site owners with the option of conducting the cleanup

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. 6, 2014).

themselves, and then receive reimbursement from the IPTF, or have the state conduct the cleanup in priority order.³

The Legislature created the Petroleum Liability and Insurance Restoration Program (PLIRP) in 1988 to allow eligible petroleum facilities to purchase \$1 million in pollution liability protection from a state contracted insurer. The PLIRP also provided \$1 million worth of site restoration coverage through reimbursement or state-funded cleanup.⁴

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 is now waived indefinitely for owners who are unable to pay for the closure of abandoned tanks.⁵

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup sites to the reimbursement program,⁶ which was funded by increasing the excise tax on petroleum and petroleum products.⁷ 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 IPTF. By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated \$551.5 million in outstanding reimbursement claims.⁸

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.⁹

The Petroleum Preapproval Program (program) was implemented by the Legislature in 1996. The program required state-funded clean up 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 corrective action principles in the cleanup criteria rule. The Petroleum Cleanup Participation Program (PCPP) was created for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties were required to cost share in the cleanup and prepare a limited scope assessment at their expense. The Preapproved Advanced Cleanup (PAC) program was created to allow sites to bypass the priority ranking list and receive funding in order to facilitate a public works project or property transaction. The PAC program requires applicants to cost share in the cleanup and to prepare limited scope assessments at their expense.¹⁰

³ Chapter 86-159, Laws of Fla.

⁴ Chapter 88-331, Laws of Fla.

⁵ Chapter 90-98, Laws of Fla.

⁶ The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.

⁷ Chapter 92-30, Laws of Fla.

⁸ Comm. on Environmental Preservation and Conservation, The Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

⁹ Chapter 95-2, Laws of Fla.

¹⁰ Chapter 96-277, ss. 18-19, Laws of Fla.

In 1999, the Legislature amended the Petroleum Preapproval Program to allow the DEP to fund certain source removal activities. The bill addressed new petroleum discharges that occurred at a site with existing contamination and were reported after December 31, 1998. The bill allowed a responsible party to enter into a Site Rehabilitation Agreement with the DEP and share in the cost and coordination of the cleanup, provided that the responsible party submit an application and a Limited Contamination Assessment Report to the DEP.¹¹

The Legislature substantially amended the Petroleum Preapproval 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 underground storage tank 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 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 10 sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding per facility and for activities that may be funded;
- Limited funding of \$1 million per fiscal year for Department of Transportation projects, and \$10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions as of June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges of petroleum that are eligible for restoration funding under the Petroleum Cleanup Participation Program for the state's cost share of site rehabilitation; and
- Extension of life of the Inland Protection Financing Corporation from 2011 to 2025, and require the corporation to issue notes and bonds, and to pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.¹²

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.¹³ Pursuant to s. 376.30711, F.S., the DEP is authorized to use competitive bid procedures or negotiated contracts for preapproving all costs and procedures for site-specific rehabilitation projects, but has not done so on a permanent basis.

The Legislature also required the DEP to adopt rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S., by December 31, 2013, otherwise funding for the program would be terminated.

On May 30, 2013, the DEP published a Notice of Rule Development in the Florida Administrative Register to create Rule 62-772, F.A.C., and amend Rule 62-771, F.A.C. The new

¹¹ Chapter 99-376, Laws of Fla.

¹² Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.

¹³ Chapter 2013-41, s. 29, Laws of Fla.

rules provide the procedures for the procurement of contractual services for clean up of petroleum contaminated sites and amend the procedures for establishing the priority scoring system for petroleum contaminated sites. The rules were adopted on December 27, 2013.

Legislative Ratification of Agency Rules

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature. The thresholds are:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after implementation of the rule.¹⁴

The DEP prepared a Statement of Estimated Regulatory (SERC) for Rules 62-772.300 and 62-772.400, F.A.C., and determined the rules triggered a statutory threshold requiring ratification. The SERC for Rule 62-772.300, F.A.C., estimates the cost for contractors to maintain business licensure, safety compliance, workers compensation insurance, comprehensive automobile insurance, and general and professional liability insurance is approximately \$15.4 million per year. The cost estimate provided in the SERC is based on 225 contractors. As of March 2014, the number of agency term contractors is 70, decreasing the cost associated with Rule 62-772.300, F.A.C., to approximately \$4.8 million per year.¹⁵

The SERC for Rule 62-772.400, F.A.C., estimates the cost incurred by contractors to assemble and submit bids, responses, replies, and quotes to the DEP as part of the competitive procurement procedures and a one percent transaction fee for MyFloridaMarketPlace, to be approximately \$41 million per year.¹⁶

The cost requirements outlined by the DEP are already incurred by contractors in order to conduct business according to ss. 376.3071, 376.30711, and 376.30713, F.S.; however, the existing requirements are being restated in rule, requiring ratification by the Legislature.

