



Journal of the Senate

Number 24

Thursday, May 26, 1983

BILL ACTION SUMMARY

Thursday, May 26, 1983

- H 7 Passed
- H 1012 Passed as amended, immediately certified
- H 1129 C/S for C/S Passed as amended, immediately certified
- H 1187 Passed as amended, immediately certified
- H 1190 Immediately certified
- S 46 Passed as amended, immediately certified
- S 88 C/S passed as amended, immediately certified
- S 91 C/S passed, immediately certified
- S 124 Immediately certified
- S 262 C/S for C/S passed, immediately certified
- S 357 Refused to concur, Conference Committee appointed Senator Gordon, Chairman; Senators Maxwell, Grant, Barron and Vogt; Senator Hair, Alternate
- S 783 Immediately certified
- S 827 C/S for C/S passed as amended, immediately certified
- S 1119 Immediately certified
- S 1140 Passed as amended, immediately certified

The Senate was called to order by the President at 9:00 a.m. A quorum present—40:

Mr. President	Frank	Jennings	Myers
Barron	Gersten	Johnston	Neal
Beard	Girardeau	Kirkpatrick	Plummer
Carlucci	Gordon	Langley	Rehm
Castor	Grant	Malchon	Scott
Childers, D.	Grizzle	Mann	Stuart
Childers, W. D.	Hair	Margolis	Thomas
Crawford	Henderson	Maxwell	Thurman
Dunn	Hill	McPherson	Vogt
Fox	Jenne	Meek	Weinstein

Excused: Senator Plummer at 3:00 p.m.

Prayer by Father John Giel, Church of Our Savior, Cocoa:

Dear God, we do believe that you are Lord over all things. You rule the sky, the wind, the earth, the seas and all of nature. You control kingdoms and rulers and principalities with our not even knowing it.

We call on you this morning as we gather to legislate and direct the people you have entrusted to us, we ask that you be our source and the mainstay of our decisions.

Protect us, Lord, from our temptations toward selfishness. Keep our thoughts and concerns directed not on our special interests, but for the good of the majority of the people we serve. Direct our words and eloquence in the right paths—toward justice and the true needs of your people.

Lord, we ask you to always help us be mindful of the extra needs of your poor, the homeless, the hungry, the sick and aged and yes, those in prison. You have always called on your people to specially meet the needs of those unable and without, Lord. Help this Senate to lead the people of Florida, to provide for those without food and shelter, for those living on the streets of our cities and in cars. Help us to care for our mentally and physically deprived and ill. Help us remember always the millions of older citizens of our state, and those needing our love and rehabilitation. And, Lord, let us not count the cost, but help us learn to give and care, as your son cared for us.

Heavenly Father, let us not spoil your creation. What you have entrusted to us, we want to give back to you, a thousand-fold. We have

been blessed in Florida with your natural beauty, Lord. Let us not allow our modern man and woman to destroy this land of serenity—this land of your obvious love. Let not the greed we are often tempted with destroy our coastlands and forests, our beaches and natural springs, our healthy atmosphere. Help us to preserve our environment, dear God.

And lastly, Lord, we bow our heads. We ask your blessings. May you enrich us by our work of serving our sisters and brothers. Bless this Senate with wisdom and peace. Ease any anxieties they may have. Fill them with a spirit strength and fortitude. And in the last few days of this session, fill them with the grace of your endless love—so that these women and men may continue their service to the people of Florida.

I pray this prayer in the name of my Lord Jesus, and I ask my sisters and brothers to pray with me, recognizing your love and mercy, Lord. In your name, Lord, we all pray. Amen.

REPORTS OF COMMITTEES

The Committee on Rules and Calendar submits the following bills to be placed on the Special and Continuing Order Calendar for Thursday, May 26, 1983: SB 388, CS for SJR 46, SB 645, SB 127, CS for SB 464, SB 575, CS for SB 1016, CS for SB 1065, SB 1104, HB 673, SB 344, SB 490, CS for SB 362, CS for SB 365, CS for SB 367, SB 123, SB 159, SB 198, CS for SB 444, CS for SB 539, CS for SB 309, SB 642, SB 1014, CS for SB 460, CS for SB 478, CS for SB's 609 and 769, SB 631, CS for SB 1150, SB 213, SB 650, CS for SB 466, SB 514, CS for SB 803, SB 283, SB 288, SB 449, SB 450, SB 290, CS for SB 137, CS for SB 56, CS for SB 374, SB 497, SB 857, SB 516, CS for SB 431, SB 471, CS for SB 156, SB 463, SB 308, SB 234, SB 782, SB 256

Respectfully submitted,
Dempsey J. Barron, Chairman

The Committee on Appropriations recommends the following pass: CS for SB 491

The bill was referred to the Committee on Agriculture under the original reference.

The Committee on Appropriations recommends the following pass: CS for SB 980 with 2 amendments

The bill was referred to the Committee on Rules and Calendar under the original reference.

The Committee on Appropriations recommends the following pass: CS for SB 88, SB 199, SB 321 with 1 amendment, CS for SB 461 with 3 amendments, SB 618, CS for SB 981, SB 949, CS for SB 994 with 3 amendments, SB 1072 with 3 amendments, SB 1115, SB 1140

The bills were placed on the calendar.

The Committee on Natural Resources and Conservation recommends a committee substitute for the following: Senate Bills 963, 999, 1079 and 1098

The bills with committee substitute attached were referred to the Committee on Appropriations under the original reference.

The Committee on Judiciary-Civil recommends a committee substitute for the following: CS for SB 1038

The bill with committee substitute attached was referred to the Committee on Appropriations under the original reference.

The Committee on Judiciary-Civil recommends a committee substitute for the following: SB 512

The bill with committee substitute attached was referred to the Committee on Finance, Taxation and Claims under the original reference.

The Committee on Judiciary-Civil recommends a committee substitute for the following: SB 157

The bill with committee substitute attached was referred to the Committee on Rules and Calendar under the original reference.

The Committee on Appropriations recommends committee substitutes for the following: SB 35, SB 91, CS for SB 262, CS for SB 644, CS for SB 827

The Committee on Judiciary-Civil recommends committee substitutes for the following: SB 14, SB 20, SB 206, SB 333, SB 392, SB 937, SB 1009, CS for Senate Bills 6, 18 and SB 287

The bills with committee substitutes attached contained in the foregoing reports were placed on the calendar.

