

By Representatives Murman, Crist, Littlefield, Ogles,
Bradley, Tamargo, Wallace, Byrd, Miller, Culp and Safley

1 A bill to be entitled
2 An act relating to the Environmental Protection
3 Commission of Hillsborough County;
4 consolidating, compiling, and codifying extant
5 laws pertaining to the commission; providing
6 legislative intent; conforming terminology and
7 improving clarity; conforming references to
8 air, water, and soil throughout the act;
9 clarifying the authority to regulate wetlands;
10 adding and amending definitions; adding
11 language relating to quorum, open meetings, and
12 open records; providing notice with respect to
13 the Hillsborough County Charter; enumerating
14 the powers and duties of the commission in a
15 single section including clarification of the
16 power to accept delegation of and exercise
17 authority received, to enter into contracts and
18 agreements, to sue and be sued, to establish an
19 annual budget, and to establish advisory and
20 other committees; providing for filing rules
21 with the Clerk of the Circuit Court;
22 enumerating the powers and duties of the
23 commission environmental director in a single
24 section, including the power to hire and fire
25 employees; providing that hearing officers may
26 make final decisions in certain administrative
27 appeals; providing that hearing officers may
28 affix monetary amounts for costs and damages;
29 clarifying which party must bear the burden of
30 proof; clarifying that procedural
31 determinations are to be made in accordance

1 with the Florida Rules of Civil Procedure;
2 enumerating enforcement procedures and remedies
3 in a single section; providing for the
4 applicability of ss. 376.82 and 376.308, F.S.;
5 clarifying the components of the performance
6 audit and the qualifications of those
7 performing the audits; providing for
8 recodification; providing a saving clause;
9 repealing chapters 84-446 and 87-495, Laws of
10 Florida, relating to the commission; repealing
11 chapters 94-405 and 96-513, Laws of Florida,
12 relating to performance audits of the
13 commission; providing that repeal does not
14 affect prior prosecutions or responsibilities
15 and actions of the commission; providing an
16 effective date.

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

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20 Section 1. It is the intent of the Legislature that
21 this act supersede chapters 84-446 and 87-495, Laws of
22 Florida, which provide for the Environmental Protection
23 Commission of Hillsborough County, and chapters 94-405 and
24 96-513, Laws of Florida, which provide for performance audits
25 of the commission, and that it be deemed a codification of
26 previously existing legislation relating to the Environmental
27 Protection Commission. Said codification is also a reviser,
28 deleting provisions which have expired, have had their effect,
29 have served their purpose, or have been impliedly repealed or
30 superseded; replacing incorrect cross references and
31 citations; correcting grammatical, typographical, and like

1 errors; removing inconsistencies, redundancies, and
2 unnecessary repetition; and improving clarity and facilitating
3 correct interpretation.

4 Section 2. Short title.--This act shall be known and
5 may be cited as the "Environmental Protection Act of
6 Hillsborough County."

7 Section 3. Declaration of legislative intent.--The
8 Legislature finds that the reasonable control and regulation
9 of activities which are causing or may reasonably be expected
10 to cause pollution or contamination of air, water, soil,
11 wetlands, and property, or cause excessive and unnecessary
12 noise, are necessary for the protection and preservation of
13 the public health, safety, and welfare. It is the intent of
14 the Legislature to establish an environmental protection
15 commission to provide and maintain standards which will ensure
16 the purity of all waters, soils, wetlands, and the air,
17 consistent with public health and public enjoyment thereof,
18 and freedom from contaminants or synergistic agents injurious
19 to human, plant, or animal life, the propagation and
20 protection of plant and animal life, and freedom from noise
21 which unreasonably interferes with the comfortable enjoyment
22 of life or property or the conduct of business.

23 Section 4. Definitions.--As used in this act and
24 rules, unless the context otherwise requires, the term:

25 (1) "Air contaminants" means a particulate matter, as
26 defined herein, gas, or odor, including, but not limited to,
27 smoke, charred paper, dust, soot, grime, carbon, or any other
28 particulate matter, or irritating, malodorous, or noxious
29 substances, fumes, or gases, or any combination thereof, but
30 shall not include uncombined water vapor.

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1 (2) "Air pollution" means the presence in the outdoor
2 atmosphere of one or more air contaminants in such quantities
3 and of such duration as to be, or which may potentially be,
4 injurious to human, plant, or animal life, or property, or
5 which unreasonably interfere with the comfortable enjoyment of
6 life or property or the conduct of business.

7 (3) "Board" means the Board of County Commissioners of
8 Hillsborough County.

9 (4) "Commission" means the Environmental Protection
10 Commission of Hillsborough County.

11 (5) "County" means Hillsborough County, Florida.

12 (6) "Discharge" means, but is not limited to, any
13 spilling, leaking, seeping, pouring, misapplying, emitting,
14 emptying, or dumping of any contaminant which occurs and which
15 affects lands or the waters of the county.

