The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL:	CS/CS/CS/SB 2104
INTRODUCER:	General Government Appropriations Committee, Community Affairs Committee, Environmental Preservation and Conservation Committee and Senator Constantine
SUBJECT:	Environmental Protection
DATE:	April 20, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	**Fav/CS**
2.	Molloy	Yeatman	CA	**Fav/CS**
3.	Pigott	DeLoach	GA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill amends provisions of Florida Statutes and the Laws of Florida that impact the Department of Environmental Protection (department, DEP) and other state agencies relating to land management, surplus lands, Florida Barge Canal lands, membership of the Acquisition and Restoration Council, information submitted to the Land Management Uniform Accounting Council, the expenditure of Florida Forever funds for capital projects, sovereignty submerged lands, administrative hearings relating to the use of submerged lands, federal delegation of air program pre-construction permitting activities, mangrove protection, and contamination notification. The bill also addresses inconsistencies in membership and appointments to basin boards, excludes certain air pollution violations from department action, and revises and streamlines certain administrative penalties. Waste facilities using gas capture measures may accept yard trash. Exceptions to the Florida Marketable Record Title Act (MRTA) are provided, and technical revisions are made. Section 23 of ch. 2008-150, Laws of Florida, is repealed. Finally, it creates the Recycling Business Assistance Center and requires inspection of waste-to-energy facilities.

The bill substantially amends the following sections of the Florida Statutes: 14.2015, 253.034, 253.111, 253.12, 253.7829, 253.783, 259.035, 259.037, 259.105, 373.0693, 373.427, 376.30702,

403.0876, 403.121, 403.7032, 403.707, 403.708, 403.9323, 403.9324, 403.9329, 403.9331, 712.03, and 712.04.

The bill repeals section 288.1185, Florida Statutes, and section 23 of chapter 2008-150, Laws of Florida.

II. Present Situation:

Florida Forever

Senate Bill (SB) 542 (ch. 2008-229, L.O.F.) revised land management plan content and reporting requirements. The revisions intended that management planning, actual management and management reporting be detailed, effective and consistent across agencies. Multiple state agencies, local governments and other entities are responsible for preparing management plans for the state's 3.5 million acres of conservation lands. Pursuant to sections 253.034(5) and 259.032(10), F.S., these plans must be updated every 10 years. For management areas greater than 160 acres, the managing agency is required to form an advisory group composed of multiple entities and must conduct at least one public hearing. The statutory revisions required that all plans be revised to specifically identify long and short-term goals, quantitative data, and implementation schedules. The existing statute contains unclear language regarding goals, objectives and measures. There is confusion and disagreement among the state agencies on what standards to apply to adhere to these specific requirements, which must be uniform across all agencies so they can be compiled for legislative reporting purposes to show the overall land management needs and accomplishments.

SB 542 created inconsistencies between statutory sections 253.111(2), F.S., which requires a county to determine with 40 days of receipt of the Board of Trustees of the Internal Improvement Trust Fund (Board) notice that it intends to surplus state lands, whether or not the county wishes to purchase lands being surplused, and sections 253.111 (3) and 253.034(6)(f)(1), F.S., which require that the property be offered to the county for 45 days.

SB 542 increased the number of members of the Acquisition and Restoration Council (ARC) from nine to eleven, but failed to adjust the number of votes required to add or subtract projects from the list (currently five votes are required). Additionally, a long-standing glitch in which ARC members are permitted to serve two terms of four years each but are limited to six years of total service was not corrected.

The July 1, 2008, effective date of SB 542 immediately instituted the new requirements for the Land Management Uniform Accounting Council, which requires more than 330 management plans amended and at least 268 advisory groups be formed to hold public hearings.

The intent of revisions to s. 259.105, F.S., is to allow public access to conservation lands as soon as possible after purchase. However, all capital expenditures of the following programs' distributions must be identified during the time of acquisition:

- 35 percent to the department for the acquisition of lands.
- 1.35 percent to the department to purchase inholdings and additions.

- 1.35 percent to the Division of Forestry at Department of Agriculture and Consumer Services to purchase state forest inholdings and addition.
- 1.50 percent to the Fish and Wildlife Conservation Commission to purchase inholdings and additions.
- 1.50 percent to the department for the Florida Greenway and Trails Program.

Sovereignty Submerged Lands

Section 253.12 (9), F.S., does not apply to sovereignty lands that were filled by a governmental entity for a public purpose or pursuant to proprietary authorization from the Board. Such activities were not contemplated to fall under the legislation and the current language is unclear. This means that people may sue to claim title over sovereignty lands that were filled subject to the above purpose or authorization.

Administrative Hearings

Two different time clocks exist for the filing of administrative hearing petitions related to an Environmental Resource Permit (ERP), which leads to confusion for both the public and the permitting agencies.

- If the project is linked to activities occurring on sovereignty submerged lands, the petition must be filed within 14 days of receipt of notice that a permit has been granted or denied.
- If the project is not linked to activities on sovereignty submerged lands, the petition must be filed within 21 days of receipt of notice that a permit has been granted or denied.

Air Program Preconstruction Permitting

Title V major source air operation permits issued by the department under federally delegated or approved programs are exempt from the 90-day default provision of s. 403.0876, F.S., but other federally delegated programs are not.

Federal programs have specific public involvement procedures, such as a 30 day public comment period and a requirement to hold a public meeting if requested. These procedural requirements can cause permit processing to exceed the existing 90-day requirements of s. 403.0876, F.S., and result in the department's technical default under the 90-day requirements of s. 403.0876, F.S. If default permits result, federal program approval can be lost, requiring applicants to obtain separate state and federal permits.