REQUESTS FOR EXTENSION OF TIME

May 26, 1983

The Special Master for Claims requests an extension of 15 days for consideration of the following: SB 187, SB 338, SB 426

INTRODUCTION AND REFERENCE OF BILLS

First Reading

By Senators Beard, Frank and Castor—

SB 1202—A bill to be entitled An act relating to Hillsborough County and the City of Tampa; amending s. 4(1)(c), (d), chapter 78-522, Laws of Florida; authorizing the city upon agreement with the county, to charge the county special fees if the county does not reduce or eliminate its discharge to the Tampa system according to a mutually acceptable schedule; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committee on Rules and Calendar.

By Senator W. D. Childers—

SB 1203—A bill to be entitled An act relating to county boundaries; amending s. 7.17, Florida Statutes; providing for the legal description of Escambia County to specifically include the waters of the Gulf of Mexico within the jurisdiction of the State of Florida; deleting the provision that Escambia County shall have jurisdiction of offenses committed on the waters of the Gulf of Mexico adjacent to the shores of Santa Rosa Island; providing an effective date.

Proof of publication of the required notice was attached.

—was referred to the Committees on Governmental Operations, and Rules and Calendar.

FIRST READING OF COMMITTEE SUBSTITUTES

By the Committee on Judiciary-Civil and Senators Henderson, Neal, Langley, Weinstein, Rehm, Fox, Myers, Peterson, Castor, Mann, Jenne, Grizzle, Stuart, Jennings, Malchon, Hair, Girardeau, Maxwell, Dunn, Gordon and Grant—

CS for CS for SB's 6, 18 and 287—A bill to be entitled An act relating to mobile homes; creating ss. 83.7710, 83.7720, and 83.7730, Florida Statutes; providing for mobile home owners' associations and providing association powers; providing for maintenance of records and for inspection thereof; providing for association bylaws; providing for a governing board and providing its powers and duties; requiring mobile home park owners to notify the association of intent to sell, under certain circumstances; providing exceptions; requiring such associations to record certain documents under specified circumstances; creating a Mobile Home Study Commission and specifying its membership and duties; providing an exception to application of the act under certain circumstances; providing an effective date.

By the Committee on Judiciary-Civil and Senators Scott, McPherson and Weinstein—

CS for SB 14—A bill to be entitled An act relating to elections; amending s. 99.061(1), (2), (3), and (4), Florida Statutes, as amended, relating to the qualifying period for candidates; amending s. 99.103(2), Florida Statutes, relating to the remitting of fees to the state executive committees by the Department of State; amending s. 100.021, Florida Statutes, relating to the notice of general election; amending s. 100.061, Florida Statutes, changing the date of the first primary election; amending s. 100.091(1), Florida Statutes, changing the date of the second primary election; amending s. 101.62, Florida Statutes; providing time period for delivery or mailing of absentee ballots; authorizing the Department of State to prescribe certain rules for a ballot to be sent to absent electors overseas under certain circumstances; amending s. 101.65, Florida Statutes, 1982 Supplement; providing instructions to absent electors; amending ss. 103.021(3) and 103.022, Florida Statutes, relating to candidates for President and Vice President; amending s. 105.031(1), Florida Statutes, relating to the qualifying period for judicial candidates; amending s. 106.07(1), Florida Statutes, 1982 Supplement, relating to campaign reports; providing an effective date.

By the Committee on Judiciary-Civil and Senators Frank and Fox—

CS for SB 20—A bill to be entitled An act relating to elections; amending s. 99.092(1), Florida Statutes, relating to party assessments; amending s. 103.121(1) and (5), Florida Statutes, 1982 Supplement, and adding a subsection thereto, relating to powers and duties of state and county executive committees with respect to party assessments; repealing s. 103.091(7), Florida Statutes, relating to endorsement of candidates in primary elections by political party executive committees; providing an effective date.

By the Committee on Appropriations and Senator Henderson—

CS for SB 35—A bill to be entitled An act relating to purchase of motor vehicles by state officials and employees; amending s. 116.12, Florida Statutes; providing legislative intent; providing a definition; providing that it is unlawful for any state officer or employee to authorize purchase or continuous lease of a motor vehicle except under certain conditions; providing exemption under certain circumstances; providing for retention of motor vehicles by state agencies under certain conditions; prohibiting acquisition of a motor vehicle by a certain deferred payment contract; providing an exception; providing an effective date.

By the Committee on Judiciary-Civil and Senator Grizzle—

CS for SB 157—A bill to be entitled An act relating to initiative petition; amending s. 100.371(2), (4), (5), Florida Statutes; requiring that signatures on initiative petitions proposing constitutional amendments be dated and providing that such dated signatures shall be valid for a period of 4 years following said date; providing for any petition form to be in compliance with the act if it has been approved and circulated on or before the effective date of this act; providing an effective date.

By the Committee on Judiciary-Civil and Senators Frank, Malchon, Castor, Margolis, Fox, Grizzle and Meek—

CS for SB 206—A bill to be entitled An act relating to sexual battery; amending s. 794.022, Florida Statutes; deleting the authority of a judge to give certain jury instructions; providing that evidence of specific instances of prior consensual sexual activity may be admitted in certain circumstances; limiting the admissibility of certain evidence; providing an effective date.

By the Committee on Judiciary-Civil and Senator Fox—

CS for SB 333—A bill to be entitled An act relating to the grand jury; amending s. 905.01, Florida Statutes; authorizing the replacement of grand jurors on order of the chief judge; authorizing the convening of two contemporaneous grand juries in certain circuits; requiring chief judge to enter an order stating reasons for calling second grand jury; providing that second grand jury not reconsider certain matters; amending s. 905.17, Florida Statutes; granting witnesses called before grand jury the right to be accompanied by counsel; prohibiting certain acts by such counsel; providing an effective date.

By the Committee on Judiciary-Civil and Senator Thurman—

CS for SB 392—A bill to be entitled An act relating to damage by dogs; amending s. 767.03, Florida Statutes, to provide that, in an action

for damages or a criminal prosecution, satisfactory proof that the person against whom such action is brought had a reasonable belief that a dog was killing, harassing, or causing injury to livestock or horses shall constitute a good defense to the killing or injuring of the dog; providing an exception; providing a definition; providing an effective date.

By the Committee on Judiciary-Civil and Senator Fox—

CS for SB 512—A bill to be entitled An act relating to sovereign immunity; amending s. 768.28(6), (11), Florida Statutes, and adding (15) to said section; specifying a notice period for contribution actions; providing a statute of limitations on actions for contribution; providing that agency notice and denial are conditions precedent to maintaining suit but are not elements of the cause of action; providing savings clauses; providing an effective date.

