

STORAGE NAME: h1535a.jud

DATE: March 31, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 1535 (PCB AG 99-01a)

RELATING TO: Wildfires

SPONSOR(S): Committee on Agriculture, Representative Putnam, and others

COMPANION BILL(S): CS/SB 780(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE YEAS 10 NAYS 0
- (2) JUDICIARY YEAS 8 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

In the summer of 1998, Florida suffered catastrophic wildfires which burned approximately 500,000 acres. Fire suppression costs were over \$130 million. More than 10,000 firefighters and emergency personnel from 47 states were recruited to provide fire suppression support.

This bill clarifies the authority of the Florida Department of Agriculture and Consumer Services' Division of Forestry (division) and charges the division with providing primary responsibility for prevention, detection, and suppression of wildfires wherever they may occur, on public or private land.

The bill creates the Florida Center for Wildfire and Forest Resources Management Training and authorizes an advisory committee to review program curriculum and course content.

The bill authorizes the Commissioner of Agriculture to declare severe drought emergencies. It reorganizes existing statutes relating to prescribed burning, creating s. 590.125, F.S., and provides legislative intent for the division to maximize the opportunities for prescribed burning conducted during its daytime and nighttime authorization process. Existing law allows the division to prescribe burn any area of wild land within the state reasonably determined to be in danger of wildfire; this bill provides a series of steps with which a landowner may appeal the division's prescribed burn action. In addition, when conducting a certified prescribed burn, a property owner or his or her agent is not liable for damage or injury caused by the fire or resulting smoke unless gross negligence is proven. When a lesser degree of negligence is proven, a cap of \$100,000 is imposed on the property owner or his or her agent.

The bill authorizes the division to issue warning citations, notices of violation, and to recover costs incurred for wildfire suppression, and undertake privatization alternatives for fire prevention activities.

State expenditures in enacting this legislation would be approximately \$848,335 in FY 1999-2000, \$688,376 in FY 2000-2001, and \$718,670 in FY 2001-2002 for the Florida Center for Wildfire and Forest Resources Management Training. Anticipated recurring revenues are \$59,484 for FY 1999-2000, \$62,284 for FY 2000-2001, and \$65,224 for FY 2001-2002.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Division of Forestry (division) of the Florida Department of Agriculture and Consumer Services (department) is directed, under s. 589.04, F.S., to cooperate with federal, state, and local governmental agencies, non-profit organizations, and other persons to promote and encourage forest fire protection.

Currently, the division has the primary responsibility for forest and wild land fire protection anywhere in the state and is charged with providing leadership and direction in the evaluation, coordination, and monitoring of wildfire management and protection.

The division provides training for fire suppression and conducts certified prescribed burning and land management training, as well as other courses, in various locations throughout the state.

Division employees and firefighting crews under the division's control and direction may enter upon any lands for the purpose of preventing and suppressing forest fires, and may "carry on all customary activities in the fighting of forest fires without incurring liability to any person."

Under section 590.025, F.S. (also referred to as the "Hawkins Bill" or the "Hawkins Act"), the division is authorized to prescribe burn any area of wild land within the state which is reasonably determined to be in danger of wildfire, and must act in accordance with the following procedures:

- describe to the local governmental entity the areas that will be prescribe burned,
- publish a prescribed burn notice in at least one newspaper no less than 10 days prior to burn, and
- prepare a notice to be sent to all landowners in areas designated as wildfire hazard areas (must include areas to be burned, dates, reasons for, and benefits of) to be included with the annual tax statement by the county tax collector.

B. EFFECT OF PROPOSED CHANGES:

A majority of the underlined language in this bill is existing statute language that has been moved or reorganized to facilitate comprehension and promote efficiency.

The bill clarifies that the division has the primary responsibility for prevention, detection, and suppression of wildfires wherever they may occur, on public or private land. It expands the division's leadership in allocation of resources with wildfire management and protection and directs the division to promote fuel reduction through the use of prescribed fire and other fuel-reduction measures (manual and mechanical clearing and the use of herbicides).

