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CS/HB 7059, Engrossed 3

2008 Legislature

1 A bill to be entitled
2 An act relating to fish and wildlife; amending s. 253.03,
3 F.S.; requiring the Board of Trustees to provide for the
4 establishment of seagrass mitigation banks for specific
5 purposes; amending s. 253.034, F.S.; creating a monitoring
6 team for the purposes of reviewing management plans of
7 state-owned lands; providing review procedures; amending
8 s. 253.04, F.S.; relating to the protection of state lands;
9 providing definitions; providing that it is a civil
10 infraction to operate a vessel outside a marked channel in
11 a manner that causes seagrass scarring; providing
12 penalties; amending s. 259.037, F.S.; requiring state-
13 owned land managing agencies report additional information
14 to the Division of State Lands; amending s. 327.73, F.S.,
15 relating to noncriminal infractions; establishing civil
16 penalties for the destruction of seagrasses; amending ss.
17 370.021 and 370.061, F.S., conforming cross-references;
18 amending s. 372.73, F.S., relating to the disposition of
19 illegally taken wildlife; providing for the disposition of
20 such wildlife; providing for the documentation of
21 illegally taken wildlife; creating s. 372.731, F.S.,
22 relating to photographs of illegally taken wildlife;
23 providing for the admission of photographs as evidentiary
24 materials; providing conditions under which such
25 photographs shall be taken; amending ss. 372.9901,
26 372.9904, and 932.7055, F.S., conforming cross-references;
27 repealing ss. 327.803 and 372.107, F.S.; amends s.
28 253.002, F.S.; providing for a type two transfer of the

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29 Bureau of Invasive Plant Management to the Fish and
 30 Wildlife Conservation Commission; providing an effective
 31 date.

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Subsection (18) is added to section 253.03,
 36 Florida Statutes, to read:

37 253.03 Board of trustees to administer state lands; lands
 38 enumerated.--

39 (18) The Board of Trustees of the Internal Improvement
 40 Trust Fund may ensure the preservation and regeneration of
 41 seagrass, as defined in s. 253.04(4)(a)2., by providing for the
 42 establishment of seagrass mitigation banks, pursuant to s.
 43 373.4136, to offset the unavoidable impacts of projects where
 44 such banks meet the applicable public interest test of chapters
 45 253 and 258. This subsection shall not prohibit mitigation for
 46 impacts to seagrass or other habitats on sovereignty submerged
 47 lands for other types of projects, or for projects occurring on
 48 nonsovereign submerged lands, upon applicable approval of the
 49 board of trustees.

50 Section 2. Paragraph (c) is added to subsection (5) of
 51 section 253.034, Florida Statutes, to read:

52 253.034 State-owned lands; uses.--

53 (5) Each manager of conservation lands shall submit to the
 54 Division of State Lands a land management plan at least every 10
 55 years in a form and manner prescribed by rule by the board and
 56 in accordance with the provisions of s. 259.032. Each manager of

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57 | conservation lands shall also update a land management plan
58 | whenever the manager proposes to add new facilities or make
59 | substantive land use or management changes that were not
60 | addressed in the approved plan, or within 1 year of the addition
61 | of significant new lands. Each manager of nonconservation lands
62 | shall submit to the Division of State Lands a land use plan at
63 | least every 10 years in a form and manner prescribed by rule by
64 | the board. The division shall review each plan for compliance
65 | with the requirements of this subsection and the requirements of
66 | the rules established by the board pursuant to this section. All
67 | land use plans, whether for single-use or multiple-use
68 | properties, shall include an analysis of the property to
69 | determine if any significant natural or cultural resources are
70 | located on the property. Such resources include archaeological
71 | and historic sites, state and federally listed plant and animal
72 | species, and imperiled natural communities and unique natural
73 | features. If such resources occur on the property, the manager
74 | shall consult with the Division of State Lands and other
75 | appropriate agencies to develop management strategies to protect
76 | such resources. Land use plans shall also provide for the
77 | control of invasive nonnative plants and conservation of soil
78 | and water resources, including a description of how the manager
79 | plans to control and prevent soil erosion and soil or water
80 | contamination. Land use plans submitted by a manager shall
81 | include reference to appropriate statutory authority for such
82 | use or uses and shall conform to the appropriate policies and
83 | guidelines of the state land management plan. Plans for managed
84 | areas larger than 1,000 acres shall contain an analysis of the