By the Committee on Judiciary-Civil and Senators Weinstein and Meek—

CS for SB 937—A bill to be entitled An act relating to human rights; amending s. 23.167(13), Florida Statutes, granting to certain local agencies and units of government the authority to file in the circuit courts of this state for enforcement of orders as to discriminatory employment practices; providing for membership of such agencies; providing that hearings be guided by chapter 120, Florida Statutes; granting to the circuit courts the jurisdiction to hear such actions; providing an effective date.

By the Committee on Natural Resources and Conservation and Senators Gersten and Johnston—

CS for SB's 963, 999, 1079 and 1098—A bill to be entitled An act relating to growth management; providing a short title; amending s. 11.60, Florida Statutes, increasing the membership of the Administrative Procedures Committee and requiring the committee to review the state comprehensive plan, and changes therein, and to make recommendations to the Legislature; creating s. 23.01, Florida Statutes, providing legislative findings and intent; amending s. 23.0112, Florida Statutes, providing definitions; creating s. 23.01131, Florida Statutes, granting certain powers and responsibilities relating to state and regional planning to the Executive Office of the Governor; amending s. 23.0114(1), Florida Statutes, transferring subsection (4) thereof, and adding new subsections thereto; providing for the preparation of the state comprehensive plan and providing certain content thereof; providing restrictions upon capital outlay recommendations to the Legislature; amending s. 23.013, Florida Statutes, requiring the Executive Office of the Governor to prepare a proposed state comprehensive plan and providing for its adoption; providing for legislative review; providing for implementation of the plan; creating s. 23.0131, Florida Statutes, requiring state agencies to adopt state agency functional plans; creating s. 23.0132, Florida Statutes, requiring state agencies to prepare state agency functional plans consistent with the state comprehensive plan; providing for review thereof; amending s. 23.015, Florida Statutes, changing the purposes of the Governor's annual report of the state's economic condition; amending s. 160.01(4), Florida Statutes, requiring county membership in regional planning councils; amending s. 160.07, Florida Statutes, changing requirements and adoption procedures for comprehensive regional policy plans; creating s. 160.072, Florida Statutes, requiring certain review of such plans prior to adoption; creating s. 160.076, Florida Statutes, providing for periodic evaluation of such plans; creating the Growth Management Trust Fund and providing its purposes; repealing ss. 23.0115, 23.012, 23.0125, 23.014, 23.016, 23.0161, and 23.017, Florida Statutes, deleting provisions relating to the specification of data in the state comprehensive plan, to certain general powers and duties of the Executive Office of the Governor, to the development of certain environmental data, and to the preparation of the annual development program; deleting provisions relating to certain special reports of the Executive Office of the Governor and to required annual progress reports on state and regional planning; deleting authority to contract for assistance in preparation of reports; repealing s. 160.003(6), Florida Statutes, deleting the definition of the Department of Community Affairs in provisions relating to regional planning councils; amending s. 163.3177(6)(a), (g), Florida Statutes; providing for contents of future land use plans, and coastal zone protection elements of local government comprehensive plans; creating s. 163.3179, Florida Statutes; providing for review and approval of coastal zone protection elements by the state land planning agency according to certain criteria; providing for revision of current elements; providing sanctions for local government failure to prepare elements that meet state approval; adding s. 163.3184(8), Florida Statutes; providing for adoption of local comprehen-

sive plans; amending s. 163.3191, Florida Statutes; providing for periodic evaluation and appraisal of local comprehensive plans; creating s. 367.065, Florida Statutes; providing for consideration of certain elements of local government comprehensive plans by the Public Service Commission under certain circumstances; providing for repeal and review pursuant to s. 11.61, Florida Statutes; providing an appropriation; providing for estimates of certain state revenue; creating the Florida Infrastructure Needs and Funding Study Committee in the Executive Office of the Governor; providing membership and duties of the committee; providing for reports to the Governor and Legislature; providing for secretarial support by the Executive Office of the Governor; authorizing the committee to employ an executive director and staff; providing an appropriation; providing an effective date.

By the Committee on Judiciary-Civil and Senator Scott—

CS for SB 1009—A bill to be entitled An act relating to the judiciary; amending s. 26.031(5), Florida Statutes, 1982 Supplement; providing for an additional circuit judge for the fifth judicial circuit; providing an effective date.

By the Committee on Judiciary-Civil and Senator Gersten—

CS for CS for SB 1038—A bill to be entitled An act relating to residential planned developments; establishing a residential planned development study committee; providing for membership and duties of the committee; requiring the committee to prepare a report; providing an effective date.

MOTIONS RELATING TO COMMITTEE REFERENCE

On motions by Senator Johnston, the rules were waived and by two-thirds vote Senate Bills 317, 400, 424, 799, 918, 922, 964, 989, 1076, 1117, 1122 and CS for SB 777 were withdrawn from the Committee on Appropriations.

On motion by Senator Johnston, by two-thirds vote SB 196 was removed from the calendar and recommitted to the Committee on Appropriations.

On motion by Senator Johnston, the rules were waived and the Committee on Appropriations was granted permission to consider Senate Bills 435, 164, 960, 607, 145, 933 and CS for HB's 32 and 49 this day.

On motion by Senator Gersten, by two-thirds vote CS for CS for SB 994 was removed from the calendar and re-referred to the Committee on Economic, Community and Consumer Affairs.

Senator Gersten moved that CS for SB 164 be withdrawn from the Committee on Appropriations and recommitted to the Committee on Economic, Community and Consumer Affairs.

Senator Neal moved as a substitute motion that CS for SB 164 be withdrawn from the Committee on Appropriations and placed on the calendar. The substitute motion was adopted by two-thirds vote.

On motion by Senator McPherson, the rules were waived and HB 1190 was ordered immediately certified to the House.

On motion by Senator Barron, by two-thirds vote HB 1129 was established as a special order for 11:00 a.m. this day.

On motion by Senator Barron, by two-thirds vote CS for SB 1148 was withdrawn from the Committee on Appropriations.

On motion by Senator Barron, by two-thirds vote CS for SB 91, CS for CS for SB 644, CS for SB 88, CS for CS for SB 827, CS for SB 262, CS for SB 1148 and CS for SB 1140 were established as a special order for 2:00 p.m. this day.