Definitions are provided for the following terms: division, fire management services, fuel reduction, wildfire, and wild land.

Under this bill, division employees and firefighting crews under the division's control and direction may enter upon any lands for the purpose of preventing and suppressing wildfires and investigating smoke complaints or open burning not in compliance with authorization. In the performance of duties, the bill specifies that division personnel may set counterfires, remove fences and other obstacles, dig trenches, cut firelines, use water from public and private sources, and carry on all other customary activities in the fighting of wildfires. Further, the division may reimburse public and private entities which the division engages to assist in wildfire suppression. The division is directed to undertake privatization alternatives for fire prevention activities, including construction of fire lines and conducting prescribed burns, and where appropriate, enter into agreements or contracts with the private sector to perform such activities

The bill allows the division to hire personnel who may be certified as forestry firefighters and creates the Florida Center for Wildfire and Forest Resources Management Training, where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory related to their respective disciplines. The center may assess fees for food, lodging, travel, course materials, and supplies in order to meet operational costs and may also establish cooperative efforts with federal, state, and local entities. Course curriculum will focus on fuel reduction, an incident management

system, prescribed burning certification, multiple-use land management, water quality, forest health, environmental education, and wildfire suppression training for structural firefighters. An advisory committee is created to review program curriculum, course content and scheduling. It is to be comprised of the following persons or their designees:

- the Director of the Florida Division of Forestry,
- the Assistant Director of the Florida Division of Forestry,
- the Director of the School of Forest Resources and Conservation of the University of Florida,
- the Director of the Division of Recreation and Parks of the Department of Environmental Protection,
- the Director of the Division of State Fire Marshal,
- the Director of the Florida Chapter of The Nature Conservancy,
- the Executive Vice President of the Florida Forestry Association,
- the President of the Florida Farm Bureau Federation,
- the Executive Director of the Florida Game and Fresh Water Fish Commission,
- the Executive Director of a Water Management District, as appointed by the Commissioner of Agriculture,
- the Supervisor of the National Forests in Florida,
- the President of the Florida Fire Chiefs' Association, and
- the Executive Director of the Tall Timbers Research Station.

The bill changes authorization to declare a severe drought emergency from the Governor to the Commissioner of Agriculture and provides that in order to end the declaration, the commissioner must file a revocation with the Department of State. It prohibits any person from setting fires within the designated area of a severe drought emergency, unless a written permit is obtained from the division.

In the past, railroad rights-of-way were one of the leading wildfire causes. This is no longer the case and rights-of-way fires are almost negligible. The bill removes the notification of local governments of railroad rights-of-way that are known fire hazards, but retains the stipulation that railroads must maintain rights-of-way that are known wildfire hazard areas.

The bill clarifies that it is unlawful for a person to throw, drop or dispose of a lighted substance which may or does cause a wildfire and replaces "campfires" with the more inclusive term "recreational fires" when prohibiting the leaving of an unextinguished fire.

Section 590.125, F.S. (Section 9 of the bill), is created as a central location for all existing statutes dealing with open burning authorized by the division. The term "extinguished" is defined as meaning "that no spreading flame for wild land burning or certified prescribed burning and no visible flame, smoke, or emissions for vegetative land-clearing debris burning exist."

A legislative intent section urges the division to maximize the opportunities for prescribed burning conducted during its daytime and nighttime authorization process.

Significant changes in the law occur in section 590.125 (3)(c), F.S., which states that a property owner or his or her agent who is conducting a certified prescribed burn is not liable for damage or injury caused by the fire or resulting smoke for burns conducted in accordance with the subsection unless "gross" negligence is proven. When a lesser degree of negligence is proven, a cap of \$100,000 is imposed on the property owner or his or her agent.