Examples of permits that would be covered are the major air construction permits that involve analysis under the Prevention of Significant Deterioration, the Non-Attainment New Source Review, or the case-by-case Maximum Achievable Control Technology requirements. Before issuance, these permits must include a 30-day public comment period and an opportunity for a public meeting, if such meeting is requested during the comment period.

Environmental Litigation Reform Act

Section 403.121, F.S., currently allows the department and parties alleged to be in violation of Florida's environmental laws to resolve less significant environmental violations through an administrative proceeding, instead of in state court. Except for violations involving hazardous wastes, asbestos, or underground injection, the department must proceed administratively in all cases in which it seeks administrative penalties not in excess of $10,000 per assessment, as calculated under s. 403.121(3), (4), (5), (6), (7), and (8), F.S. Through this administrative enforcement process, an administrative law judge may impose up to $10,000 in administrative penalties in addition to requiring actions to correct the violation and bring the regulated entity back into compliance. Section 403.121, F.S., establishes a specific penalty schedule for violations that may be pursued administratively and allows alleged violators a hearing before the Division of Administrative Hearings to dispute the department's allegations, to mediate the dispute, or to opt out of the administrative process entirely. If an alleged violator opts out, the department must file in state court to pursue enforcement. The department bears the burden of proving by a preponderance of the evidence that the alleged violator caused the violation. In any administrative proceeding brought by the department, the prevailing party recovers all costs. In cases that ultimately require a hearing by the Division of Administrative Hearing, the administrative law judge has final order authority. The alleged violator is entitled to an award of attorney's fees (up to $15,000) if the administrative law judge determines that the department's initiation of the enforcement action was not substantially justified.

Marketable Record Title Act

Due to the vast holdings of each of the Water Management Districts (districts), as well as other state entities, it is a burden for the districts to expend significant resources in monitoring the status of title of all district land holdings, filing notices to protect district interests, and defending its interest in land holdings where they may be challenged based on the Florida Marketable Record Title Act (MRTA). The MRTA provides that one who holds title to land based on a root of title at least 30 years old, takes free and clear ownership of title and extinguishes all matters arising prior to the root of the title that are not referenced in the root of title. It is possible that someone can file a wild deed on a piece of government or district owned property and take ownership if the government agency or district does not file a notice to protect the agency or district's interest.

Section 712.03, F.S., identifies those interests in property that are not extinguished by marketable record title. Currently only sovereignty submerged lands and covenants recorded under the provisions of chapter 376 or chapter 403 expressly exempt governmental interests from extinguishment. Another provision of s. 712.03 F.S., exempts easements from extinguishment, when any parts of the easement are in use. The easement exemption implicates governmental entities who acquire conservation easements and land protection agreements. The "easement in use" exemption was originally intended to apply to visible use on the ground, by which an owner would have notice that someone else might be using the land. Conservation easements and land protection agreements, however, are not necessarily visible on the ground, so uncertainty surrounds whether the "easement in use" exception protects those interests from extinguishment by the MRTA.

The Cross Florida Barge Canal

Section 253.7829, F.S., governs disposition of former Cross Florida Barge Canal lands. The Cross Florida Barge Canal was a canal project to connect the Gulf of Mexico and the Atlantic Ocean across Florida for shipping traffic. The project was cancelled mainly due to environmental concerns and converted into a greenway. Today, the 110-mile Marjorie Harris Carr Cross Florida Greenway serves as the state's premier greenway. There are several parcels needed to complete areas of the greenway that can be accomplished using land swaps with owners; however there are statutory barriers to these deals.

Contamination Notification

Section 376.30702, F.S., provides that whenever contamination has been discovered beyond the property boundaries of the site being cleaned up according to risk-based corrective action (RBCA) provisions, the person responsible for site rehabilitation must give notice to the department's Division of Waste Management. Also, the person responsible for site rehabilitation must mail a copy of such notice to the appropriate the DEP district office and county health department. The DEP must send a copy of the notice to record owners of any real property, with exceptions, other than the contaminated property owner. Currently, not all property owners within the contaminated area need to be notified.

Water Management District Basin Boards

Pursuant to s. 373.0693, F.S., any area within a water management district may be designated by the Governing Board as a subdistrict or basin.[1] Each designated basin shall be controlled by a basin board whose members shall be appointed by the Governor. Ten basin boards exist in Florida: two in the South Florida Water Management District and eight in the Southwest Florida Water Management District. Basin Board members are unpaid citizen volunteers who are appointed to three-year terms. Each Basin Board includes one person from each county within the basin, and there must be at least three members on each board. Each Basin Board has at least one member from the Governing Board that serves as the board's nonvoting chair ex-officio, except to break a tie. The Basin Boards meet every other month. Once appointed, basin board members may serve beyond the end their term until a successor is named. The Oklawaha River Basin Advisory Council was created by the legislature under the governing board of the St. Johns Water Management District but has not met in ten years.

Yard Trash Prohibition in Class I Landfills

There are 53 active Class I landfills and 41 Class III landfills in Florida. Section 408.708, F.S., prohibits yard waste from being placed in a landfill. According to the statute, yard trash may only be accepted at a Class I facility where separate yard trash composting facilities are provided. Most local governments now arrange for a separate collection of yard trash from residences and businesses. The yard trash is either taken to a processing facility to be turned into mulch, compost, or fuel or it is disposed of in a Class III landfill or construction and demolition

[1] Provisions in s. 373.0693, F.S., designate several specific basin boards. In addition, this section contains a provision that prohibits the creation of a subdistrict or basin board in the St. Johns River Water Management District unless created by the Legislature.