On motion by Senator Barron, the following bills were placed on the special order calendar following CS for SB 464: Senate Bills 256, 782, 463, 639 and 308.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable Curtis Peterson, President

I am directed to inform the Senate that the House of Representatives has passed SB 140.

Allen Morris, Clerk

The bill contained in the foregoing message was ordered enrolled.

The Honorable Curtis Peterson, President

I am directed to inform the Senate that the House of Representatives has concurred in Senate Amendments 1 and 2 and passed HB 1341, as amended.

Allen Morris, Clerk

The Honorable Curtis Peterson, President

I am directed to inform the Senate that the House of Representatives has passed with amendments by the required Constitutional three-fifths vote of the membership of the House—

CS for CS for SB 357—A bill to be entitled An act relating to education; amending s. 228.041(16) and (22), Florida Statutes, 1982 Supplement; providing definitions; increasing the number of hours of instruction in public high schools; amending s. 233.09(4)(e), Florida Statutes; requiring school district comprehensive plans to include provision for use of quality textbooks; amending s. 229.565(2)(e), Florida Statutes, and adding paragraph (h) to said subsection, providing for evaluation of vocational programs, providing for computer instruction; amending s. 229.575(3), Florida Statutes; expanding required content of annual school reports; amending s. 229.58(2), Florida Statutes; expanding areas in which school advisory committees may provide assistance; amending s. 229.59, Florida Statutes; providing for educational improvement projects at the school level; providing for grants; amending s. 229.814(1), Florida Statutes; providing that the general equivalency diploma examination shall not serve as the high school equivalency diploma examination; amending s. 230.03(2), (3), Florida Statutes; expanding powers of school boards, amending ss. 230.23(4)(h), (6)(a), Florida Statutes, 1982 Supplement, and adding paragraph (c) to subsection (13) of said section; requiring review and approval of vocational programs; requiring school boards to cooperate with regional coordinating councils in planning vocational programs; providing for policies relating to classroom performance; amending s. 230.2313(3)(d), Florida Statutes; providing for studies, reports, and recommendations regarding occupational and placement services; amending s. 230.33(9)(b), Florida Statutes; requiring the comprehensive plan to include steps taken to ensure use of quality textbooks; amending s. 230.64(1), Florida Statutes; providing that area vocational-technical centers are subject to review; requiring legislative evaluation of the alternative education program; amending s. 231.087(1), (2)(a), (3), Florida Statutes, 1982 Supplement, renumbering and amending existing subsection (7), and adding a new subsection (7) to said section; specifying duties of the Florida Council on Educational Management; providing for assistance in selection of school principals; amending s. 232.245(2), Florida Statutes, and adding subsection (3) to said section; requiring mastery of minimum standards prior to promotion from specified grades; requiring progression plans to include student performance standards; requiring adoption of student performance standards in computer literacy; requiring inclusion of computer literacy standards in state assessment tests; amending s. 232.246, Florida Statutes; providing general requirements for high school graduation; amending s. 232.2465(1)(a), Florida Statutes, 1982 Supplement; increasing the number of credits required to qualify as a Florida Academic Scholar; requiring high school curriculum frameworks; requiring adoption of specific curriculum components; adding s. 233.057(4), Florida Statutes; providing for allocations to high schools that employ reading resource specialists; amending s. 233.068(1), Florida Statutes; providing for review and approval of job-related vocational instruction; amending s. 236.013(2)(a), (c), Florida Statutes, and adding subsection (7) to said section; redefining "full-time student" and "full-time equivalent student"; amending s. 236.02(2), Florida Statutes, adding new subsections (3), (4), to said section and renumbering existing subsections; increasing minimum term of operation of schools; requiring student performance standards for FEFP participation; amending s. 236.081(1), Florida Statutes; revising funding formula; amending s. 236.0811(1), Florida Statutes; providing restriction on inservice training programs; amending s. 240.233(1), (2), Florida Statutes, 1982 Supplement; establishing minimum requirements for university enrollment; amending s. 240.311(1)(a), (e), Florida Statutes, 1982 Supplement; requiring review and approval of vocational courses offered by community colleges; requiring cooperation with specified agencies; amending s. 240.319(3)(c), Florida Statutes, 1982 Supplement; providing for review and approval of community college rules; amending s. 240.321, Florida Statutes; restricting admission to Associate of Arts degree programs; creating a uniform, coordinated system of vocational education; providing for a vocational education management information system; providing for use of unemployment insurance wage reports; requiring reports; providing for establishment of vocational education planning regions; providing

for regional vocational coordinating councils; providing powers and duties; amending s. 240.355, Florida Statutes; providing for review of vocational programs; creating s. 240.4081, Florida Statutes; providing for the Student Loan Forgiveness Program and creating a trust fund; creating the Teacher Scholarship Loan Trust Fund; providing for award of scholarship loans from the fund; providing for summer inservice institutes for instructional personnel; requiring adoption of common diagnostic tests; authorizing remedial instruction in postsecondary institutions; providing for a study of postsecondary remedial education; prohibiting postsecondary credit for remedial courses; requiring universities and community colleges to report certain information to high schools; establishing standards for student participation in extracurricular activities; requiring study and report on the minimum competency program; providing for establishment of a visiting school scholars program; providing for certification of adjunct instructors; authorizing universities and community colleges to offer academic courses on high school sites; amending s. 240.60, Florida Statutes, 1982 Supplement; establishing priorities for the college career work experience program; requiring a study of vocational job preparatory programs; repealing s. 233.064, Florida Statutes, relating to a required course in Americanism vs. Communism; amending s. 231.17(1), Florida Statutes, 1982 Supplement; limiting the number of teacher education courses required for teacher certification; providing for expanded instruction time pilot projects; requiring feasibility study of modifying teacher certification examination; providing for a study of collective bargaining; amending s. 231.608, Florida Statutes; providing for content of evaluation reports; providing for the reenactment of the Teacher Center Act; providing for the sunset of the Teacher Center Act; providing an effective date.

—and requests the concurrence of the Senate.

Allen Morris, Clerk

(Amendments attached to the original bill)

On motions by Senator Gordon, the Senate refused to concur in the House amendments and the House was requested to recede. The action of the Senate was certified to the House.

On motion by Senator Barron, the rules were waived and the amendments were not published in the Journal.

SPECIAL ORDER

Senator Grizzle presiding

On motion by Senator Thurman, by two-thirds vote HB 7 was withdrawn from the Committee on Transportation.