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85 multiple-use potential of the property, which analysis shall
86 include the potential of the property to generate revenues to
87 enhance the management of the property. Additionally, the plan
88 shall contain an analysis of the potential use of private land
89 managers to facilitate the restoration or management of these
90 lands. In those cases where a newly acquired property has a
91 valid conservation plan that was developed by a soil and
92 conservation district, such plan shall be used to guide
93 management of the property until a formal land use plan is
94 completed.

95 (c) Beginning July 1, 2010, and every 3 years thereafter,
96 state-owned lands with an approved land management plan shall be
97 monitored for land management activities by a monitoring team.
98 The Division of State Lands shall coordinate the activities of
99 the monitoring team, which shall consist of three members. One
100 member shall be selected by the Executive Director of the Fish
101 and Wildlife Conservation Commission or a designee, and shall
102 have experience with applied habitat management. One member
103 shall be selected by the Secretary of the Department of
104 Environmental Protection or a designee, and shall have
105 experience with public recreation or use administration. One
106 member shall be selected by the Commissioner of Agriculture or a
107 designee, and shall have experience with applied land
108 management. The Division of State Lands shall provide the
109 monitoring team with the operational report prepared pursuant to
110 s. 259.037(6). The monitoring team shall prepare a monitoring
111 report that assesses the progress towards achieving short-term
112 and long-term land management goals, as identified in the

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113 operational report, and shall propose corrective actions for
 114 identified deficiencies in management activities. The monitoring
 115 report shall be submitted to the Acquisition and Restoration
 116 Council and the managing agency. The Acquisition and Restoration
 117 Council shall review the monitoring report and determine whether
 118 the deficiencies warrant a corrective action plan or revisions
 119 to the management plan. Significant and recurring deficiencies
 120 shall be brought to the Board of Trustees, which shall determine
 121 whether the corrective actions being proposed by the land
 122 manager and the Acquisition and Restoration Council sufficiently
 123 address the deficiencies. Corrective action plans shall be
 124 prepared and submitted in the same manner as land management
 125 plans.

126 Section 3. Subsection (4) of section 253.04, Florida
 127 Statutes, is amended to read:

128 253.04 Duty of board to protect, etc., state lands; state
 129 may join in any action brought.--

130 (4) Whenever any person or the agent of any person
 131 knowingly refuses to comply with or willfully violates any of
 132 the provisions of this chapter so that such person causes damage
 133 to the lands of the state or products thereof, including removal
 134 of those products, such violator is liable for such damage.
 135 Whenever two or more persons or their agents cause damage, and
 136 if such damage is indivisible, each violator is jointly and
 137 severally liable for such damage; however, if such damage is
 138 divisible and may be attributed to a particular violator or
 139 violators, each violator is liable only for that damage and
 140 subject to the fine attributable to his or her violation.

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141 (a) The duty to conserve and improve state-owned lands and
 142 the products thereof shall include the preservation and
 143 regeneration of seagrass, which is deemed essential to the
 144 oceans, gulfs, estuaries, and shorelines of the state. Any
 145 person operating a vessel outside a lawfully marked channel in a
 146 careless manner that causes seagrass scarring within an aquatic
 147 preserve established in ss. 258.39-258.399 with the exception of
 148 the Lake Jackson, Oklawaha River, Wekiva River, and Rainbow
 149 Springs aquatic preserves, commits a civil infraction,
 150 punishable as provided in s. 327.73. Each violation is a
 151 separate offense. As used in this subsection, the term:

152 1. "Seagrass scarring" means destruction of seagrass roots,
 153 shoots or stems that results in tracks on the substrate, caused
 154 by the operation of a motorized vessel in waters supporting
 155 seagrasses, commonly referred to as prop-scars or propeller
 156 scars.

157 2. "Seagrasses" means Cuban shoal grass (Halodule
 158 wrightii), turtle grass (Thalassia testudinum), manatee grass
 159 (Syringodium filiforme), star grass (Halophila engelmannii),
 160 paddle grass (Halophila decipiens), Johnsons seagrass (Halophila
 161 johnsonii) or widgeon grass (Ruppia maritima).