16 (7) "Dusts" means minute solid particles released into
17 the air by natural forces or by mechanical processes,
18 including, but not limited to, crushing, grinding, milling,
19 drilling, demolishing, shoveling, conveying, covering,
20 bagging, and sweeping.

21 (8) "Emission" means the discharge or release into the
22 atmosphere of one or more air contaminants.

23 (9) "Hearing officer" means a person or persons
24 appointed by the commission pursuant to section 16.

25 (10) "Mitigation" means activity designed and
26 technologically demonstrated as practical to restore or
27 replace the environmental functions provided by an area before
28 pollution occurred.

29 (11) "Noise pollution" means the presence of noise in
30 excessive or unnecessary amount, or of such duration, wave
31 frequency, or intensity as to be injurious to human or animal

1 life or property, or which unreasonably interferes with the
2 comfortable enjoyment of life or property or other conduct of
3 business.

4 (12) "Nuisance" means any activity which causes or
5 materially contributes to:

6 (a) The emission into the outdoor air of dust, fumes,
7 gas, mist, odor, smoke, vapor, or noise, or any combination
8 thereof; the discharge into any of the waters of the county of
9 any organic or inorganic matter or substances or chemical
10 compounds or thermal energy, or any effluent containing the
11 foregoing; or the placement, maintenance, or accumulation in
12 or upon any soils of the county of any material of a
13 deleterious nature of such character and in such quantity as
14 to be detectable by a considerable number of persons or the
15 public so as to interfere with such persons' health or safety
16 or public health or safety by causing severe annoyance or
17 discomfort, tending to lessen normal food and water intake,
18 producing irritation of the upper respiratory tract, producing
19 symptoms of nausea, or being offensive or objectionable to or
20 causing injury or damage to real property, personal property,
21 or human, animal, or plant life of any kind or which
22 interferes with the normal conduct of business or is
23 detrimental or harmful to the health, comfort, living
24 conditions, welfare, and safety of the inhabitants of the
25 county.

26 (b) Any violation of the provisions of this act which
27 endangers the public health, safety, and welfare.

28 (13) "Open burning" means any fire wherein the
29 products of combustion are emitted into the open air and are
30 not directed thereto through a stack or chimney.

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1 (14) "Particulate matter" means any material which, at
2 standard conditions, is emitted into the atmosphere in a
3 finely divided form as liquid or solid or both, but shall not
4 include uncombined water vapor.

5 (15) "Person" means any natural person, individual,
6 public or private corporation, firm, association, joint
7 venture, partnership, municipality, governmental agency,
8 political subdivision, public officer, or any other entity, or
9 any combination of such, jointly or severally.

10 (16) "Plant and animal life" or "plant or animal life"
11 means all terrestrial and aquatic plants, animals, wildlife,
12 birds, game, fish, and other aquatic life, whether wild or
13 domestic.

14 (17) "Rule" means a statement of general applicability
15 that implements, interprets, or prescribes law or policy or
16 describes the procedure or practice requirements of the
17 commission and includes any form which imposes any requirement
18 or solicits any information not specifically required by
19 general or special law or by existing rule adopted pursuant to
20 this act. The term does not include internal management
21 memoranda which do not affect either the private interests of
22 any person or any plan or procedure important to the public
23 which has no application outside the commission; legal
24 memoranda or opinions issued to the commission by the Attorney
25 General or legal opinions of the commission prior to their use
26 in connection with a commission action; and the preparation or
27 modification of the commission's budget.

28 (18) "Smoke" means the solid particles produced by
29 incomplete combustion of organic substances, including, but
30 not limited to, particles, fly ash, cinders, tarry matter,
31 soot, and carbon.

1 (19) "Water pollution" means any contamination,
2 destruction, or other alteration, or any activity which
3 contributes to such contamination, destruction, or other
4 alteration, of any physical, chemical, or biological feature
5 or property of any waters of the county, including change in
6 temperature, taste, color, turbidity, or odor of the waters;
7 or the discharge of any liquid, gaseous, solid, radioactive,
8 or other substance into any waters of the county as will
9 create, or may reasonably be expected to create, a nuisance or
10 render such waters harmful, detrimental, or injurious to
11 public health, safety, or welfare, or to domestic, commercial,
12 industrial, agricultural, recreational, or other legitimate
13 beneficial uses, or to plant or animal life.

14 (20) "Wetlands" means those areas defined by s.
15 373.019, Florida Statutes, included within the waters of the
16 county.

17 Section 5. Environmental Protection Commission;
18 creation; responsibilities.--

19 (1) The Environmental Protection Commission of
20 Hillsborough County is created for the benefit of the people
21 of Hillsborough County. The commission is the single local
22 environmental protection agency for Hillsborough County and
23 its municipalities as prescribed in section 9.10 of the
24 Hillsborough County Charter, approved by referendum in
25 September 1983, and has the duties and responsibilities
26 prescribed by this act.