On motion by Senator Thurman—

HB 7—A bill to be entitled An act relating to uniform traffic control; amending s. 316.073, Florida Statutes; specifying that provisions of the Uniform Traffic Control Law applicable to pedestrians shall apply to persons riding or leading an animal upon a roadway or shoulder; providing an exception; creating s. 316.0825, Florida Statutes; requiring the operator of a motor vehicle approaching an animal being led or ridden to use reasonable care; providing an effective date.

—a companion measure, was substituted for SB 388 and read the second time by title. On motion by Senator Thurman, by two-thirds vote HB 7 was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—30

Barron	Fox	Jennings	Neal
Beard	Frank	Johnston	Plummer
Carlucci	Gersten	Kirkpatrick	Stuart
Castor	Girardeau	Langley	Thomas
Childers, D.	Gordon	Malchon	Thurman
Childers, W. D.	Grant	Mann	Vogt
Crawford	Hair	Margolis	
Dunn	Hill	Maxwell	

Nays—None

Vote after roll call:

Yea—Jenne

SB 388 was laid on the table.

CS for SJR 46—A joint resolution proposing the creation of Section 19 of Article III of the State Constitution relating to legislative privilege.
—was read the second time by title.

Senator Girardeau moved the following amendment:

Amendment 1—On page 1, line 7, strike everything after the enacting clause and insert:

That the amendment to Section 2 of Article III of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 1984:

SECTION 2. Members; officers; Legislative privilege.—

(a) Each house shall be the sole judge of the qualifications, elections, and returns of its members, and shall biennially choose its officers, including a permanent presiding officer selected from its membership, who shall be designated in the senate as President of the Senate, and in the house of representatives shall designate a Clerk to serve at its pleasure.

(b) *Members of the senate and the house of representatives shall in all cases be privileged with regard to any speech or debate and they shall not be questioned in any other place with respect thereto.*

(c) The legislature shall appoint an auditor to serve at its pleasure who shall audit public records and perform related duties as prescribed by law or concurrent resolution.

BE IT FURTHER RESOLVED that in accordance with the requirements of section 101.161, Florida Statutes, the title and substance of the amendment proposed herein shall appear on the ballot as follows:

SPEECH OR DEBATE PRIVILEGE

Provides that legislators' speech or debate in either house of the Legislature is privileged and that legislators shall not be subject to compulsory process with regard to legislative actions in accordance with the corresponding federal constitutional provisions.

Senator Girardeau moved the following amendment to Amendment 1 which was adopted:

Amendment 1A—On page 2, line 4, after "debate" insert: relating to matters of legislative interest or concern

Senator Dunn moved the following amendment to Amendment 1 which was adopted:

Amendment 1B—On page 1, line 13, after "any" insert: *statement*, Amendment 1 as amended was adopted.

Senator Girardeau moved the following amendment which was adopted:

Amendment 2—In title, on page 1, strike lines 2-4 and insert: A joint resolution proposing an amendment to Section 2 of Article III of the State Constitution relating to legislative privilege for speech or debate.

The President presiding

On motion by Senator Girardeau, by two-thirds vote CS for SJR 46 as amended was read the third time in full as follows:

CS for SJR 46—A joint resolution proposing an amendment to Section 2 of Article III of the State Constitution relating to legislative privilege for speech or debate.

Be It Resolved by the Legislature of the State of Florida:

That the amendment to Section 2 of Article III of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 1984:

**ARTICLE III
LEGISLATURE**

SECTION 2. Members; officers; legislative privilege.—

(a) Each house shall be the sole judge of the qualifications, elections, and returns of its members, and shall biennially choose its officers,

including a permanent presiding officer selected from its membership, who shall be designated in the senate as President of the Senate, and in the house as Speaker of the House of Representatives. The senate shall designate a Secretary to serve at its pleasure, and the house of representatives shall designate a Clerk to serve at its pleasure.

(b) *Members of the senate and the house of representatives shall in all cases be privileged with regard to any statement, speech or debate and they shall not be questioned in any other place with respect thereto.*

(c) The legislature shall appoint an auditor to serve at its pleasure who shall audit public records and perform related duties as prescribed by law or concurrent resolution.

BE IT FURTHER RESOLVED that in accordance with the requirements of section 101.161, Florida Statutes, the title and substance of the amendment proposed herein shall appear on the ballot as follows:

SPEECH OR DEBATE PRIVILEGE

Provides that legislators' speech or debate in either house of the Legislature is privileged and that legislators shall not be subject to compulsory process with regard to legislative actions in accordance with the corresponding federal constitutional provisions.

—and as amended passed by the required constitutional three-fifths vote of the membership, was ordered engrossed and then certified to the House. The vote on passage was:

Yeas—34

Mr. President	Grant	Langley	Rehm
Barron	Grizzle	Malchon	Scott
Beard	Hair	Mann	Stuart
Childers, D.	Henderson	Margolis	Thomas
Childers, W. D.	Hill	McPherson	Thurman
Crawford	Jenne	Meek	Vogt
Gersten	Jennings	Myers	Weinstein
Girardeau	Johnston	Neal	
Gordon	Kirkpatrick	Plummer	

Nays—5

Carlucci	Dunn	Frank
Castor	Fox	

On motion by Senator Girardeau, the rules were waived and CS for SJR 46 after being engrossed was ordered immediately certified to the House.

On motion by Senator Dunn, the rules were waived and SB 124 after being engrossed was ordered immediately certified to the House.

CS for CS for HB 1129—A bill to be entitled An act relating to water resources; providing a short title; amending s. 373.026, Florida Statutes, expanding duties of the Department of Environmental Regulation with respect to collecting and monitoring data relating to water resources; creating s. 487.043, Florida Statutes, providing for the testing of restricted-use pesticides; providing duties of the Department of Agriculture and Consumer Services and the Department of Environmental Regulation; creating s. 403.063, Florida Statutes, requiring the department to establish a groundwater quality monitoring network and providing criteria therefor; requiring regional and local governments to sample and test groundwater as directed by the department; amending s. 403.855, Florida Statutes, expanding duties of the department relating to imminent hazards in water supplies; provides the department with the authority to inspect package sewage treatment facilities; allows the department to delegate this responsibility to local governments under certain circumstances; amending s. 373.206, Florida Statutes, expanding the authority of the department to plug hazardous artesian wells; creating s. 373.207, Florida Statutes, requiring water management districts to adopt plans for plugging abandoned artesian wells; providing for review of plans by the department; providing for certain liens; creating the Local Government Hazardous Waste Management Program within the Department of Environmental Regulation, providing for a state needs assessment; providing legislative intent with respect to local hazardous waste management programs; requiring counties to conduct a hazardous waste assessment under rules established by the department; providing for technical assistance from the program; providing a schedule for completion; providing for annual updating of the assessment; providing that all local government laws, ordinances, or regulations be consistent with state