Section 590.125(4), F.S., formerly known as the "Hawkins Bill" or the "Hawkins Act," provides procedures for landowners objecting to the prescribed burning of his or her property. The first step is to apply to the director of the division for a review of alternatives. If the landowner's objection is not resolved, a panel may be convened. If the landowner's objection is still not resolved, the owner may request further consideration by the Commissioner of Agriculture.

The bill provides for the division to issue a warning citation if unpredicted atmospheric conditions occur which cause an authorized fire to escape the boundaries of the prescription area, if the fire does not leave the land owned by the authorization holder, and if no damage has occurred. The bill also provides for a notice of violation if the division determines that a person has violated chapter 589 or 590. This notice shall be filed with the division and a copy forwarded to the appropriate law enforcement entity for further action, if necessary. In addition, if a person permits any authorized fire to escape the boundaries or time limit of the authorization, cost and expenses (or \$150, whichever is greater) incurred by the division shall be paid within thirty days and costs incurred by an agency acting at the division's direction are recoverable by that agency.

The bill allows a certified fire or law enforcement instructor to have an incendiary device within his or her possession.

Outdated terms and language in the statutes are repealed. In addition, statutes that have been reorganized and moved, as described at the beginning of the "Effect of Proposed Changes" section have been repealed.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

In s. 590.125(4)(d), F.S., if a landowner objects to the prescribed burning of his or her property, the landowner may request a review of alternative methods. If not resolved, he or she may request a panel recommendation, and if there is still no resolution, the land owner may request further consideration by the Commissioner of Agriculture.

Judiciary Committee staff comments:

Chapter 120, F.S., applies to all proceedings in which the substantial interests of a party are determined by an agency. In the case of wildfire hazard reduction burning, the Division of Forestry is determining that a property owner's property is to be burned and may burn the property without the owner's consent. This decision affects the substantial interests of the landowner. A Chapter 120 notice of rights must be provided to the landowner and the landowner must be given the opportunity for a Section 120.57, F.S., hearing. Since property has not previously been burned without the owner's consent, rules determining the criteria for the required burning may need to be expanded. The Division of Administrative Hearings may begin to adjudicate compulsory burning issues between the Department and private landowners.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Judiciary Committee Staff Comments

Yes. Depending upon how the Division of Forestry approaches compulsory burning, property owners may request administrative hearings; since no hearings have previously been held in this situation, the workload of the Division of Administrative Hearings may increase.

(2) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced: **Not applicable.**

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Section 590.02(6)(c), F.S., authorizes the division's Florida Center for Wildfire and Forest Resources Management Training to assess appropriate fees for food, lodging, travel, course materials, and supplies in order to meet operational costs. Provision is made for free meals, room, and scholarships to individuals and entities in exchange for instructional assistance.

Judiciary Committee staff comments:

Landowners are not required to pay the cost of wildfire reduction burning performed by the Division of Forestry.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Judiciary Committee staff comments:

No. While a property owner could previously refuse to have his or her property prescribe burned, following notice and hearing the owner may now be required to permit the burning. The bill decreases the options of property owners.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Judiciary Committee staff comments:

Yes. The Division of Forestry is now able to determine the land management practices of property owners by requiring burning of the undercanopy of certain private property .

5. Family Empowerment: **Not applicable.**

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. STATUTE(S) AFFECTED:

Sections 590.01, 590.015, 590.02, 590.081, 590.082, 590.091, 590.10, 590.11, 590.125, 590.13, 590.14, 590.16, 590.25, 590.27, 590.28, 590.29, 590.33, 590.34, and 590.42, Florida Statutes.

The following sections are repealed: 590.025, 590.026, 590.03, 590.04, 590.05, 590.06, 590.07, 590.08, 590.09, 590.12, 590.30, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 590.01, F.S., to expand the authority of the division to have primary responsibility for prevention, detection, and suppression of wild fires wherever they occur.