27 (2) The governing body of the commission shall consist
28 of the members of the Hillsborough County Board of County
29 Commissioners. A majority of the governing body constitutes a
30 quorum, and its meetings shall be open to the public in
31 accordance with general law. The commission shall keep a

1 record of its proceedings and shall be the custodian of all
2 books, documents, and papers filed with it. The commission
3 shall make copies of its minutes and other records upon
4 request in accordance with general law except those records
5 which may be exempt pursuant to general law. The commission
6 has jurisdiction within the geographic boundaries of
7 Hillsborough County and its municipalities.

8 Section 6. Commission; duties and powers.--The duties
9 and powers of the commission are to:

10 (1) Adopt and amend rules reasonably necessary for the
11 implementation and enforcement, administration, and
12 interpretation of the provisions of this act and provide for
13 the effective and continuing control and regulation of air,
14 water, and noise pollution. No rule may be adopted or become
15 effective until after a public hearing has been held by the
16 commission pursuant to notice published in a newspaper of
17 general circulation in the county at least 10 days prior to
18 the hearing, and then until the rule has been filed with the
19 Clerk of the Circuit Court for Hillsborough County.

20 (2) Establish a fee schedule and charge fees as
21 necessary to recover costs for the services rendered pursuant
22 to this act and rules.

23 (3) Require permits as provided in this act.

24 (4) Make continuing studies and periodic reports and
25 recommendations to the county and municipal governments for
26 the improvement of air, water, soil, wetlands, and noise in
27 the county and work in cooperation with the Florida Department
28 of Environmental Protection and other appropriate agencies and
29 groups interested in environmental protection.

30 (5) Investigate pollution control and environmental
31 protection programs in other areas for the improvement of the

1 regulation, administration, and enforcement of this act and
2 rules; publicize the importance of adequate pollution
3 controls; hold public hearings, discussions, forums, and
4 institutes; and arrange programs for the presentation of
5 information by environmental experts.

6 (6) Issue subpoenas to compel the production of
7 documents and attendance of witnesses who may have information
8 relevant to any issue before the commission.

9 (7) Hold hearings and make findings of liability,
10 establish damages, issue citations and orders, and file suit
11 to enjoin violations, seek damages and penalties, recover
12 costs, and enforce its orders.

13 (8) Employ and terminate an environmental director to
14 exercise the powers listed in section 8 of this act and such
15 other professional, technical, and support personnel as the
16 business of the commission may require; appoint one or more
17 hearing officers, each of whom must be a member of The Florida
18 Bar; and establish compensation for all such employees and
19 appointees within the budgetary constraints of the commission.

20 (9) Undertake projects and programs, including an
21 artificial reef program, designed to control and prevent
22 pollution or restore or mitigate the effects of pollution.

23 (10) Contract and enter into agreements with
24 individuals, agencies, and other entities as necessary to
25 effect the purposes of this act.

26 (11) Sue and be sued in courts of competent
27 jurisdiction.

28 (12) Accept delegation of and exercise authority
29 received from other regulatory agencies and as allowed by law
30 so as to facilitate the effective and streamlined function of
31 environmental protection.

1 (13) Establish an annual budget, manage a pollution
2 recovery fund, undertake regularly scheduled performance
3 audits, and accept grants and donations in addition to the
4 appropriations provided herein.

5 (14) Create and prescribe the duties of an advisory
6 committee and such other committees as appropriate.

7 (15) Undertake any other activity necessary to
8 implement and enforce the provisions of this act.

9 Section 7. Environmental director.--The commission
10 shall appoint an environmental director who shall have at
11 least a bachelor's degree from an accredited university and
12 possess experience in such a field which shall, in the
13 judgment of the commission, qualify him or her to discharge
14 the duties imposed by this act with appropriate executive,
15 administrative, and technical skills to implement the powers
16 and duties provided herein, and who shall serve at the
17 pleasure of the governing body. Compensation shall be
18 determined by the commission and paid from the general funds
19 of the county.

20 Section 8. Environmental director; duties and
21 powers.--The duties and powers of the environmental director
22 include to:

23 (1) Serve as technical secretary to the commission,
24 handle correspondence and investigations, prepare reports and
25 data between meetings, and manage the business of the
26 commission.

27 (2) Implement and enforce the provisions of this act
28 and rules.