rules; requiring counties to notify small quantity generators of their responsibilities annually; requiring such generators to disclose certain information to the county; providing for verification of such generators' management practices; providing for penalties; requiring counties to furnish information on the assessment and the notification program to the department; creating the Local Government Hazardous Waste Management Trust Fund; providing an appropriation to the fund to subsidize preparation of the assessment; creating s. 376.115, Florida Statutes, creating the Water Quality Assurance Trust Fund; levying an excise tax on persons registered for the operation of pollutant terminal facilities and persons handling such pollutants; providing a definition; providing for the collection and administration of the tax; providing for the suspension of the tax under certain circumstances; repealing ss. 208.001, 208.002, 208.003, 208.004, and 208.005, Florida Statutes, abolishing the tax on the generation of hazardous wastes; creating ss. 208.201, 208.202, 208.203, 208.204, 208.205, and 208.206, Florida Statutes; providing definitions; imposing a tax on the sale of chemicals by wholesale dealers or manufacturers; providing liability of certain consumers; requiring taxpayer registration with the Department of Revenue; providing for annual determination of the tax rate; providing exemptions; providing for application of administrative and penalty provisions of chapter 212, Florida Statutes; providing for administration, records, and audits; providing for deposit of tax revenues in the Hazardous Waste Management Trust Fund; adding a subsection to s. 215.22, Florida Statutes, including Hazardous Waste Management Trust Fund revenues within those funds a portion of which may be placed in general revenue; adding a subsection to s. 403.061, Florida Statutes, 1982 Supplement, authorizing the Department of Environmental Regulation to establish rules for the management of underground storage tanks; amending s. 403.703(18), Florida Statutes, redefining the "closure" of a resource recovery and management facility; amending s. 403.704(16), Florida Statutes, changing procedures for the review of rules of the department stricter than those of the United States Environmental Protection Agency relating to resource recovery and management; changing authority of the department to adopt hazardous waste rules for solid wastes; amending s. 403.7045(1)(c), Florida Statutes, 1982 Supplement, correcting a cross-reference to federal law; amending s. 403.707(1) and (2), Florida Statutes, 1982 Supplement; requiring resource recovery and management facilities and sites which are closed to be permitted; changing exceptions from certain permit requirements; amending s. 403.722(9) and (10), Florida Statutes, 1982 Supplement; revising time periods with respect to issuance of permits for hazardous waste facilities; authorizing the department to request additional information from an applicant; amending s. 403.723, Florida Statutes; providing for petition to the Governor and Cabinet when a local government denies a request for variance from local ordinances, regulations, or plans or takes no action on a variance request; requiring recommendation of such variance by the State Hazardous Waste Facility Siting Commission; providing commission procedures and time limitations; requiring a public hearing; providing criteria to be considered by the commission; providing for a hearing by the Governor and Cabinet; providing criteria to be considered; amends s. 403.725(1) and (3), relating to the use of funds in the Hazardous Waste Management Trust Fund; amending s. 403.727(3) and (4), Florida Statutes, 1982 Supplement, and adding a new subsection (4) thereto, increasing penalties for violations of provisions relating to hazardous wastes; imposing liability upon specified persons for costs and damages caused by the release or threatened release of hazardous substances; restricting the ability of government entities to interpose a defense to such liability; amending s. 403.729, Florida Statutes; providing for a State Hazardous Waste Facility Siting Commission within the Florida Land and Water Adjudicatory Commission in lieu of the State Hazardous Waste Policy Advisory Council; providing for membership thereof; providing for temporary members; creating s. 501.082, Florida Statutes; requiring specified governmental agencies and institutions of the State University System to notify the department regarding hazardous materials and management practices; requiring written plans for management and spill control; providing for siting of a multipurpose hazardous waste facility by the state; providing for adoption of siting criteria by the department; providing for adoption of a site designation by the commission; directing the commission to contract for construction and operation of the facility; requiring permitting of the facility; granting eminent domain powers to the Governor and Cabinet; authorizing the issuance of state bonds; prohibiting hazardous waste landfills and the issuance of permits therefor; providing for emergency temporary permits; providing immunity from liability for persons who assist in cleaning up any discharge of hazardous materials; providing exceptions; creating s. 403.1655, Florida Statutes, creating the Environmental Short-Term Emergency Trust Fund to fund pollution abatement procedures; adding a paragraph to s. 376.11(5), Florida Stat-

utes, transferring certain funds from the Florida Coastal Protection Trust Fund to such trust fund; amending s. 381.272, Florida Statutes, 1982 Supplement, providing for the regulation of onsite, rather than individual, sewage disposal systems; changing the types of subdivisions which may use certain systems; restricting the location of such systems; providing for equal application of restrictions and rules; changing the circumstances in which variances may be granted and the procedures therefor; authorizing temporary permits for experimental systems; deleting provisions relating to organic waste composting systems; creating s. 381.273, Florida Statutes, authorizing the Department of Health and Rehabilitative Services to collect fees for regulating such systems and for certain research; increasing fees to fund the accelerated soil survey program in the Department of Agriculture and Consumer Services; prohibits use of certain chemicals in the treatment of onsite sewage disposal systems; providing effective dates.

—was read the second time by title.

Amendment 1—The Committee on Natural Resources and Conservation recommended an amendment striking everything after the enacting clause constituting an entirely new bill. The amendment failed.

On motion by Senator Neal, the rules were waived and the amendment was not printed in the Journal.