162 (b) Any violation of this subsection is a violation of the
 163 boating laws of this state and shall be charged on a uniform
 164 boating citation as provided in s. 327.74. Any person who
 165 refuses to post a bond or accept and sign a uniform boating
 166 citation commits a misdemeanor of the second degree, as provided
 167 in s. 327.73(3), punishable as provided in s. 775.082 or s.
 168 775.083.

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169 Section 4. Subsection (6) is added to section 259.037,
 170 Florida Statutes, to read:
 171 259.037 Land Management Uniform Accounting Council.--
 172 (6) Beginning July 1, 2010, and every 3 years thereafter,
 173 each reporting agency shall also submit an operational report
 174 for each management area along with an approved management plan.
 175 The report should assess the progress toward achieving short-
 176 term and long-term management goals of the approved management
 177 plan, including all land management activities, and identify any
 178 deficiencies in management and corrective actions to address
 179 identified deficiencies as appropriate. This report shall be
 180 submitted to the Division of State Lands for inclusion in its
 181 annual report required pursuant to s. 259.036.

182 Section 5. Paragraph (x) of subsection (1) of section
 183 327.73, Florida Statutes, is created to read:

184 327.73 Noncriminal infractions.--

185 (1) Violations of the following provisions of the vessel
 186 laws of this state are noncriminal infractions:

187 (x) Section 253.04(4)(a), relating to carelessly causing
 188 seagrass scarring, for which the civil penalty is:

189 1. Fifty dollars upon conviction for a first offense.

190 2. Two hundred and fifty dollars upon conviction for a
 191 second offense occurring within 12 months after a prior
 192 conviction.

193 3. Five hundred dollars upon conviction for a third
 194 offense occurring within 36 months after a prior conviction.

195 4. One thousand dollars upon conviction for a fourth or
 196 subsequent offense.

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197
 198 Any person cited for a violation of any such provision shall be
 199 deemed to be charged with a noncriminal infraction, shall be
 200 cited for such an infraction, and shall be cited to appear
 201 before the county court. The civil penalty for any such
 202 infraction is \$50, except as otherwise provided in this section.
 203 Any person who fails to appear or otherwise properly respond to
 204 a uniform boating citation shall, in addition to the charge
 205 relating to the violation of the boating laws of this state, be
 206 charged with the offense of failing to respond to such citation
 207 and, upon conviction, be guilty of a misdemeanor of the second
 208 degree, punishable as provided in s. 775.082 or s. 775.083. A
 209 written warning to this effect shall be provided at the time
 210 such uniform boating citation is issued.

211 Section 6. Paragraph (m) of subsection (2) of section
 212 370.021, Florida Statutes, is amended to read:

213 370.021 Administration; rules, publications, records;
 214 penalties; injunctions.--

215 (2) MAJOR VIOLATIONS.--In addition to the penalties
 216 provided in paragraphs (1)(a) and (b), the court shall assess
 217 additional penalties against any commercial harvester convicted
 218 of major violations as follows:

219 (m) For a violation involving the taking or harvesting of
 220 any marine life species, as those species are defined by rule of
 221 the commission, the harvest of which is prohibited, or the
 222 taking or harvesting of such a species out of season, or with an
 223 illegal gear or chemical, or any violation involving the
 224 possession of 25 or more individual specimens of marine life

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225 species, or any combination of violations in any 3-year period
 226 involving more than 70 such specimens in the aggregate, the
 227 suspension or revocation of the licenseholder's marine life
 228 endorsement as provided in paragraph (h).