(C&D) debris disposal facility. Due to the rising cost of gas and Florida's stalled economy there is an increased interest in innovative ways to reduce waste, stimulate the economy and create clean energy sources.

According to the DEP, there are approximately nine landfills that are fitted to collect the gas and use it for a beneficial purpose. These landfills cannot accept yard trash for disposal. There are also about 45 landfills that actively collect landfill gas but do not beneficially use the gas. Some of those landfills could install a system to beneficially use the gas, and then also accept yard trash. The department has reported, that proponents of this section suggest that allowing these landfills to accept yard trash will increase the amount of landfill gas generated, resulting in greater efficiency and more alternative fuel produced. However, the bill would also reduce the amount of yard trash that is available for mulch or compost.

Permitting of Class I Landfills

In 2008, the Legislature passed s. 23 of 2008-150, L.O.F. The law prohibits the department from issuing a permit for a Class I landfill that is located on or adjacent to a Class III landfill that was permitted on or before January 1, 2006 and that is located in the Southern Water Use Caution Area.

Recycling Business Assistance Center (RBAC)

The Energy, Climate Change, and Economic Security Act of 2008 established a new 75 percent recycling goal to be achieved statewide by the year 2020. The act directs the department to develop a program designed to achieve this goal and submit it to the Legislature for approval by January 1, 2010. In 2006, over 35 million tons of total municipal solid waste, including commercial waste and construction and demolition debris, were collected. Of this, only 24 percent of the total tonnage was recycled. This represents the lowest percentage of recycled materials in Florida since 1991.[2] Currently, the DEP administers three recycling market development programs through grants and loans. The Office of Tourism, Trade and Economic Development (OTTED) does not have any recycling programs within its purview.

Inspection of Waste-to-Energy Facilities

Additionally, s. 403.707, F.S., gives the department permitting authority for solid waste management facilities, including those operating as waste-to-energy facilities. According to the department, all solid waste districts except the South East District conduct unannounced solid waste inspections at waste-to-energy facilities, unless they are investigating complaints and need to coordinate with the facility. The department's Air Division also inspects waste-to-energy facilities; however, they usually combine their inspections with required stack tests. In order to coordinate those inspections and tests, the facilities usually know the date of the inspection and test. The department has no statutory requirement to conduct unannounced inspections of waste-to-energy facilities for either solid waste or air permits.

[2] The Department of Environmental Protection. Retrieved 6 Apr. 2009. <http://www.dep.state.fl.us/waste/categories/recycling/default.htm>.

Mangrove Protection

In 1995, the Legislature created the Mangrove Trimming and Preservation Act. The 1995 act substantially revised the regulation of mangroves by providing for:

- Delegation of mangrove regulation to local governments.
- Exemptions from permitting requirements for certain trimming activities.
- General permits for trimming in extended mangrove fringe areas.
- Mitigation and restoration policies.
- Regulation of professional mangrove trimmers.

In 1996, the act was amended to strengthen the requirements for trimming mangroves and to correct some weaknesses in the 1995 law. No mangroves may be cut lower than six feet under either an exemption or general permit. Mangroves over 16 feet must be cut in stages, removing no more than 25 percent annually.

The 1996 changes provided additional specificity regarding the lengths of shoreline that were statutorily exempted from requiring a trimming permit. The clarified exemption for mangrove trimming without a permit applies to property with a shoreline of 150 feet or less. Property owners with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent along the shoreline. Additionally, for trimming activities occurring on property developed for multi-family residential use, the 65 percent shoreline trimming limitation must be equitably distributed so that each owner's riparian view is similarly impacted.

The 1996 changes also provided for an expansion of the list of those who qualify as professional mangrove trimmers. However, landscape architects could not trim mangroves until standards were set by the Board of Landscape Architecture. Mitigation and enforcement provisions were also revised and provided that efforts for violations have five years to achieve a canopy equivalent to the area destroyed. Violations can be resolved by purchasing credits from a mitigation bank at a two-to-one ratio.

Section 403.121, F.S., provides for judicial and administrative remedies for violations of ch. 403, F.S. Section 403.121(3)(d), F.S., provides that, for mangrove trimming or alteration violations, the department shall assess a penalty of $5,000 per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit.[3] The preparation or signing of a permit application by a person currently licensed under ch. 471, F.S., to practice as a professional engineer does not make that person an agent of the owner or tenant.

Currently, there appears to be some inconsistencies within the act regarding where and how trimming is allowed. The only trimming method in the act is "top trimming," which is the least desirable method for mangrove productivity.

[3] In practice, the DEP adopted rules that allow first-time violators to enter into consent agreements between the Department and themselves to avoid the $5,000 per violation penalty or from having to go to circuit court. Thus, the DEP currently assesses penalties on a sliding scale based on severity of the violation and willingness of the violator to work with the DEP to make the environment whole.

Certain persons are authorized by the act to automatically be considered as professional mangrove trimmers. Those persons are:

- Certified arborists, certified by the International Society of Arboriculture.
- Professional wetland scientists, certified by the Society of Wetland Scientists.
- Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals.
- Certified ecologists, certified by the Ecological Society of America.
- Landscape Architects currently licensed in Florida under part II of ch. 481, F.S.
- Persons who have conducted mangrove trimming as part of their business and are able to demonstrate a sufficient level of competence to either the department or a delegated local government.
- Persons who have been qualified by a delegated local government through a mangrove-trimming qualification program as provided in s. 403.9329(7)(a), F.S.