The Committee on Finance, Taxation and Claims recommended the following amendments which were moved by Senator Neal and failed:

Amendment 2—On page 20, line 19, strike "in direct conflict with" and insert: less stringent than

Amendment 3—On page 20, lines 22-25, strike everything after the period (.) on line 22 and all of lines 23-25

Amendment 4—On page 24, line 29, strike "is intended to" and insert: shall

Amendment 5—On page 57, line 13, after "Control" insert: Trust

Amendment 6—On page 60, lines 2 and 3, strike "1,500 gallons" and insert: a 1,500 gallon per acre flow per day

Amendment 7—On page 63, line 19, strike Section 41 and renumber subsequent sections

Amendment 8—On page 64, line 18, strike Section 42 and renumber subsequent sections

Senator Langley presiding

The Committee on Agriculture recommended the following amendment which was moved by Senator Kirkpatrick:

Amendment 9—On page 7, strike everything after the enacting clause and insert:

PART I POLLUTANT SPILL PREVENTION AND CONTROL

Section 1. Part I of chapter 376, Florida Statutes, shall consist of sections 376.011, 376.021, 376.031, 376.041, 376.051, 376.06, 376.07, 376.09, 376.10, 376.11, 376.12, 376.13, 376.14, 376.15, 376.16, 376.165, 376.17, 376.18, 376.19, 376.20, 376.205, and 376.21, Florida Statutes, and s. 376.011, Florida Statutes, is amended to read:

376.011 Short title.—*Part I of this* ~~This~~ chapter shall be known as the "Pollutant Spill Prevention and Control Act."

Section 2. Subsection (6) is added to section 376.051 to read:

376.051 Powers and duties of the department.—

(6) *Within 120 days of the effective date of this subsection, the department shall adopt rules providing for the coordination of the respective duties of the Department of Environmental Regulation and the Department of Natural Resources with respect to the implementation of part I of this chapter. Such rules shall specifically establish procedures that determine which of the two agencies should respond in the case of specific types of pollutant spill incidents, and establish minimum criteria for response times. The rules shall also specify criteria and procedures for the expenditure of Coastal Protection Trust Fund moneys for pollution incidents that require action by the Department of Environmental Regulation.*

Section 3. Part II of chapter 376, Florida Statutes, consisting of sections 376.30, 376.32, 376.35, 376.40, 376.45, 376.50, 376.55, 376.60, 376.65, 376.70, 376.75, 376.80, 376.85, and 376.90, Florida Statutes, is created to read:

PART II
FLORIDA GROUNDWATER PROTECTION ACT.

376.30 Legislative intent.—

(1) The Legislature finds and declares that the preservation of groundwater is a matter of the highest urgency and priority, and that such use can only be served effectively by maintaining the quality of inland waters as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(2) The Legislature further finds and declares that:

(a) The transfer of pollutants within the jurisdiction of the state and state inland waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants occurring as a result of procedures taken by private and government entities involving the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the state, to citizens of the state and other interests deriving livelihood from the state;

(c) Such hazards have occurred in the past, are occurring now, and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as herein set forth; and

(d) Such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring and storing petroleum products and related activities.

(3) The Legislature intends by the enactment of this part to exercise the police power of the state by conferring upon the department the power to:

(a) Deal with the hazards and threats of danger and damage posed by such transfers and related activities;

(b) Require the prompt containment and removal of product occasioned thereby; and

(c) Establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

(4) The Legislature further finds and declares that the preservation of groundwater quality is of prime public interest and concern to the state in promoting its general welfare, preventing diseases, promoting health, and providing for the public safety and that the state's interest in such preservation outweighs any burdens of liability imposed by the Legislature upon those engaged in transferring and storing pollutants and related activities.

(5) The Legislature further declares that it is the intent of this part to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, specifically those provisions relating to the national contingency plan for removal of pollutants.

376.32 Definitions.—When used in this part, unless the context clearly requires otherwise:

(1) "Department" means the Department of Environmental Regulation.

(2) "Secretary" means the secretary of the Department of Environmental Regulation.

(3) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(4) "Discharge" shall include, but not be limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping of refined petroleum products which occurs and affects lands and groundwaters of the state.

(5) "Fund" means the Florida Groundwater Petroleum Protection Trust Fund.

(6) "Pollutants" shall include only refined petroleum products but does not include liquified petroleum gases.

(7) "Pollution" means the presence on the land or in waters of the state of pollutants, in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(8) "Facility" means any nonresidential stationary inland refined petroleum bulk product distribution, or storage structures with a storage capacity greater than 500 gallons, and not covered by part I.

(9) "Owner" means any person owning a refined petroleum product facility; "operator" means any person operating a facility, whether by lease, contract, or other form of agreement.

(10) "Transfer" or "transferred" includes unloading or offloading between facilities.

(11) "Person in charge" means the person on the scene who is in direct, responsible charge of a facility from which pollutants are discharged, when the discharge occurs.

(12) "Cleanup contractor" means any third-party contractor or any local government, provided such contractor or local government is properly certified by the department.

(13) "Person" means any individual, partner, joint venture, corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(14) "Registrant" is a facility required to possess a valid registration certificate to operate as an inland refined petroleum facility.

376.35 Pollution prohibited; pollution of waters and lands of the state prohibited.—The discharge of refined petroleum products upon any waters and lands of the state in the manner defined by this part is prohibited.

376.40 Powers and duties of the department.—

(1) The powers and duties conferred by this part shall be exercised by the department and shall be deemed to be an essential governmental function in the exercise of the police power of the state. The department may call upon any other state agency for consultative services and technical advice and the agencies are directed to cooperate in said request. The department shall coordinate with the Department of Insurance and Treasurer and the Department of Agriculture and Consumer Services in order to integrate those agencies' responsibilities into the regulatory program authorized herein. The department shall report annually to the Legislature beginning January 1, 1984, the progress it has made in the integration and coordination required by this subsection. The department shall adopt reasonable rules to regulate facilities. Such rules may include, but not be limited to, standards and criteria for design, installation, operation, maintenance and monitoring of such facilities. Any standards adopted pursuant to this subsection shall be compatible with federal standards when the facilities are operating in interstate commerce; however, this shall not preclude the establishment of standards exceeding federal standards if such state or local standards are intended to protect the environment or water quality of the state and are not in conflict with federal standards. Nothing in this section shall preempt the department from approving individual plans that meet the requirement of its rules. Each facility shall be registered with the Department of Environmental Regulation. The department shall require in connection with the issuance of a facility registration the payment of an annual fee.

(2) The powers and duties of the department under this part shall extend to the land mass of the state not described in part I.

(3) Registration certificates required under this part shall be issued from the department subject to such terms and conditions as are set forth in this part and as set forth in rules and regulations promulgated by the department as authorized herein.

(4) Whenever it becomes necessary for the state to protect the public interest, it shall be the duty of the department to keep an accurate record of costs and expenses incurred and thereafter diligently to pursue the recovery of any sums so incurred from the person responsible or from the Government of the United States under any applicable federal act.