229
 230 The penalty provisions of this subsection apply to commercial
 231 harvesters and wholesale and retail dealers as defined in s.
 232 370.07. Any other person who commits a major violation under
 233 this subsection commits a Level Three violation under s. 372.83.
 234 Notwithstanding the provisions of s. 948.01, no court may
 235 suspend, defer, or withhold adjudication of guilt or imposition
 236 of sentence for any major violation prescribed in this
 237 subsection. The proceeds from the penalties assessed pursuant to
 238 this subsection shall be deposited into the Marine Resources
 239 Conservation Trust Fund to be used for marine fisheries research
 240 ~~or into the commission's Federal Law Enforcement Trust Fund as~~
 241 ~~provided in s. 372.107, as applicable.~~

242 Section 7. Subsection (4), paragraph (c) of subsection (5)
 243 of section 370.061, Florida Statutes, are amended to read:

244 370.061 Confiscation, seizure, and forfeiture of property
 245 and products.--

246 (4) DESTRUCTION OR DISPOSITION OF PROPERTY.--All property
 247 forfeited under this section may be destroyed, used by the
 248 commission, disposed of by gift to charitable or state
 249 institutions, or sold, with the proceeds derived from the sale
 250 deposited into the Marine Resources Conservation Trust Fund to
 251 be used for law enforcement purposes, ~~or into the commission's~~

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252 ~~Federal Law Enforcement Trust Fund as provided in s. 372.107, as~~
 253 ~~applicable.~~

254 (5) CONFISCATION AND SALE OF PERISHABLE SALTWATER
 255 PRODUCTS; PROCEDURE.--

256 (c) In the event of acquittal, the proceeds of a sale or
 257 the bond or cash deposit required by this subsection shall be
 258 returned to the defendant. In the event of a conviction, the
 259 proceeds of a sale or the bond or cash deposit required by this
 260 subsection shall be deposited into the Marine Resources
 261 Conservation Trust Fund to be used for law enforcement purposes
 262 ~~or into the commission's Federal Law Enforcement Trust Fund as~~
 263 ~~provided in s. 372.107, as applicable.~~ Such deposit into the
 264 Marine Resources Conservation Trust Fund ~~or the Federal Law~~
 265 ~~Enforcement Trust Fund~~ shall constitute confiscation.

266 Section 8. Section 372.73, Florida Statutes, is amended to
 267 read:

268 372.73 Confiscation and disposition of illegally taken
 269 wildlife, freshwater fish, and saltwater fish ~~game~~.--

270 (1) All wildlife, ~~game and~~ freshwater fish, and saltwater
 271 fish seized under the authority of this chapter, any other
 272 chapter, or rules of the commission shall, upon conviction of
 273 the offender or sooner in accordance with a court order ~~if the~~
 274 ~~court so orders~~, be forfeited to the investigating law
 275 enforcement agency. The law enforcement agency may elect to
 276 retain the wildlife, freshwater fish, or saltwater fish for the
 277 agency's official use; transfer it to another unit of state or
 278 local government for official use; donate it to a charitable
 279 organization; sell it at public sale, pursuant to the provisions

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280 of s. 705.103; or destroy the wildlife, freshwater fish, or
 281 saltwater fish if none of the other options are practicable or
 282 if the wildlife, freshwater fish, or saltwater fish is
 283 unwholesome or otherwise not of appreciable value. All live
 284 wildlife, freshwater fish, and saltwater fish, the possession of
 285 which is unlawful, shall be properly documented as evidence as
 286 provided in s. 372.731, and returned to the habitat unharmed,
 287 except that nonnative species may be released only as allowed by
 288 rules of the commission. Any unclaimed wildlife, freshwater
 289 fish, or saltwater fish shall be retained by the investigating
 290 law enforcement agency and disposed of in accordance with the
 291 above provisions and given to some hospital or charitable
 292 institution and receipt therefor sent to the Fish and Wildlife
 293 Conservation Commission.

294 (2) All furs or hides or fur-bearing animals seized under
 295 the authority of this chapter shall, upon conviction of the
 296 offender, be forfeited and sent to the commission, which shall
 297 sell the same and deposit the proceeds of such sale to the
 298 credit of the State Game Trust Fund or into the commission's
 299 Federal Law Enforcement Trust Fund as provided in s. 372.107, as
 300 applicable. If any such hides or furs are seized and the
 301 offender is unknown, the court shall order such hides or furs
 302 sent to the Fish and Wildlife Conservation Commission, which
 303 shall sell such hides and furs.