Those automatically designated as professional mangrove trimmers under s. 403.9329(1)(a)-(e), F.S., are not required to have prior mangrove trimming expertise. The department has no ability to revoke the professional mangrove trimmer status from those professionals who repeatedly violate the act.

III. Effect of Proposed Changes:

Section 1 amends s. 253.034(5)(a) and (c), F.S., to apply the beginning date of July 1, 2009, to all newly developed or updated management plans and reporting requirements in order to provide department staff more time to accomplish necessary interagency planning and rulemaking to implement both short-term and long-term management goals in an orderly and consistent way across the participating agencies. It also makes technical changes.

Section 2 amends s. 253.111(2), F.S., to remove the timing inconsistency between s. 253.111(2), F.S., and ss. 253.111(3) and 253.034(6)(f)(1), F.S. The 40-day limitation for a board of county commissioners to pass a resolution determining whether it wants to buy surplus lands offered by the Board is revised to 45 days. It also makes technical changes.

Section 3 amends s. 253.7829(4), F.S., to clarify who is offered and can accept rights of refusal for former Cross Florida Barge Canal lands. It also provides a second right of refusal for private landowners who wish to exchange their lands with potential surplus lands, and adds conforming changes.

Section 4 amends s. 253.783(2), F.S., to clarify the additional powers and duties of the department when disposing of surplus lands and payments to counties. The bill authorizes the department to extend the second right of refusal to the current owner of adjacent lands affected by acquired surplus lands. Third right of refusal may be extended to the original owner from whom the state acquired the land.

Section 5 amends s. 259.035, F.S., to include language that would require an affirmative vote of six members of ARC to change a project boundary or add a project to the acquisition list, and to

clarify that ARC members may serve two four-year terms. It also makes technical and conforming changes.

Section 6 amends s. 259.037(3)(b), F.S., to add a beginning date of July 1, 2009, for the management plan and reporting requirements. It amends s. 259.037(6), F.S., to add a beginning date of July 1, 2010, for each agency to submit its five-year operational report requirements for management areas to which a new or updated plan was approved by the Board. The date allows department staff necessary to accomplish interagency planning and rulemaking to implement both short-term and long-term management goals in an orderly and consistent way across the participating agencies. It also makes technical changes.

Section 7 amends s. 259.105(3), F.S., to allow capital expenditures for rapid public access for projects which have been identified in the management prospectus or during the development of the initial management plan or update of the plan. Such capital expenditures apply to:

- The department for land acquisition.
- The department for the purchase of inholdings and additions.
- The Division of Forestry at the Department of Agriculture and Consumer Services for the purchase of state forest inholdings and additions.
- The Fish and Wildlife Conservation Commission to purchase inholdings and additions.
- The department to purchase greenways and trails.

It amends s. 259.105(13), F.S., to clarify that a majority vote of the ARC members is needed to place a proposed project on the Florida Forever acquisition list. It also provides technical changes.

Section 8 amends s. 253.12(10), F.S., to clarify that the provisions of subsection (9) of this section do not operate to divest state ownership of sovereignty lands filled by a governmental entity prior to July 1, 1975, for a public purpose or pursuant to proprietary authorization from the Board. It also provides technical changes.

Section 9 repeals s. 288.1185, F.S., relating to the Recycling Markets Advisory Committee.

Section 10 amends s. 373.0693, F.S., to limit the time which a member of a basin board may serve beyond the end of their term. Members may not serve more than 180 days past the end of their terms even if no successor has been appointed. It removes the ex-officio designation for those governing board members serving on basin boards as chairpersons, and reduces the number of members serving on the Manasota Basin Board from six to four. Lastly, it repeals a provision that created that Oklawaha River Basin Advisory Council.

Section 11 amends s. 373.427(2)(c), F.S., to provide that a petition for an administrative hearing must be filed within 21 days of the notice of consolidated intent to deny or grant concurrent permits requesting proprietary authorization to use sovereignty submerged lands for activities for which the Board has not delegated authority to take final action. It also provides technical changes.

Section 12 amends s. 376.30702, F.S. to expand the risk-based correction action provisions to include contamination that is discovered as a result of rehabilitation carried out pursuant to an administrative or court order. The bill also expands the parties that need to be notified, adding the following:

- The mayor, chair of the county commission, or the comparable senior elected official representing the affected area;
- The city manager, county administrator, or the comparable senior elected official representing the affected area, the state senator and state representative representing the affected area, both U.S. Senators and U.S. Representatives; and
- All property owners, lessees and tenants where site rehabilitation is being conducted, if different from the person responsible for site rehabilitation, and all property owners, lessees, and tenants of any properties within a 1,000 foot radius of each sampling point at which contamination is discovered.

These additional notification requirements do not apply to contamination found due to petroleum cleanups administered by the DEP using the Inland Protection Trust Fund,[4] dry cleaning facility restoration,[5] or brownfield area cleanup.[6] The additional notice applies to contamination that is at or beyond the property boundaries where rehabilitation was initiated. The bill is silent as to whether notification is required for contamination within the property boundaries.

Notice mailed to local government officials must include information advising local government of the local government's statutory notification responsibilities. Copies of the notices and receipts must be provided to the DEP so that the department can verify compliance. The notice provided by responsible parties to property owners, lessees, and tenants may be delivered by certified mail, return receipt requested, hand delivery, or door hanger. Copies of the notices and receipts, or a copy of a sample of the hand-delivered notice or door-hanger and a list of addresses to which the notice or door-hanger was distributed, must be provided to the DEP so the department can verify compliance.