29 (3) Investigate complaints, study and monitor air,
30 water, and noise pollution conditions, and recommend
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- 1 institution of actions necessary to abate nuisances, including
2 prosecution for violations of this act and rules.
- 3 (4) Inspect property, facilities, equipment, and
4 processes to determine compliance with this act and rules.
- 5 (5) Intervene in other governmental proceedings for
6 the purpose of providing environmental impact statements,
7 recommendations, and advice in matters having or likely to
8 have an effect upon the environment of the county.
- 9 (6) Establish, operate, and maintain a continuous
10 monitoring network designed to provide accurate data and
11 information regarding compliance with this act and rules and
12 whether the level of air, water, and noise pollution is
13 increasing or decreasing throughout the county.
- 14 (7) Publish and disseminate information to the public
15 concerning air, water, and noise pollution.
- 16 (8) Cooperate and enter into agreements with
17 appropriate public agencies to improve coordination and to
18 further the goal of environmental protection.
- 19 (9) Enter upon any public or private property or
20 carrier during regular business hours to inspect and copy
21 records pertaining to pollution control and compliance with
22 this act and rules.
- 23 (10) Sample, test, inspect, and make analyses at any
24 time and place and to such an extent as necessary to determine
25 compliance with this act and rules.
- 26 (11) Require sampling, testing, and reporting.
- 27 (12) Issue citations and orders, institute
28 administrative proceedings for abatement, restoration, or
29 correction, establish liability and recover damages, and
30 negotiate and settle disputes.
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1 (13) Issue permits and authorize activities as
2 provided by this act and rules.

3 (14) Receive, review, and act upon information
4 submitted by applicants or other entities pursuant to
5 legislation, delegation, agreement, or contract.

6 (15) Hire and terminate employees to serve as agents
7 and representatives of the environmental director within the
8 budgetary constraints of the commission and as provided by the
9 Civil Service Act for Hillsborough County.

10 (16) Perform all other duties necessary to effect the
11 purpose of this act.

12 Section 9. Reporting of sources.--Any person engaging
13 in any activity or operation which may be a source of air,
14 water, or noise pollution shall, at the written request of the
15 environmental director, file reports on a form approved by the
16 commission containing information relating to the processes
17 and methods of manufacture, the composition and source of
18 airborne effluents, the rate and period of emissions or
19 discharges, and such other information as the commission may
20 prescribe.

21 Section 10. Permits may be required.--The commission
22 may adopt rules making it unlawful for any person to
23 construct, alter, expand, or operate any installation or plant
24 which, through its operation or maintenance, may emit,
25 discharge, or permit to escape pollutants or contaminants into
26 the air, water, soil, wetlands, or property without first
27 obtaining a permit from the environmental director as provided
28 by rule. Commencing construction or operation under such
29 permit to construct or operate shall be deemed acceptance of
30 all of the conditions so specified.

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1 Section 11. Sampling and testing.--Any person who may
2 be responsible for the emission or discharge of air, water, or
3 noise pollution from any source shall, upon written request of
4 the environmental director, provide such sampling and testing
5 facilities, exclusive of instruments and sensing devices, as
6 may be necessary for the proper determination of the nature,
7 extent, quantity, and degree of such pollution. The
8 environmental director may also require the person responsible
9 for the source of contaminants to conduct tests which will
10 show the contaminant emissions or discharges from the source
11 and to provide the results of said tests to the environmental
12 director. These tests shall be carried out under the
13 supervision of the environmental director and at the expense
14 of the person responsible for the source.

15 Section 12. Open burning prohibited.--No person shall
16 ignite or cause or permit to be ignited, suffer, allow, or
17 maintain any open burning except:

18 (1) Fires or campfires used only for noncommercial
19 preparation of food, recreational purposes, ceremonial
20 occasions, or personal warmth on cold days, as long as a
21 nuisance is not created.

22 (2) Any fire set or permitted by a public officer in
23 the performance of official duty, if such fire is for the
24 purpose of weed abatement, the prevention of a fire hazard,
25 including the disposal of dangerous materials where there is
26 no safe alternative method of disposal, or the instruction of
27 public employees in the methods of fighting fires, and which
28 fire is, in the opinion of such official, necessary.

29 (3) Fires otherwise permitted by rule of the
30 commission.

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1 Section 13. Violations; citations; orders of the
2 environmental director.--

3 (1) Whenever evidence has been obtained or received
4 establishing that a violation of this act or rules is
5 occurring or has occurred, the environmental director shall
6 issue a citation and serve the violator by personal service or
7 certified mail or by posting a copy in a conspicuous place on
8 the premises of the facility causing the violation. The
9 citation shall specify the provision of law, rule, permit, or
10 order of the commission or environmental director allegedly
11 violated and shall include a summary of the facts alleged to
12 constitute the violation. The citation shall, where
13 appropriate, include an order to cease the violation and
14 specify a reasonable time within which the violation shall be
15 corrected or stopped. If the violation is not stopped within
16 the time specified, or reasonable steps have not been taken to
17 correct the violation, the environmental director shall have
18 the power and authority to issue an order to cease the
19 activity or suspend operation of the facility causing the
20 violation until the violation has been corrected. The
21 environmental director may include with a citation an order
22 for restoration, provided that no order for restoration shall
23 become effective until after service and an administrative
24 hearing before the hearing officer, if requested.