304 (3) Except as otherwise provided, and deposit the proceeds
 305 of any such sale pursuant to this section shall be remitted to
 306 the Department of Revenue to be deposited to the credit of the
 307 State Game Trust Fund or the Marine Resources Conservation Trust

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308 ~~Fund into the commission's Federal Law Enforcement Trust Fund as~~
 309 ~~provided in s. 372.107, as applicable.~~

310 (4) Any state, municipal, or county law enforcement agency
 311 that enforces or assists the commission in enforcing the
 312 provisions of this chapter, which results in a forfeiture of
 313 property as provided in this section, shall be entitled to
 314 receive all or a share of any property based upon its
 315 participation in such enforcement.

316 Section 9. Section 372.731, Florida Statutes, is created
 317 to read:

318 372.731 Photographs of illegally taken wildlife,
 319 freshwater fish, and saltwater fish.--In any prosecution for a
 320 violation of chapter 370, this chapter, or rules of the
 321 commission, a photograph of the illegally taken wildlife,
 322 freshwater fish, or saltwater fish may be deemed competent
 323 evidence of such property and may be admissible in the
 324 prosecution to the same extent as if such wildlife, freshwater
 325 fish, or saltwater fish were introduced as evidence. Such
 326 photograph shall bear a written description of the wildlife,
 327 freshwater fish, or saltwater fish alleged to have been
 328 illegally taken, the name of the violator, the location where
 329 the alleged wrongful taking occurred, the name of the
 330 investigating law enforcement officer, the date the photograph
 331 was taken, and the name of the photographer. Such writing shall
 332 be made under oath by the investigating law enforcement officer,
 333 and the photograph shall be identified by the signature of the
 334 photographer.

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335 Section 10. Subsection (5) of section 372.9901, Florida
 336 Statutes, is amended to read:

337 372.9901 Seizure of illegal hunting devices; disposition;
 338 notice; forfeiture.--In order to protect the state's wildlife
 339 resources, any vehicle, vessel, animal, gun, light, or other
 340 hunting device used or attempted to be used in connection with,
 341 as an instrumentality of, or in aiding and abetting in the
 342 commission of an offense prohibited by s. 372.99 is subject to
 343 seizure and forfeiture. The provisions of chapter 932 do not
 344 apply to any seizure or forfeiture under this section. For
 345 purposes of this section, a conviction is any disposition other
 346 than acquittal or dismissal.

347 (5) All amounts received from the sale or other
 348 disposition of the property shall be paid into the State Game
 349 Trust Fund ~~or into the commission's Federal Law Enforcement~~
 350 ~~Trust Fund as provided in s. 372.107, as applicable.~~ If the
 351 property is not sold or converted, it shall be delivered to the
 352 executive director of the commission.

353 Section 11. Subsection (3) of section 372.9904, Florida
 354 Statutes, is amended to read:

355 372.9904 Seizure of illegal transportation devices;
 356 disposition; appraisal; forfeiture.--

357 (3) Upon conviction of the violator, the property, if
 358 owned by the person convicted, shall be forfeited to the state
 359 under the procedure set forth in ss. 370.061 and 370.07, when
 360 not inconsistent with this section. All amounts received from
 361 the sale or other disposition of the property shall be paid into
 362 the State Game Trust Fund ~~or into the commission's Federal Law~~

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363 ~~Enforcement Trust Fund as provided in s. 372.107, as applicable.~~
 364 If the property is not sold or converted, it shall be delivered
 365 to the director of the Fish and Wildlife Conservation
 366 Commission.

367 Section 12. Paragraph (e) of subsection (6) of section
 368 932.7055, Florida Statutes, is amended to read:

369 932.7055 Disposition of liens and forfeited property.--

370 (6) If the seizing agency is a state agency, all remaining
 371 proceeds shall be deposited into the General Revenue Fund.