Within 30 days of receiving notice, the local government must mail a copy of the notice to the president or comparable executive officer of each homeowners' association or neighborhood association within the potentially affected area. The DEP must verify within 30 days of receiving the notice that the person responsible for the site rehabilitation has complied with the notice requirements. If the person responsible for site rehabilitation has not complied with the notice requirement, the DEP may pursue enforcement of those provisions using its existing enforcement authority.

Additionally, if the property at which contamination has been discovered is a school as defined in s. 1003.01, F.S., the DEP is also required to send a notice to the school district superintendent and direct the superintendent to annually notify teachers and parents or the guardians of students attending the school. If the property at which contamination has been discovered is the site of a private K-12 school or a child care facility as defined in s. 402.302, F.S., the department must

[4] s. 376.3071, F.S.
[5] s. 376.3078, F.S.
[6] s. 376.81, F.S.

mail a copy of the notice to the governing board, principal, or owner of the school or child care facility. The DEP must direct the governing board, principal, or owner to provide actual notice annually to teachers and parents or guardians of children attending the school or child care facility during the time the site is being rehabilitated.

If a property within a one-mile radius of the contamination is a school, as defined in s. 1003.01, F.S., the DEP is required to send a notice to the school district superintendent and direct the superintendent to provide actual notice annually to the principal of the school. The bill is silent on the obligation of the principal to provide any further notice to teachers and parents. Additionally, there is no similar notification requirement to private schools and child care facilities. This notification does not apply to contamination found due to petroleum cleanups administered by the DEP using the Inland Protection Trust Fund pursuant[7], dry cleaning facility restoration,[8] or brownfield area cleanup.[9]

It also provides for technical and conforming changes.

Section 13 amends s. 403.0876(2)(c), F.S., to provide that applications for an air construction permit for which a federally delegated or approved program requires a public participation period of 30 days or longer are not subject to the requirements of paragraph (a) which provides that a permit must be approved or denied within 90 days of application. It also provides technical changes.

Section 14 amends s. 403.121, F.S., to expand the number of program areas served by the Environmental Litigation Reform Act (ELRA) and increase fines within existing program areas as follows:

- Section 403.121(2)(b), F.S., is amended to exclude major sources of air pollution as a violation for which the department must proceed administratively when seeking administrative penalties that do not exceed $10,000.
- Section 403.121(2)(f), F.S., is amended to clarify that the respondent is the prevailing party when a final order is entered which does not require the respondent to perform any corrective actions or award any damages or penalties to the department, and the order is not reversed on appeal or the time for judicial review is expired.
- Section 403.121(3)(a), F.S., is amended to provide for the following administrative penalties:
  - $3,000 for failure to obtain a clearance letter from the department before putting a drinking water system into service if the system would not have been eligible for clearance; and $1,500 for all other failures to obtain a clearance letter.
  - $2,000 for failure to complete required public notification of violations, exceedances, or failures that may pose an acute risk to human health, plus $2,000 if the violation occurs at a community water system; and $1,000 for all other failures to complete required public notification relating to maximum containment violations, plus another $1,000 if the violation occurs at a community water system.
  - $1,000 for failure to submit a consumer confidence report to the department.

[7] s. 376.3071, F.S.
[8] s. 376.3078, F.S.
[9] s. 376.81, F.S.

  - $1,000 for failure to provide or meet licensed operator or staffing requirements at a drinking water facility, plus $1,000 if the violation occurs at a community water system.
- Section 403.121(3)(b), F.S., relating to wastewater violations is amended as follows:
  - $5,000 for failure to obtain a required wastewater permit before construction or modification, other than a permit required for surface water discharge.
  - $4,000 for failure to obtain a permit to construct a domestic wastewater collection and transmission system.
  - $1,000 for failure to renew a required wastewater permit, other than a permit required for surface water discharge.
  - $2,000 for failure to properly notify the department of an unauthorized spill, discharge, or abnormal event that may impact public health or the environment; and
  - $2,000 for failure to provide or meet requirements for licensed operators or staffing at a wastewater facility.
- Section 403.121(3)(c), F.S., relating to dredge and fill, or stormwater violations, to provide a penalty for a dredging violation, a fill violation, or a stormwater violation is amended as follows:
  - In addition to other statutorily applied penalties, an additional penalty of $3,000 if the person or persons responsible previously applied for or obtained authorization from the DEP to dredge or fill within wetlands or surface waters.
  - $10,000 for dredge, fill or stormwater management system violations occurring in a conservation easement.
- Section 403.121(3)(d), F.S., relating to mangrove trimming and alteration violations is amended as follows:
  - Up to $5,000 per violation for any person who violates ss. 403.9321-403.9333, F.S. The preparation or signing of a permit application by a person licensed under chapter 471, L.O.F., to practice as a professional engineer does not constitute a violation.
  - Up to $1,000 for minor, first time violations.
  - For major, or second and subsequent violations, an additional $100 penalty for each mangrove illegally trimmed and a $250 penalty for each mangrove illegally altered, not to exceed $10,000.
  - For major, or second and subsequent violations by a professional mangrove trimmer, an addition $250 penalty for each mangrove illegally trimmed or altered, not to exceed $10,000.
- Section 403.121(3)(e), F.S., relating to solid waste violations is amended as follows:
  - A penalty of $2,000 for the unpermitted disposal or unauthorized disposal or storage of solid waste, plus a penalty of $1,000 for unpermitted or unauthorized solid waste if the waste is Class I or Class III, including yard waste (previously excluded.)
  - $5,000 for failure to timely implement evaluation monitoring or corrective actions in response to adverse impacts to water quality at permitted facilities.
  - $3,000 for failure to have a trained operator on duty as required by department rules; for failure to apply and maintain adequate initial, intermediate, or final cover; failure to control or correction erosion resulting in exposed waste; failure to implement a gas management system as required by department rules, or processing or disposing of unauthorized waste.
  - $2,000 for failure to compact and slope waste, or maintain a small working face as required by department rules.
  - $1,000 for failure to timely submit annul updates required for financial assurance.