25 (2) Failure to request an administrative hearing by
26 service of notice of appeal within 20 days after service of a
27 citation or order of the environmental director shall
28 constitute a waiver thereof, and any such unappealed citation
29 or order shall become an order of the commission by operation
30 of law.

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1 Section 14. Emergency order.--In the event a violation
2 of this act or rules creates an immediate health hazard or
3 threatens immediate serious damage to the public health, or
4 threatens or causes irreparable injury or damage to plant or
5 animal life or property, the environmental director shall have
6 the power and authority to order immediate cessation of the
7 operations causing such conditions. Any person receiving such
8 an order for cessation of operations shall immediately comply
9 with the requirements thereof. It shall be unlawful for any
10 person to fail or refuse to comply with an emergency order
11 issued and served under these provisions.

12 Section 15. Appeals from actions or decisions of
13 environmental director.--

14 (1) Any person aggrieved by an action or decision of
15 the environmental director may appeal by filing, within 20
16 days after the date of the action or decision, a written
17 notice of appeal which shall concisely identify the matter
18 contested and the reasons or grounds therefor. The notice of
19 appeal shall be filed with the chair of the commission. The
20 hearing officer shall set such appeal for hearing at the
21 earliest reasonable date and serve notice thereof upon the
22 appellant and the environmental director.

23 (2) The environmental director shall bear the burden
24 of proof when a citation or order is appealed. The appellant
25 shall bear the burden of proof when appealing a permit.

26 (3) Following hearing, except as may be required
27 through delegation, the hearing officer shall issue a
28 preliminary decision containing findings of fact and
29 conclusions of law and serve copies on the parties. Any party
30 may file exceptions to the preliminary decision within 10 days
31 from the date of service. If no exceptions are filed within

1 the period, the preliminary decision shall become the final
2 administrative decision. If any exceptions are filed, the
3 hearing officer shall consider each exception and render
4 within 15 days a written final decision on each exception, and
5 affirm, reverse, or modify the preliminary decision. In no
6 case shall the hearing officer take any action which conflicts
7 with or nullifies any of the provisions of this act or rules.
8 Either party aggrieved by the final administrative decision
9 may seek judicial review in accordance with the Administrative
10 Procedure Act.

11 Section 16. Hearing officer; duties and powers.--

12 (1) The commission shall designate one or more hearing
13 officers to hear appeals of actions or decisions of the
14 environmental director to determine factual disputes relating
15 to compliance with this act and rules. A hearing officer also
16 shall hear any matters relating to this act and rules which
17 the commission may delegate; however, all hearings for the
18 adoption of rules shall be before the governing body of the
19 commission. All hearings before a hearing officer shall be
20 public. Each hearing officer shall have the power to issue
21 notices of hearings, issue subpoenas requiring the attendance
22 of witnesses and the production of evidence, administer oaths
23 and take relevant testimony, and make appropriate procedural
24 determinations pursuant to the Florida Rules of Civil
25 Procedure. A hearing officer shall promptly issue to the
26 commission a final decision containing findings of fact and
27 conclusions of law regarding the disposition of matters heard
28 in accordance with this subsection.

29 (2) Each hearing officer shall give probative effect
30 to evidence which would be admissible in civil proceedings in
31 the courts of this state; but in receiving evidence, due

1 regard shall be given to the technical and highly complicated
2 subject matter which the commission and environmental director
3 must handle. The exclusionary rules of evidence shall not be
4 used to prevent the receipt of evidence having substantial
5 probative effect. Otherwise, effect shall be given to the
6 rules of evidence recognized by the law of this state.

7 (3) Each hearing officer shall be compensated from the
8 general revenue fund of the county for services rendered, and
9 such compensation shall be set by the commission.

10 Section 17. Nuisances prohibited.--No person shall
11 cause, let, permit, suffer, or allow the continuation of a
12 nuisance or commit any act which causes or may reasonably be
13 expected to cause a nuisance. Each day such violation exists
14 constitutes a separate offense.

15 Section 18. Prohibitions, penalties, intent.--

16 (1) It is unlawful for any person to:

17 (a) Cause or take such action as may reasonably be
18 expected to cause air, water, or noise pollution in the
19 county, or to otherwise violate any other provision of this
20 act or any rule.

21 (b) Violate or fail to comply with any order of the
22 environmental director or commission, including orders or
23 rules fixing standards for noise pollution or air, soil,
24 wetlands, or water quality.

25 (2) Violation is punishable by a civil penalty of not
26 more than \$5,000 for the first offense and of not more than
27 \$5,000 for each offense thereafter. Each day during any
28 portion of which such violation occurs constitutes a separate
29 offense. Failure of any offender to pay any fine imposed under
30 this section within a time period set by the court when
31 imposing said fine shall be evidence of an intent to violate

1 orders of the commission, and shall be sufficient cause for
2 the court to enter an order for the offender to cease from
3 doing business or carrying on operations within the county.