Section 2: Creates s. 590.015, F.S., providing definitions.

Section 3: Amends s. 590.02, F.S., to:

- Expand the authority of the division to prevent, detect, suppress, and extinguish wildfires on both public and private lands and provide fire fighting crews under the control and direction of the division;
- Authorize the division to appoint center managers, forest area supervisors, forestry program administrators, forest protection bureau chief, forest protection assistant bureau chief, field operations bureau chief, deputy chiefs of field operations, district managers, senior forest rangers, firefighter rotorcraft pilots, and other employees;
- Authorize development of a training curriculum for forestry firefighters which includes basic volunteer structural fire training and at least 250 hours of wildfire training;
- Expand the division's authority to provide fire management services and emergency response assistance and to charge reasonable fees for such services;
- Expand the division's authority to allow its employees to enter any lands for the purpose of investigating smoke complaints or open burning not in compliance with authorization;
- Allow local agencies and other entities under contract or agreement with the division to assist in firefighting operations, such as setting counterfires, removing fences and cutting fire lines;
- Allow the use of water from public and private sources;
- Authorize the division to organize its operational units to most effectively prevent, detect, and suppress wildfires; and employ the necessary personnel to manage the activities in each unit;
- Authorize the division to construct lookout towers, roads, bridges, fire lines, and other facilities and purchase or fabricate tools, supplies, and equipment for firefighting;
- Authorize the division to reimburse public and private entities that it engages to assist in the suppression of wildfires for their personnel and equipment, including aircraft;
- Authorize the division to undertake privatization alternatives for fire prevention activities including construction of fire lines and conducting prescribed burns, and, where appropriate, enter into agreements or contracts with the private sector to perform such activities;
- Authorize the division to operate a newly created Florida Center for Wildfire and Forest Resources Management Training. The center is to serve as a place where fire and forest resource managers can obtain current knowledge, techniques, skills, and theory;
- Authorize the division to establish cooperative efforts with governmental entities, hire personnel and have contract arrangements with public and private bodies to assist in carrying out the training and operation of the center; requires the center to provide wildfire suppression training opportunities for rural fire departments, volunteer fire departments, and other local fire response units. The training center is directed to focus curriculum related to fuel reduction, an Incident Management System, prescribed burning certification, multiple-use land management, water quality, forest health, environmental education, and wildfire suppression training for structural firefighters;
- Authorize the assessment of fees for food, lodging, travel, course materials, and supplies in order to meet operational costs of the center. Provision is made for free meals, room, and scholarships to individuals and entities in exchange for instructional assistance; and
- Create an advisory panel to review program curriculum, course content, and scheduling.

Section 4: Amends s. 590.081, F.S., to authorize the Commissioner of Agriculture to declare a severe drought emergency to exist in a given area of the state, and to require a written permit for all open burning in those areas, which is to be obtained from the division or its designated agent.

Section 5: Amends s. 590.082, F.S., to require the Commissioner of Agriculture to advise the Governor when a severe drought emergency, as prescribed in s. 590.081, F.S., continues until wild lands have become so dry or parched as to create an extraordinary fire hazard that could endanger life or property on wild lands. The Governor may by proclamation declare an extraordinary fire hazard

to exist and file the proclamation with the Department of State. Upon such proclamation certain travel in any public or private wild land within any area described by the proclamation is prohibited, except on public roads or highways or on well-defined private roads. A person violating this provision commits a misdemeanor of the second degree.

Section 6: Amends s. 590.091, F.S., to delete a requirement that local governments must be notified that railroad rights-of-way are being designated as wildfire hazard areas by the division.

Section 7: Amends s. 590.10, F.S., to include disposal of lighted substances which could cause a wildfire, in addition to throwing and dropping such substances. Violation of this section constitutes a misdemeanor of the first degree.

Section 8: Amends s. 590.11, F.S., to make it unlawful to leave bonfires unextinguished.