- Section 403.121(3)(f), F.S., relating to air emission violations is amended as follows:
  - Removed the additional $1,000 administrative penalty for an air emission if the emission results in an air quality violation.
- Section 403.121(3)(g), F.S., relating to storage tank system and petroleum contamination violations is amended as follows:
  - $5,000 for failure to submit site assessment reports.
  - $3,000 for failure to timely assess or remediate petroleum contamination as required by department rule.
  - $1,000 for failure to repair a storage tank system.
- Section 403.121(3)(h), F.S., relating to contaminated site rehabilitation violations is amended as follows:
  - $5,000 for failure to submit a complete site assessment report.
  - $5,000 for failure to provide notice of contamination beyond property boundaries.
  - $5,000 for failure to complete a well survey.
  - $5,000 for the use or injection of substances or materials to surface water or groundwater for remediation purposes without prior to department approval.
  - $5,000 for operation of a remedial treatment system without prior to department approval.
  - $3,000 for failure to timely assess or remediate contamination as required by department rule.
- Section 403.121(4), F.S., provides that in an administrative proceeding, the department may assess penalties in addition to those provided in 403.121(3), F.S., or for violations not listed in 403.121(3), F.S. Section 403.121(4), F.S., is amended as follows:
  - $4,000 penalty for failure to properly operate a required pollution control, collection, treatment or disposal system.
  - $4,000 for failure to use appropriate best-management practices or erosion and sediment controls.
  - $3,000 for failure to obtain a required license or permit if the facility is constructed, modified, or operated in compliance with applicable requirements.
  - $5,000 for failure to obtain a required license or permit if the facility is constructed, modified, or operated out of compliance with applicable requirements.
  - $1,000 for failure to prepare, submit, maintain, or use required reports or other documentation, or for failure to comply with any other department regulatory statute or rule requirement, but excluding penalties applied to public water systems serving a population of more than 10,000.
  - The department may not seek more than $5,000 against any one violator unless the violator has a history of noncompliance or received economic benefit from the violation.

This section also provides for technical and conforming changes.

Section 15 creates subsection (4) in s. 403.7032, F.S., providing for the creation of the Recycling Business Assistance Center (RBAC) by the department in cooperation with the OTTED. Specific minimum duties of the RBAC must include but are not limited to the following:

- Identifying and developing new markets and expanding and enhancing existing markets for recyclable materials;
- Pursuing expanded end uses for recyclable materials;

- Evaluating specific materials suitable for concentrated market-development efforts;
- Developing incentive proposals for targeted materials;
- Providing guidance for a variety of recycling issues, such as permitting, financing and facility siting;
- Coordinating the optimization of supply and demand between various governmental entities and the private sector for recyclable materials;
- Evaluating source-reduced products for state procurement;
- Providing grants and loans to various governmental entities and the private sector to improve recycling in the state;
- Maintaining a continuously updated online directory of recycling entities, both public and private, that is searchable by the public; and
- Providing and distributing materials on the benefits of recycling and using recycled products to both public and private entities.

Section 16 amends s. 14.2015, F.S., to create subsection (11), providing for the creation of the Recycling Business Assistance Center by the OTTED in cooperation with the DEP. The bill directs the OTTED to consult with Enterprise Florida, Inc., and other state personnel appointed as economic development liaisons pursuant so s. 288.021, F.S.

Section 17 amends s. 403.707, F.S., to create a new subsection (8), providing for at least one inspection per year of waste-to-energy facilities by the DEP to determine permit compliance. These inspections must be carried out by the department with only 24-hours notice given prior to the inspection.

Section 18 amends s. 403.708, F.S., to allow Class I landfills to accept yard trash provided they collect gases generated at the disposal facility and reuse those gases in a beneficial manner.

Section 19 amends s. 403.9323, F.S., to provide for clarification of legislative intent providing that mangroves may be trimmed under owners' riparian rights of view when conducted in conformity with the provisions of ss. 403.9321-403.9333, F.S.

Section 20 amends s. 403.9324, F.S., to give the department rule making authority to adopt rules providing for exemptions and general permits for activities that have a no or minimal impact on the water resources of the state. However, the bill specifically prohibits the department from adopting rules that provide for additional exemptions or general permits within other sections of the Mangrove Trimming and Preservation Act. It also provides for technical and conforming changes.

Section 21 amends s. 403.9329, F.S., to authorize revocation of a professional mangrove trimmer's status granted under the Mangrove Trimming and Preservation Act or other department rules for violations of the Act or department rules.

Section 22 amends s. 403.9331, F.S., to prohibit trimming of mangroves on publicly owned uninhabited islands or on lands that are set aside for conservation, preservation or mitigation, with exceptions for public health, safety or welfare, or to provide public access.