4 (3) In addition to the civil penalty in subsection
5 (2), the violation of any provision of this act and rules is a
6 misdemeanor within the meaning of s. 775.08, Florida Statutes,
7 and is punishable as provided by law.

8 (4) It is the legislative intent that the civil and
9 criminal penalties and fines imposed by the court be of such
10 amount as to ensure immediate and continued compliance with
11 this act and rules.

12 Section 19. Enforcement procedure; remedies.--

13 (1) Remedies for violation of this act include:

14 (a) Judicial remedies. The commission may initiate a
15 civil action in a court of competent jurisdiction to:

16 1. Establish liability and recover damages for any
17 injury to the air, waters, soils, wetlands, or property,
18 including plant and animal life, caused by any violation.

19 2. Obtain injunctive relief to enforce compliance with
20 this act or any rule, permit, or order; enjoin any violation;
21 and obtain restoration of the air, waters, soils, wetlands,
22 and property, including plant and animal life injured or
23 threatened by any violation.

24 3. Recover the reasonable costs incurred in tracing
25 the source of any pollution or damage resulting from a
26 violation, and the costs of restoring the air, waters, soils,
27 wetlands, and property, including plant and animal life
28 injured or threatened by the violation.

29 4. Impose and recover a civil penalty for each
30 violation in an amount of not more than \$5,000 per offense,
31 provided that the court may receive evidence in mitigation.

1 Each day during any portion of which such violation occurs
2 constitutes a separate offense.

3 (b) Administrative remedies. The environmental
4 director may institute administrative proceedings to:

5 1. Abate or correct a violation or obtain restoration
6 by service of a citation and order to cease or order for
7 restoration as provided in section 13.

8 2. Establish liability, recover reasonable costs
9 incurred in tracing a source of pollution, and recover damages
10 as provided in section 20 by written petition, setting forth
11 the provision of law, rule, permit, or order allegedly
12 violated and a summary of the facts alleged to constitute the
13 violation. The petition shall be served upon the alleged
14 violator by personal service or certified mail, or by posting
15 a copy of the violation in a conspicuous place on the premises
16 of the violation, and shall include a notice of the time and
17 place the request will be heard by the hearing officer. After
18 a hearing, the hearing officer may affix the monetary amount
19 for the costs and for the damages resulting from a violation,
20 and the violator may be ordered to pay same within a
21 prescribed time. The judgment upon the amount of damages may
22 be entered and enforced in any court having jurisdiction.
23 Parties to an administrative proceeding for damages shall be
24 afforded all rights of discovery permitted by the Florida
25 Rules of Civil Procedure, and appropriate orders may be issued
26 to effect the purposes of discovery.

27 (2) Nothing herein shall be construed as preventing
28 any other legal or administrative action in accordance with
29 law or this act.

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1 (3) Every order of the commission is legally
2 enforceable, binding, and judicially reviewable in accordance
3 with the Administrative Procedure Act.

4 (4) It shall not be a defense to or ground for
5 dismissal of these judicial remedies for damages and civil
6 penalties that the commission has failed to exhaust all
7 administrative remedies, has failed to serve a notice of
8 violation, or has failed to hold an administrative hearing
9 prior to the institution of a civil action.

10 (5) All the judicial and administrative remedies in
11 this act are independent and cumulative except that the
12 judicial and administrative remedies to recover damages are
13 alternative and mutually exclusive.

14 Section 20. Costs; damages; joint and several
15 liability.--

16 (1) Whoever causes air, water, or noise pollution or
17 damage to the animal or plant life of the county, or other
18 damage to said air, soil, wetlands, or waters, is liable for
19 such damages and the reasonable costs of the county or
20 commission incurred in tracing the source of the pollution or
21 damage and in restoring the air, soil, wetlands, or waters or
22 plant or animal communities to their former condition.

23 (2) Whenever two or more persons cause air, water, or
24 noise pollution in violation of this act or rules, or
25 otherwise violate this act or rules, so that the damage is
26 indivisible, each violator shall be jointly and severally
27 liable for such damage and for the reasonable costs incurred
28 in tracing, controlling, and abating the source and the
29 contaminants and in restoring the air, waters, soils,
30 wetlands, and property, including the animal, plant, and
31 aquatic life, to their former condition; however, if said

1 damage is divisible and may be attributed to a particular
2 violation or violations, each violator is liable only for the
3 damage and costs attributable to his or her violation.

4 (3) Nothing herein shall give the commission the right
5 to bring an action on behalf of any private person. Nothing
6 herein shall prohibit the commission from proceeding to obtain
7 a judicial determination of the liability and damages. No
8 finding, written report, or recommendation of the commission
9 made pursuant to this section shall be admissible in evidence
10 in any action.