Section 9: Creates s. 590.125, F.S., relating to open burning authorized by the division, to reorganize existing statutes; provides definitions; provides conditions under which burning of wild land and vegetative land-clearing may take place; establishes that a violation of this section is a misdemeanor of the second degree; describes the legislative intent to support prescribed burning; establishes conditions for certified prescribed burning; notes that prescribed burning is considered in the public interest and does not constitute a public or private nuisance when conducted under applicable statutes and rules and is considered to be a property right of the property owner.

The section specifies that property owners or their agents are not liable for damage or injury caused by fire or smoke when conducting a lawful certified prescribe burn unless gross negligence is proven. When a lesser degree of negligence is proven, a cap of \$100,000 is established. The section provides that violations of the section are a second degree misdemeanor; mandates that the division adopt rules for certifying and decertifying certified prescribed burn managers; authorizes and empowers the division to prescribe burn any wild land area of the state that is in danger of having an uncontrolled fire. Before an area is prescribe burned under this section, a notice of intent shall be sent out in the tax notice, and the notice shall be published in the newspaper 10 days in advance of the prescribed burn. Landowners who object to the prescribed burning of their property may apply to the director of the division for a review of alternatives. If the landowner's objection is not resolved, a panel may be convened. If there is still no resolution, the landowner may request further consideration by the Commissioner of Agriculture. The division is required to notify local governments of areas which are to be prescribe burned. The Department of Education is directed to include prescribed burning information in educational materials.

Section 10: Amends s. 590.13, F.S., to reflect more current language and to provide for the continuation of civil liabilities separate from criminal prosecution.

Section 11: Amends s. 590.14, F.S., to create a "warning citation" for situations where unpredicted atmospheric conditions occur which cause an authorized fire to escape from the boundaries of the authorized area, where the fire does not leave the land owned or controlled by the authorization holder, and where no damage has occurred; authorizes the division to issue notice of violation when division employees determine that a violation of chapter 589 or 590 has occurred. These notices of violation are to be provided to the appropriate law enforcement agency for further action, if necessary. This section provides that, in addition to other penalties, anyone who causes a wildfire, or allows an authorized fire to escape, or burn past the approved time is liable for costs incurred by the division in suppressing the fire, or \$150, whichever is greater, and shall be paid to the division within thirty days; provides that costs incurred by agencies acting at the direction of the division may be recoverable by that agency.

Section 12: Amends s. 590.16, F.S., relating to rewards, to make a technical correction.

Section 13: Amends s. 590.25, F.S., to broaden its scope to include wildfires rather than only forest fires in a penalty for obstructing the extinguishing of wildfires.

Section 14: Amends s. 590.27, F.S., relating to destroying fire control signs, to include those signs of private landowners in addition to those of the state.

Section 15: Amends s. 590.28, F.S., to clarify that an individual who intentionally sets a fire to wild land not owned or without consent of the owner is considered to have committed a third degree felony. Further clarification is made to provide that anyone carelessly setting fire to wild land not owned or without consent of the owner has committed a second degree misdemeanor.

Section 16: Amends s. 590.29, F.S., to allow certified fire instructors and law enforcement instructors to have an incendiary device in their possession with the intent to use it. Possession of an incendiary device is prima facie evidence of intent to use the device. Violation of this provision constitutes a third degree felony offense.

Section 17: Amends s. 590.33, F.S., relating to the administration of the Southeastern Interstate Forest Fire Protection Compact, to correct an organizational reference.

Section 18: Amends s. 590.34, F.S., relating to aid from other states under the Southeastern Interstate Forest Fire Protection Compact, to correct an organizational reference.

Section 19: Amends s. 590.42, F.S., relating to federally funded fire protection assistance programs, to correct an organizational reference.

Section 20: Repeals ss. 590.025, 590.026, 590.03, 590.04, 590.05, 590.06, 590.07, 590.08, 590.09, 590.12, and 590.30, Florida Statutes.