Sections 23 and 24 create s. 712.03(9), F.S., and amend s. 712.04, F.S., respectively, to create an exemption to the applicability of MARTA for any right, title, or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created pursuant to ch. 373, F.S., or the federal government. These amendments also resolve the confusion over whether conservation easements and land protection agreements were "easements in use" and prevent rights and interests acquired with public funds for public benefit from being extinguished. Section 24 makes technical changes.

Section 25 repeals s. 23 of ch. 2008-150, L.O.F., relating to the prohibition of siting Class I landfills on or adjacent to Class III landfills in the Southern Water Use Caution Area.

Section 26 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is indeterminate how much of an impact there will be to the private sector from this bill. There may be some additional costs from exercising a landowner's riparian rights given the exemption of sovereignty lands that were filled for a public purpose or proprietary authorization from the Board of Trustees of the Internal Improvement Trust Fund, but those costs, if any, are indeterminate. There may be slight cost savings to the private sector in synchronizing the linked and unlinked clocks to 21 days because of clarity and ease of filing a petition for an administrative hearing for an Environmental Resource Permit for activities that occur on sovereignty submerged lands; however, any costs savings is unknown.

Fines assessed against persons for some existing minor environmental violations subject to department administrative penalties have been increased. It is unknown how much the streamlining of the additional administrative penalties as provided in section 14 of this

bill may save the private sector in both time and litigation expenses. It is possible the savings will be significant as the ELRA process takes an average of four months, while processing through the state courts takes an average of two years. Violators also do not need to hire a lawyer to process their alleged violations through the ELRA, and, if unsatisfied with the administrative process, their right to go to court is automatically preserved. Further, if alleged violators prevail in ELRA hearings before an administrative law judge, they may be entitled to costs and up to $15,000 in attorney's fees.

Owners of contaminated property may be more vulnerable to lawsuits simply because of increased public awareness of the presence of contamination. Property owners would benefit from more information about the extent of contamination in their vicinity. However, if contamination does exist, or is presumed to exist, this may adversely affect their property's value. Private schools and child care facilities may incur costs associated with the notification requirements in the bill.

Privately owned landfills may benefit from the allowance of yard trash in landfills that collect the gas and reuse it. Businesses that operate yard trash processing facilities could see a decrease in the availability of yard trash. Businesses that operate Class III landfills or C&D disposal facilities could see a decrease in tipping fees if yard trash is diverted to Class I landfills. Businesses that operate a Class I landfill and elect to put in a system to beneficially use landfill gas would incur some up-front costs of installing such a system. In addition, repealing s. 23, 2008-150, Laws of Florida may benefit certain entities in the Southern Water Use Caution Area.

Private entities in the recycling industry in Florida may see a potential benefit from the creation of the RBAC. Its purpose is to develop and enhance markets and partnerships between suppliers of materials and those who demand them. However, the fiscal impact is indeterminate.

The bill allows certain persons to obtain either an exemption or a general permit for certain activities relating to the trimming of mangroves and may provide for less regulation in some instances. Owners' riparian rights of view and other riparian rights of ownership that involve the trimming of mangroves may be conducted without prior government approval, which will reduce permitting costs. It is likely that the penalties assessed to first-time offenders will be similar to those assessed under present law, given the department's current penalty structure. However, for major or repeat offenders, the penalties assessed may be up to $15,000 per incident.

C. Government Sector Impact:

The DEP has indicated that many of the provisions of the bill will be met with existing staff and resources, although the specific cost is indeterminate. There are several cost-saving measures for the department as well, but the impact of those is unknown.

The department may be able to complete the Marjorie Harris Carr Cross Florida Greenway with less funding given the clarification to rights of refusal for former Cross

Florida Barge Canal lands. The specific impact of the potential savings of this section is unknown.

The department will likely realize minor cost savings from clarification and synchronization of the time clocks, reporting deadlines and other technical changes, but it is indeterminate. State agencies, municipalities, water management districts and other governmental entities may see reduced litigation costs from the clarification to title to tidal lands vested in the state, exemptions to filled sovereignty lands and the exemption of their lands from the MARTA; however, these litigation savings, if any, are indeterminate. It is unknown how much the department will save by allowing it to submit operational reports for management areas every 5 years instead of every 2 years.

According to the Department of Health (DOH), there are about 30,000 known contaminated properties in Florida. On average, within 1,000 feet of these contaminated properties are between 2 and 20 other properties. This could require notification of 60,000 and 600,000 property owners state-wide. If only one percent of property owners receiving notice inquire about the health threat, the DOH could be responding to between 600 and 6,000 inquiries per year. Notification of private K-12 schools and child care facilities would increase the demand for health information even more. Two Environmental Specialist III employees could respond with basic information to about 16 inquires per day or 4,000 per year. Two employees would be expected to cost $117,082 in salary, benefits, and training in the first year. The recurring cost is projected to be $135,898.

According to the DEP, there would be manageable startup costs to establish procedures for identifying parcels that fall within a 1,000 foot radius of a contamination location. The DEP would incur significant costs to identify a large number of property owners each year. The DOH may experience an increase in resident requests for information on public health impacts of contamination on or near their residences and drinking water supplies. These state agencies would incur an indeterminate number of expenditures to contractors tasked with identifying parcel owners, and generating and mailing notice letters. As most local governments own contaminated property, they may experience indeterminate costs associated with responding to resident inquiries about notices they receive from the DEP. Child care facilities may incur costs associated with the notification requirements in the bill. School districts may incur some costs for providing notice to the principals of schools within a one-mile radius of a contaminated site.