11 Section 21. Section 376.82, Florida Statutes, relating
12 to eligibility criteria and liability protection within the
13 "Brownfields Redevelopment Act," and s. 376.308, Florida
14 Statutes, relating to liabilities and defenses of facilities
15 within the "Pollutant Discharge Prevention and Control Act,"
16 are applicable to compliance and enforcement activities of the
17 commission.

18 Section 22. Pollution recovery fund.--A pollution
19 recovery fund is created and shall be supervised and used by
20 the commission to restore polluted areas of the county, as
21 defined by the commission, to mitigate the effects of
22 pollution, or to enhance pollution control activities within
23 the county. The fund shall consist of all moneys, excluding
24 costs, recovered by the commission or environmental director
25 in any action against any person who has polluted or engaged
26 in activity in violation of this act or rules. Disbursements
27 shall be to first pay all amounts necessary to restore or
28 mitigate each polluted area which was subject to commission
29 action where restoration could not be obtained from the
30 violation. Any remaining funds shall then be used by the
31 commission to restore or mitigate areas which require more

1 moneys than the commission was able to obtain by court action
2 or otherwise, to restore or mitigate areas in which the
3 commission brought enforcement action but was unable to
4 recover any moneys, or to otherwise enhance pollution control
5 activities. Up to 10 percent of the average annual balance of
6 the fund may be disbursed for monitoring past restoration or
7 mitigation. Up to 50 percent of the annually collected funds
8 may be disbursed to the commission's artificial reef program.

9 Section 23. Appropriations.--The board shall annually
10 appropriate sufficient moneys to the commission to carry out
11 the purposes of this act.

12 Section 24. Performance audit required.--The
13 commission is subject to a performance audit every 4 years,
14 with the first such audit having been completed by April 30,
15 1997, as follows:

16 (1) The performance audit, which shall be conducted in
17 accordance with government auditing standards, as promulgated
18 by the United States Comptroller General, shall contain the
19 following components:

20 (a) An appraisal of management performance, including
21 the effectiveness of administration and the efficiency and
22 adequacy of the program the entity is authorized by law to
23 perform;

24 (b) An assessment of adherence to general and special
25 law and any rules promulgated thereunder;

26 (c) Recommendations for changes required in general or
27 special law which, if enacted, would enhance the efficiency
28 and effectiveness of the program;

29 (d) An examination and evaluation of alternative
30 methods of providing program services or products more
31 efficiently and effectively;

1 (e) The adequacy of operating controls and operating
2 procedures;

3 (f) An assessment of relations with employees and the
4 public generally;

5 (g) An assessment of financial impact, if any, of any
6 of the recommendations contained in the final audit report;

7 (h) An assessment of progress made on the most recent
8 previous performance audit recommendations, if any; and

9 (i) A copy of the response received pursuant to
10 subparagraph (3)(b)3.

11 (2) The audit may not be performed by any agency of
12 state or local government, with the exception of the Auditor
13 General of the State of Florida as provided by general law.
14 However, nothing in this act shall be construed to prohibit
15 other audits authorized by law.

16 (3)(a) In contracting for the audit, the governing
17 board of the commission shall utilize standard procedures for
18 any public body when contracting for professional services,
19 including, but not limited to:

20 1. Public notice, which must include a general
21 description of the audit and must indicate how interested
22 firms or individuals can apply for consideration, including a
23 requirement that any such applicant must provide a statement
24 of qualifications and performance data;

25 2. Adoption of procedures for the evaluation of
26 professional auditing services, including, but not limited to,
27 capabilities; adequacy of professional personnel; past record;
28 audit and other experience of the firm or responsible
29 individual, including a statement that such firm or individual
30 has met the required continuing professional education
31 requirements as prescribed by the Department of Business and

1 Professional Regulation, Board of Accountancy; results of its
2 most recent external quality control review; and such other
3 factors as may be determined by the commission to be
4 applicable to its particular requirements; and

5 3. Making a finding that the firm or individual to be
6 employed is fully qualified pursuant to law and the adopted
7 evaluation procedures.