372 However, if the seizing agency is:

373 (e) The Fish and Wildlife Conservation Commission, the
 374 proceeds accrued pursuant to the provisions of the Florida
 375 Contraband Forfeiture Act shall be deposited into the State Game
 376 Trust Fund as provided in ss. 372.73, 372.9901, and 372.9904,
 377 into the Marine Resources Conservation Trust Fund as provided in
 378 s. 370.061, ~~or into the commission's Federal Law Enforcement~~
 379 ~~Trust Fund as provided in s. 372.107, as applicable.~~

380 Section 13. Subsection (1) of section 253.002, Florida
 381 Statutes, is amended to read:

382 253.002 Department of Environmental Protection, water
 383 management districts, and Department of Agriculture and Consumer
 384 Services; duties with respect to state lands.--

385 (1) The Department of Environmental Protection shall
 386 perform all staff duties and functions related to the
 387 acquisition, administration, and disposition of state lands,
 388 title to which is or will be vested in the Board of Trustees of
 389 the Internal Improvement Trust Fund. However, upon the effective
 390 date of rules adopted pursuant to s. 373.427, a water management

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391 district created under s. 373.069 shall perform the staff duties
 392 and functions related to the review of any application for
 393 authorization to use board of trustees-owned submerged lands
 394 necessary for an activity regulated under part IV of chapter 373
 395 for which the water management district has permitting
 396 responsibility as set forth in an operating agreement adopted
 397 pursuant to s. 373.046(4); and the Department of Agriculture and
 398 Consumer Services shall perform the staff duties and functions
 399 related to the review of applications and compliance with
 400 conditions for use of board of trustees-owned submerged lands
 401 under authorizations or leases issued pursuant to ss. 253.67-
 402 253.75 and 597.010. Unless expressly prohibited by law, the
 403 board of trustees may delegate to the department any statutory
 404 duty or obligation relating to the acquisition, administration,
 405 or disposition of lands, title to which is or will be vested in
 406 the board of trustees. The board of trustees may also delegate
 407 to any water management district created under s. 373.069 the
 408 authority to take final agency action, without any action on
 409 behalf of the board, on applications for authorization to use
 410 board of trustees-owned submerged lands for any activity
 411 regulated under part IV of chapter 373 for which the water
 412 management district has permitting responsibility as set forth
 413 in an operating agreement adopted pursuant to s. 373.046(4).
 414 This water management district responsibility under this
 415 subsection shall be subject to the department's general
 416 supervisory authority pursuant to s. 373.026(7). The board of
 417 trustees may also delegate to the Department of Agriculture and
 418 Consumer Services the authority to take final agency action on

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419 | behalf of the board on applications to use board of trustees-
 420 | owned submerged lands for any activity for which that department
 421 | has responsibility pursuant to ss. 253.67-253.75 and 597.010.
 422 | However, the board of trustees shall retain the authority to
 423 | take final agency action on establishing any areas for leasing,
 424 | new leases, expanding existing lease areas, or changing the type
 425 | of lease activity in existing leases. Upon issuance of an
 426 | aquaculture lease or other real property transaction relating to
 427 | aquaculture, the Department of Agriculture and Consumer Services
 428 | must send a copy of the document and the accompanying survey to
 429 | the Department of Environmental Protection. Unless otherwise
 430 | expressly superseded, the board of trustees may also delegate to
 431 | the Fish and Wildlife Conservation Commission the authority to
 432 | take final agency action, without any action on behalf of the
 433 | board, on applications for authorization to use board of
 434 | trustees-owned submerged lands for any activity regulated under
 435 | ss. 369.20 and 369.22. The amendments to section 253.002,
 436 | Florida Statutes, in this act prevail over any conflicting
 437 | amendments to that section contained in SB 1294 and enacted
 438 | during the 2008 Regular Session.

439 | Section 14. (1) Except as otherwise provided in
 440 | subsection (2), all of the powers, duties, functions, records,
 441 | personnel, and property; unexpended balances of appropriations,
 442 | allocations, and other funds; administrative authority;
 443 | administrative rules; pending issues; and existing contracts of
 444 | the Bureau of Invasive Plant Management in the Department of
 445 | Environmental Protection are transferred by a type two transfer,

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446 pursuant to s. 20.06(2), Florida Statutes, to the Fish and
447 Wildlife Conservation Commission.

448 (2) The statutory powers, duties, and functions of the
449 Bureau of Invasive Plant Management in the Department of
450 Environmental Protection under ss. 369.25 and 369.251, Florida
451 Statutes, are transferred to the Department of Agriculture and
452 Consumer Services.

453 Section 15. Section 327.803, Florida Statutes, is
454 repealed.

455 Section 16. Section 372.107, Florida Statutes, is
456 repealed.

457 Section 17. This act shall take effect July 1, 2008.