III. Effect of Proposed Changes:

Section 1 ratifies Rules 62-772.300 and 62-772.400, F.A.C., pursuant to s. 120.541(3), F.S. The bill specifies that upon becoming law, the enactment and the effective dates of the bill are to be noted in the Florida Administrative Code or the Florida Administrative Register, as appropriate.

¹⁴ Section 120.541(2)(a)1.-3., F.S.

¹⁵ DEP, Statement of Estimated Regulatory Cost, Rule 62-772.300, F.A.C. (on file with the Senate Environmental Preservation and Conservation Committee).

¹⁶ DEP, Statement of Estimated Regulatory Cost, Rule 62-772.400, F.A.C. (on file with the Senate Environmental Preservation and Conservation Committee).

The bill specifies that it serves no other purpose other than to ratify Rules 62-772.300 and 62-772.400, F.A.C.

Section 2 provides the act takes effect upon becoming 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 cost estimated by the DEP to implement the rules is approximately \$46 million per year. The only new cost associated with the ratification of the rules is the 1 percent MyFloridaMarketPlace transaction fee, which was not previously paid by contractors to participate in the petroleum preapproval program. The remaining costs (approximately \$45 million) are already incurred by contractors in order to conduct business and are not considered new costs.

C. Government Sector Impact:

The DEP estimates a fiscal impact of approximately \$80,000 per year for additional personnel in the contracts and procurement office.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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.

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

FOR CONSIDERATION By the Committee on Environmental Preservation and Conservation

592-02162-14

20147084__

1 A bill to be entitled
2 An act relating to ratification of rules of the
3 Department of Environmental Protection; ratifying
4 specified rules relating to qualifications and
5 performance reviews of contractors performing certain
6 site rehabilitation activities for petroleum
7 contaminated sites and procedures for procurement of
8 such contractors for the sole and exclusive purpose of
9 satisfying any condition on effectiveness pursuant to
10 s. 120.541(3), F.S., which requires ratification of
11 any rule meeting any specified thresholds for likely
12 adverse impact or increase in regulatory costs;
13 providing applicability; providing an effective date.
14

15 Be It Enacted by the Legislature of the State of Florida:
16

17 Section 1. (1) The following rules are ratified for the
18 sole and exclusive purpose of satisfying any condition on
19 effectiveness imposed under s. 120.541(3), Florida Statutes:

20 (a) Rule 62-772.300, Florida Administrative Code, entitled
21 "Contractor Qualifications and Performance Reviews," as filed
22 for adoption with the Department of State pursuant to the
23 certification package dated December 27, 2013.

24 (b) Rule 62-772.400, Florida Administrative Code, entitled
25 "Procedures for the Competitive Procurement of Contractors and
26 Assignment of Work," as filed for adoption with the Department
27 of State pursuant to the certification package dated December
28 27, 2013.

29 (2) This act serves no other purpose and may not be

592-02162-14

20147084__

30 codified in the Florida Statutes. After this act becomes law,
31 its enactment and effective dates shall be noted in the Florida
32 Administrative Code or the Florida Administrative Register, or
33 both, as appropriate. This act does not alter rulemaking
34 authority delegated by prior law, does not constitute
35 legislative preemption of or exception to any provision of law
36 governing adoption or enforcement of the rules cited, and is
37 intended to preserve the status of any cited rule as a rule
38 under chapter 120, Florida Statutes. This act does not cure any
39 rulemaking defect or preempt any challenge based on a lack of
40 authority or a violation of the legal requirements governing the
41 adoption of any rule cited.

42 Section 2. This act shall take effect on becoming law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

March 12, 2014

The Honorable Charlie Dean
Chair, Environmental Preservation & Conservation Committee
311 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Dean:

Thank you for scheduling SB 956 related to the Department of Environmental Protection to be heard at your next scheduled committee meeting.