8 (b) The contract shall be evidenced by a written
9 document embodying all provisions and conditions of the
10 procurement of such services, which shall include, but not be
11 limited to:

12 1. A provision that bills for fees or other
13 compensation for services or expenses be submitted in detail
14 with supporting documentation sufficient for a proper preaudit
15 and postaudit thereof;

16 2. A provision that bills for any travel and per diem
17 expenses be submitted in accordance with s. 112.061, Florida
18 Statutes;

19 3. A provision that, at the conclusion of the audit,
20 the entity conducting the audit shall discuss the audit with
21 the chair of the commission and submit to that person
22 preliminary audit findings, including relevant supporting
23 documentation, if requested. If the chair is not available for
24 receipt of the audit findings, with any adverse findings
25 clearly designated as such, then delivery thereof is presumed
26 to be made when it is delivered to the commission's executive
27 office. The chair shall submit to the entity conducting the
28 audit, within 60 days after receipt of the preliminary
29 findings, a written response concerning all such findings,
30 including corrective action to be taken to preclude a
31 recurrence of any adverse findings. Thereafter, a final audit

1 report shall be issued which shall include the chair's
2 response and any rebuttal thereto by the entity conducting the
3 audit;

4 4. A provision that those workpapers necessary to
5 support the conclusions in the final audit report shall be
6 retained by the entity conducting the audit for a period of 2
7 years following delivery of the final audit and shall be made
8 available to the commission upon a vote of the majority of the
9 governing board of the commission. The audit report, when
10 final, shall be retained by the commission pursuant to chapter
11 119, Florida Statutes; and

12 5. A provision that, upon completion of the audit,
13 sufficient copies shall be filed with the Office of the
14 Hillsborough County Legislative Delegation for distribution to
15 members of the delegation and that sufficient copies be
16 provided to the commission to meet anticipated public demand
17 for copies of such audit.

18 (c) In the event the audit is to be paid for by the
19 board as provided herein, the contract document may not be
20 executed without the advice and consent of the board, although
21 the board may not unreasonably withhold confirmation.

22 (4) Funds shall be appropriated by the board for
23 payment of costs incurred in connection with such audit. The
24 commission shall request the estimated funding required for
25 the audit in accordance with county budgeting procedures in a
26 manner that will ensure that funds will be appropriated for
27 that purpose during the fiscal year in which the audit is to
28 be completed.

29 Section 25. (1) In the event the board has ordered a
30 performance audit pursuant to general law by any appropriately
31 qualified entity not a part of county government which was

1 completed within 2 years prior to April 30 of the year the
2 performance audit is to be completed, or which will be
3 completed within 3 months after April 30 of the year the
4 performance audit is to be completed, and the audit contains
5 the mandatory components contained in section 24 and meets the
6 contract requirements contained in section 24(3)(b)3., 4., and
7 5., that audit may be used to fulfill the requirement for the
8 performance audit provided in section 24. In the event an
9 audit so ordered is to be submitted to fulfill the
10 requirements of the special act and will be completed after
11 the April 30 deadline, the commission shall notify the Office
12 of the Hillsborough County Legislative Delegation by April 30
13 of the year in which the audit is due that the audit will be
14 so delayed, the reason for the delay, and the date it will be
15 delivered, which date shall not be later than July 31 of the
16 year in which the audit is due pursuant to special act.

17 (2) One year from the date of the final audit report,
18 the chair of the commission shall submit to the Office of the
19 Hillsborough County Legislative Delegation a written statement
20 of the status of recommendations contained in the audit
21 report.

22 Section 26. Construction of act.--The provisions of
23 this act shall be liberally construed in order to effectively
24 carry out the purposes of this act in the interest of public
25 health, safety, and general welfare, provided the provisions
26 of this act are not intended and shall not be construed as
27 superseding or conflicting with any statutory provisions
28 relating to, or rules promulgated by, the Florida Department
29 of Health and the Florida Department of Environmental
30 Protection, but shall be construed as implementing and
31 assisting the enforcement thereof.

1 Section 27. Consolidation of governments.--In the
2 event of the consolidation of governments of the City of Tampa
3 and Hillsborough County, all powers, functions, duties,
4 responsibilities, obligations, and properties of the
5 commission shall be transferred to and vested in the
6 legislative branch of such consolidated government
7 automatically by operation of law.

8 Section 28. Recodification.--Prior to July 1, 2007,
9 and prior to July 1 every 10 years thereafter or as may
10 otherwise be required by the Florida Legislature or the
11 Hillsborough County Legislative Delegation, the Hillsborough
12 County Legislative Delegation shall review this act and all
13 acts that amend or modify this act for the purpose of
14 determining whether there is a need for consolidating,
15 compiling, revising, and recodifying such acts. If it is
16 determined there is such a need, the delegation may require
17 the commission to prepare such legislation as may be necessary
18 for that purpose.

19 Section 29. Severability.--It is declared to be the
20 legislative intent that, if any section, subsection, sentence,
21 clause, or provision of this act is held invalid, the
22 remainder of the act shall not be affected.

23 Section 30. Chapters 84-446, 87-495, 94-405, and
24 96-513, Laws of Florida, are repealed. Such repeal does not
25 affect the prosecution of any cause of action that accrued
26 before the effective date of the repeal, and does not affect
27 rules, actions and decisions, contracts, agreements,
28 obligations, and properties of the commission and the
29 environmental director existing prior to the effective date of
30 the repeal.

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1 Section 31. This act shall take effect upon becoming a
2 law.
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