It is anticipated that the DEP will see reduced litigation expenses from expanding and increasing the administrative penalties associated with the ELRA process for minor environmental violations. Any potential savings are indeterminate at this time.

The creation of an administrative penalty against any person who violates the Mangrove Trimming and Preservation Act may reduce the DEP's litigation costs by having the option to assess an administrative penalty rather than suing a violator in circuit court. The ability to revoke the status of automatic professional mangrove trimmers who violate the provisions of the act may result in reduced enforcement costs due to the revocation of serial violators' licenses. However, the specific fiscal impact is indeterminate at this time.

The bill also increases the total assessed penalty allowed from $5,000 to up to a total of $15,000 for serious violations, which includes additional penalties not to exceed $10,000. The impact of recovering increased fines is indeterminate compared to the costs for mangrove restoration and mitigation.

The DEP has indicated that it can create and maintain the RBAC with existing staff and resources. The specific cost to both the DEP and OTTED is indeterminate at this early stage of the center's creation.

The DEP already conducts air quality inspections for waste-to-energy facilities. Directing it to conduct such inspections within 24-hours of giving the facility notice of the inspections should not affect costs associated with inspecting these facilities. According to the DEP, many local governments have expended significant money on implementing separate collection programs for yard trash. In some cases the local government may save money if it could combine collections for disposal in a Class I landfill. In other cases the local government might find it more difficult or expensive to collect enough yard trash to continue supplying a mulching, composting, or fuel-making operation if yard trash is not collected separately.

VI. Technical Deficiencies:

Contamination Notification

Private schools, as defined in s. 1002.01(2), F.S., must register with the Department of Education pursuant to s. 1002.42, F.S. It may be helpful to include the reference to s. 1002.01(2), F.S., in the bill and indicate that the notification applies to private prekindergarten, kindergarten, elementary, middle, and high schools.

Recycling Business Assistance Center

The bill is contradictory on which entity creates the center. Section 15 of the bill requires the DEP to create the center in cooperation with the OTTED; section 16 of the bill requires the OTTED to create the center in cooperation with the DEP, and to consult with Enterprise Florida and state agency economic development liaisons. Because the center is empowered to provide financing and grants, the bill should provide clarity on who actually creates and operates the center. The bill does not provide a funding source and staffing requirements, if any, for the RBAC's operation.

VII. Related Issues:

Contamination Notification

The DEP argues that the basis for selecting an area around a contaminated site within which to notify the public should be based on empirical data about the size of a typical ground water contamination plume, including a safety factor to allow for an exceptionally large ground water plume.

Yard Trash Prohibition in Class I Landfills

According to DEP, combining collection of household waste and yard trash could have a major impact on the waste management industry, and may impact local governments, landfill operators, haulers, yard trash facilities, biomass facilities, and compost/top soil producers. All of these outcomes, as well as the methane potential of yard trash, are being explored in detail as part of a department-funded research effort under contract with the University of Florida.

Recycling Business Assistance Center

A "center" is not an entity specified in Chapter 20, F.S., which provides the organizational structure of the executive branch. Though the Legislature in recent years may have created centers, without a general statutory context, it is difficult to determine how duties and responsibilities of a center apply to affected entities. For example, the bill specifies that the center "coordinate" the efforts of various governmental entities, but it is unclear how the center's coordination authority would affect the authority and duties of those governmental entities.

The Department of Management Services (DMS) plays a centralized role in the procurement of commodities and services, pursuant to Ch. 287, F.S. Section 287.045, F.S., requires the DMS to work in cooperation with the DEP in regards to purchasing products with recycled content. The bill requires the center to evaluate source-reduced products as they relate to state procurement policy. These duties could be done in cooperation with the DMS, or specified as duties of the DMS within s. 287.045, F.S.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by General Government Appropriations Committee on April 20, 2009:

The committee substitute addresses the following additional areas:

- Disposition of Cross Florida Barge Canal lands.
- Requirements for notification of contamination.
- Limits service of appointed basin board members to a maximum of 180 days after their terms end.
- Dissolution of the Oklawaha River Basin Advisory Council.
- Collection and disposal of yard trash in Class I landfills that use active recovery and beneficial use of associated gases.
- Creation of the Recycling Business Assistance Center.
- Inspection of waste-to-energy facilities.
- Repeals s. 23, of ch. 2008-150, L.O.F., related to landfill permitting.

The committee substitute also makes technical and conforming changes.

CS/CS by Community Affairs on April 6, 2009:

The committee substitute of the committee substitute provides for an affirmative vote of six members of the Acquisition and Restoration Council to complete certain council responsibilities; reduces penalties relating to drinking water violations; and revises penalties for waste cleanup violations.

CS by Environmental Preservation and Conservation on March 17, 2009:

The committee substitute changes "effective" dates to "beginning" dates in s. 253.034(5)(a)(c), F.S. The committee substitute also clarifies that requirements of these paragraphs apply only to newly developed or updated management plans.

The committee substitute amends s. 259.037(6), F.S. to change the requirement that agencies submit operational reports once every five years for management plans that are new or updated, instead of biennially.

The committee substitute amends s. 259.105(3)(b)(e)(f)(g)(h), F.S. to remove all time constraints for capital expenditures necessary to provide public access.

The committee substitute amends s. 403.121(3)(d)(1), F.S. to clarify that the preparation or signing of a permit by a professional engineer does not constitute a violation of ss. 403.9321-403.9333, F.S.

The committee substitute provides for technical and conforming changes.

B. Amendments:

None.