Like many members I am experiencing scheduling problems. I respectfully request that my legislative assistant, James Kotas, be allowed to present my bill on my behalf.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Pepper Uchino, Staff Director
Kim Bonn, Committee Administrative Assistant

/jk

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

February 12, 2014

The Honorable Charlie Dean
Chair, Environmental Preservation & Conservation Committee
311 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Dean:

This letter is to request to have my bill *SB 956 relating Department of Environmental Protection* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Pepper Uchino, Staff Director
Kim Bonn, Committee Administrative Assistant

/jk

REPLY TO:

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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14
Meeting Date

Topic SB 1594 VESSEL SAFETY Bill Number SB 1594 (if applicable)

Name JACK DAUGHERTY Amendment Barcode (if applicable)

Job Title LT. COL. FWC ^{LAW} ENFORCEMENT

Address 620 S MERIDIAN ST. Phone 856 988 5600

TALLAHASSEE FL 32399 E-mail JACK.DAUGHERTY@MYFLHC.COM
City State Zip

Speaking: For Against Information

Representing FL FISH AND WILDLIFE

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.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14
Meeting Date

2

Topic DEP / Coastal Management Bill Number SB 956 (if applicable)

Name Mary Jean Yan Amendment Barcode 783244 (if applicable)

Job Title Legislative Director

Address 3324 Charleston Road Phone 850/519-7859

Tallahassee FL 32309 E-mail Maryjeanyan@comcast.net
City State Zip

Speaking: For Against Information

Representing Audubon 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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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14
Meeting Date

Topic Coastal Management Bill Number 956
(if applicable)

Name Jennifer Hatfield Amendment Barcode _____
(if applicable)

Job Title _____

Address 34 SE 7th Ave #9 Phone 941-348-3263
Street

Deeray Beach FL 33443 E-mail jen@jhatfieldandassociates.com
City State Zip

Speaking: For Against Information

Representing FL Swimming Pool Association

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14
Meeting Date

Topic Wave in Support Bill Number SB 956
(if applicable)

Name Andrew Ketchel Amendment Barcode _____
(if applicable)

Job Title DEP Deputy Legislative Affairs Director

Address 3900 Commonwealth Dr. Phone 245-2092

Street Tallahassee City Tallahassee State FL Zip _____
E-mail _____

Speaking: For Against Information

Representing DEP

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14
Meeting Date

Topic _____ Bill Number SB 956 (if applicable)

Name Drew Bartlett Amendment Barcode _____ (if applicable)

Job Title Deputy Secretary - DEP

Address 3900 Cambridgeville Dr. Phone _____

Tallahassee FL E-mail _____
Street City State Zip

Speaking: For Against Information

Representing DEP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14
Meeting Date

Topic _____ Bill Number SB 956 (if applicable)
Name Danielle Fowly Amendment Barcode _____ (if applicable)

Job Title Deputy Director - PWRM
Address 3400 Commonwealth Dr. Phone _____

Street Tallahassee State FL Zip _____
City _____ E-mail _____

Speaking: For Against Information

Representing DEP

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14 Meeting Date

Topic _____ Bill Number 7084 (if applicable)

Name Jeff Littlejohn Amendment Barcode _____ (if applicable)

Job Title Deputy Secretary - DEP

Address 3900 Commonwealth Dr.

Tallahassee FL State _____ Zip _____

City _____

Speaking: For Against Information

Representing DEP

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: EL 110

Case:

Type:

Caption: Senate Environmental Preservation and Conservation Committee

Judge:

Started: 3/13/2014 9:05:03 AM

Ends: 3/13/2014 9:35:12 AM

Length: 00:30:10

9:05:05 AM Call to order
9:07:40 AM Tab 3 SB 1594 Senator Bradley
9:08:54 AM Amendment 1 barcode 590972
9:09:11 AM Senator Simpson
9:12:08 AM Senator Soto
9:12:41 AM Speaker Jack Daugherty representing Florida Fish and Wildlife
9:13:54 AM Senator Altman
9:16:11 AM Roll call on SB 1594
9:16:18 AM Bill passes
9:16:38 AM Tab 2 SB 956 Senator Bean's legislative aide James Kotas
9:17:01 AM Amendment 1 barcode 783246
9:18:38 AM Senator Soto
9:19:25 AM speaker DEP Danielle Irwin
9:20:27 AM Senator Altman
9:20:51 AM Speaker Drew Bartlett DEP
9:22:17 AM Speaker Mary Yon Yon representing Audubon Florida
9:27:00 AM Roll call on SB 956
9:27:12 AM Bill passes
9:27:43 AM Tab 4 SPB 7084 Senator Dean
9:29:26 AM Speaker Jeff Littlejohn
9:30:39 AM Senator Soto
9:31:37 AM Senator Simpson
9:33:53 AM Roll call on SPB 7084
9:34:03 AM Bill passes
9:34:14 AM Adjournment