Section 21: Provides that this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

	<u>FY 99-00</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
OCO.			
1 4x4 utility vehicle	\$22,000		
1 15-passenger van	\$19,000		
3 std. OC. packages @ \$3,302	\$9,906		
A/V equipment and computers	\$109,000		
hardware/electronics for fire simulator room	\$60,000		
Total non-recurring effects (Gen. Rev.)	\$219,906		

2. Recurring Effects:

Positions			
1 FTE - Oper. & Man. Consultant II	\$36,233	\$49,760	\$51,253

	<u>FY 99-00</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
1 FTE - Curriculum Specialist	\$32,485	\$44,613	\$45,951
1 FTE - Administrative Assistant I	\$24,354	\$33,446	\$34,449
Total salaries & benefits (Gen. Rev.)	\$93,072	\$127,819	\$131,653

Expenses

3 std. expense pkg. - professional	\$25,833	\$25,833	\$25,833
3 uniform package & maintenance	\$2,040	\$2,040	\$2,040
est. training material & supplies, operational costs, instructor fees, meals, and lodging			
(Gen. Revenue)	\$448,000	\$470,400	\$493,920
(Incidental TF)	\$59,484	\$62,284	\$65,224
Total expenses (General Revenue)	\$475,873	\$498,273	\$521,793
Total expenses (Incidental TF)	\$59,484	\$62,284	\$65,224
Total recurring effects (General Revenue)	\$568,945	\$626,092	\$653,446
Total recurring effects (Incidental TF)	\$59,484	\$62,284	\$65,224
Total recurring effects - all funds	\$628,429	\$688,376	\$718,670
3. <u>Long Run Effects Other than Normal Growth</u>			
None anticipated.			
4. <u>Total Revenues and Expenditures:</u>			
Grand total of expenditures	\$848,335	\$688,376	\$718,670
Total anticipated recurring revenues	\$59,484	\$62,284	\$65,224

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:
No known impact on local governments.
2. Recurring Effects:
No known impact on local governments.
3. Long Run Effects Other Than Normal Growth:
No known impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
Judiciary Committee Staff Comments:
The private sector may lose undercanopy habitat necessary or convenient to the operations of the particular land holder if the Division of Forestry is permitted to burn the property owner's land.
2. Direct Private Sector Benefits:
Provides a \$100,000 liability cap for certified prescribe burners if not proven grossly negligent when conducting burns.
3. Effects on Competition, Private Enterprise and Employment Markets:
None.

D. FISCAL COMMENTS:

The expenditures and revenues listed in this section are to create, organize, staff, equip, and operate the Florida Center for Wildfire and Forest Resources Management Training. This center will be located in already existing infrastructure at the Withlacoochee Forest Center, which is managed by the Division of Forestry.

Revenues were estimated at approximately 9% of the total recurring costs of the program. The revenues will vary according to whether or not participants are from in-state or out-of-state, type of classes required or taken by various individuals, and whether instructors are Division of Forestry employees or persons brought in from another state to teach specialized courses.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

Judiciary Committee staff comments:

Change from present practice of the Division:

At the current time, the Division of Forestry may not prescribe burn wildland so long as the property owner does not object. Section 9 of the bill will permit the division to burn the property without the property owner's affirmative approval. A notice will be sent with the annual tax statement and followed by notice in a newspaper of general circulation in the area of the burn no less than 10 days before the burn. If no objection is received, the property is burned. If an absentee property owner does not receive a property tax notice, the owner may have no actual notice of the burning of the property.

Limitations upon Liability.

While subsection 520.125 (3)(c) begins, "A property owner or his agent is neither liable for damage or injury," the practical effect of the language "lesser degree of negligence" will make most landowners subject to \$100,000 of liability for damage or injury. The cap on that liability is removed if the actions of the property owner or agent during a certified prescribed burning procedure are found to constitute "gross negligence." An amendment is currently being prepared which will eliminate property owner liability unless the behavior is determined to constitute gross negligence.

Decisions which affect substantial interests

Section 120.57, F.S., applies to all proceedings in which the substantial interests of a party are determined by an agency. In the case where the Division has determined that property should be subject to wildfire hazard reduction burning, the Division of Forestry is affecting the substantial interests of the property owner. The bill might benefit from the addition of a clear point of entry into the administrative hearings process. An amendment is currently being prepared which will address this issue.

Limitations on access to public or private wild land

Once the Governor proclaims that an extraordinary fire hazard exists, Section 5 of the bill limits access to wild lands to the public at large to "public roads or highways or on well defined private roads." Restricted access to lands owned by the State of Florida in extremely hazardous conditions will most likely be sustained as a reasonable regulation of State lands, since the period of limited access is defined by the statute and the harm to be prevented -- inadvertent wildfires in inaccessible areas in a time of extraordinary fire hazard -- is significant. Since state law is applicable to federal land holdings only to the extent agreed upon by the federal authorities, this restriction on access will not necessarily apply in national forests located within Florida.

Section 5 criminalizes entry or travel in private wild land not performed by the owner, agents, or other persons regularly engaged in harvesting, processing, or moving forest products on other than public roads or well defined private roads. This section could criminalize the acts of family members driving to the homes of relatives, as well as criminalizing the act of inspection of the property for purposes of sale or lease. It is our understanding that an amendment is being prepared which will exempt travel with the express permission of the landowner.

Taking of Property without just compensation

In Department of Agriculture and Consumer Services v. Mid-Florida Growers, Inc., 521 So.2d 101 (Fla. 1988), the growers filed an inverse condemnation suit seeking full and just compensation, contending that the Department's destruction of citrus nursery stock which was not infected or diseased resulted in a taking for a public purpose. The Florida Supreme Court concluded that the destruction of healthy trees benefitted the entire citrus industry, and, in turn, Florida's economy, therefore conferring a public benefit rather than preventing a public harm. *Id* at 103. (The court noted that a regulation conferring a public benefit makes it more likely that there is a taking. Graham v. Estuary Properties, Inc. 399 So.2d 1374, 1381 (Fla. 1981))

The Supreme Court, citing Albrecht v. State, 444 So.2d 8 (Fla. 1984) found that while a statute or regulation may meet the standards necessary for exercise of the police power, it may still constitute a taking. In State Plant Board v. Smith, 110 So.2d 401 (Fla. 1959), the board ordered the destruction of uninfested trees in order to prevent the spread of a citrus disease known as a spreading decline. While "just compensation" does not compel the state to reimburse the owner for property destroyed so as to be valueless, incapable of any lawful use, and a source of public danger, "just compensation" was a clear requisite to the act of destroying healthy trees. *Id* at 406 - 407.

The Division recognizes that certain prescribed burns may result in the taking of property, and the Division currently pays claims when these takings occur. The Division indicates that except in extraordinary circumstances, the oral or written objections of property owners are accommodated and the Division turns its effort to areas where no objection to burning is found.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Five amendments to the bill were adopted:

Amendment 1 permits persons with the express consent of the landowners to enter an area which has been declared an extraordinary fire hazard.

Amendment 2 clarifies that a recreational fire may not be left unattended or unextinguished.

Amendment 3 removed the \$100,000 damage cap for negligence which was less than gross negligence.

Amendment 4 clarified that property owners subject to wildfire hazard reduction burning are entitled to an administrative hearing pursuant to Chapter 120, F.S.

Amendment 5 clarified that the Department of Education should incorporate prescribed burning into educational materials where feasible and appropriate.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE:

Prepared by:

Shari Z. Whittier

Staff Director:

Susan D. Reese

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Jo Ann Levin

Staff Director:

Don Rubottom