(5) The department may bring an action on behalf of the state to enforce the liabilities imposed by this part. The provisions of ss. 403.121, 403.131, 403.141, and 403.161, shall apply to enforcement under this part.

376.45 Operation without registration prohibited.—

(1) No person shall operate or cause to be operated a facility without a registration certificate.

(2) Registration certificates shall be issued on an annual basis, subject to such terms and conditions as the department may determine are necessary to carry out the purposes of this part.

(3) As a condition precedent to the issuance or renewal of a registration certificate, the department shall require satisfactory evidence that the applicant has implemented, or is in the process of implementing, state regulations for prevention, control, and abatement of pollution from refined petroleum products when a discharge occurs.

(4) The department shall require, in connection with the issuance of a facility registration certificate, the payment of a reasonable fee for processing applications for registration certificates. This fee shall be in addition to other taxes imposed by this part. The fee shall be reasonably related to the administrative costs of verifying data submitted pursuant to obtaining the certificates and reasonable inspections; however, the fee shall not exceed \$75 per facility per year. Such fees shall be deposited in the Florida Groundwater Refined Petroleum Protection Trust Fund which may be used by the department for personnel and equipment to administer this part. In the event the department contracts with another party to perform any duties under this part such fees deposited in the trust fund may be used to cover such reasonable expenses incurred by that party.

(5) No later than October 1, 1984, each owner or operator of a facility, with a storage capacity of 5,000 gallons or greater of refined petroleum products, shall obtain a registration certificate. Provided, however, all storage facilities, regardless of size, owned or operated by the state or any other political subdivision, shall be registered by July 1, 1984. All other facilities, not exempted by this part, shall obtain a registration certificate no later than October 1, 1985. The department shall issue a registration certificate upon the showing that the registrant can provide proof of compliance with the department's rules.

(6) Subsequent to the dates established in subsection (5) above, no person shall operate or cause to be operated any facility without a registration certificate issued by the department. No registration certificate shall be valid for more than 1 year unless revalidated by the department. Each applicant for a registration certificate shall pay the registration certificate application fee to the department, describing the barrel or other measurement capacity of the facility.

(7) Upon payment of the registration certificate application fee required by the department under this section, the applicant shall be issued a registration certificate covering the facility and related appurtenances.

376.50 Regulatory powers of department.—The department shall from time to time adopt, amend, repeal, and enforce reasonable rules insofar as they relate to facilities which may discharge refined petroleum products into the waters of this state not covered under part I.

(1) The regulations shall be adopted in accordance with the Administrative Procedure Act, chapter 120.

(2) The department shall adopt regulations including, but not limited to, the following matters:

(a) Operation and inspection requirements for facilities and other matters relating to certification under this part.

(b) Procedures and methods of reporting discharges and other occurrences prohibited by this part.

(c) Procedures, methods, means, and equipment to be used by persons subject to regulation by this part in the removal of pollutants.

(d) Development and implementation of criteria and plans to meet pollution occurrences of various degrees and kinds. Any person who shall make or cause to be made any false statement in response to requirements of any provisions of this part with a fraudulent intent shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 as required in s. 837.012.

(e) Requirements that any registrant causing or permitting the discharge of a pollutant in violation of the provisions of this part, and at other reasonable times, be subject to a complete and thorough inspection. If the department determines there are unsatisfactory preventive measures, it shall, a reasonable time after notice and hearing in compliance with chapter 120, suspend the registration until such time as there is compliance with the department requirements.

(f) Such other rules as the exigencies of any condition may require or as may reasonably be necessary to carry out the intent of this part.

376.55 Removal of prohibited discharges.—

(1) Any person discharging pollutants as prohibited by this part shall immediately undertake to contain, remove, and abate the discharge to the department's satisfaction. Notwithstanding the above requirement, the department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the department.

(2) If the person causing a discharge, or the person in charge of facilities at which a discharge has taken place, fails to act, the department may arrange for the removal of the pollutant, except that if the pollutant was discharged into or upon the navigable waters of the United States, the department shall act in accordance with the national contingency plan for removal of such pollutant as established pursuant to the Federal Water Pollution Control Act, as amended, and the costs of removal incurred by the department shall be paid in accordance with the applicable provisions of said law. Federal funds provided under said act shall be used to the maximum extent possible prior to the expenditure of state funds.

(3) In the event of discharge the source of which is unknown, any local discharge cleanup organization shall, upon the request of the department or its designee, immediately contain and remove the discharge. No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the department or its designee, shall be construed as an admission of liability for the discharge.

(4) No person who, voluntarily or at the request of the department or its designee, renders assistance in containing or removing pollutants shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Nothing in this part shall affect the right of any person to render assistance in containing or removing any pollutant or any rights which that person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of the pollutant.

(6) Any person who renders assistance in containing or removing any pollutant may be eligible for reimbursement of the cost of containment or removal, provided prior approval for such reimbursement is granted by the department. The department may, upon petition and for good cause shown, waive the prior-approval prerequisite.

376.60 Florida Groundwater Refined Petroleum Protection Trust Fund.—

(1) The purpose of this section is to provide a mechanism to have financial resources immediately available for cleanup and rehabilitation after a pollutant has been discharged, to prevent further damage by the pollutant, and to pay for damages. It is the legislative intent that this section be liberally construed to effect the purposes set forth, such interpretation being especially imperative in light of the danger to the environment and resources.

(2) The Florida Groundwater Refined Petroleum Protection Trust Fund is established, to be used by the department as a nonlapsing revolving fund for carrying out the purposes of this part. To this fund shall be credited all excise taxes, registration fees, penalties, judgments, and other fees and charges related to this part. Charges against the fund shall be in accordance with this section.

(3) Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this part shall be deposited with the Treasurer to the credit of the fund and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the fund.

(4)(a) There is hereby levied, to be collected from and paid by each registrant, an excise tax upon each registrant for the privilege of operating a facility handling refined petroleum products covered by this part, the amount of which is to be determined by the department as measured by the volume in barrels of refined petroleum transferred to or from the registrant.

(b) The excise tax shall be 2 cents per barrel coming to rest in Florida not subject to the tax in s. 376.11, until the balance in the fund equals or exceeds \$10 million. The fiscal year immediately following the year in which the balance in the fund equals or exceeds \$10 million, no excise tax shall be levied unless:

1. The balance in the fund is less than or equal to \$3 million. The fiscal year immediately following the year in which the balance in the fund is less than or equal to \$3 million, the excise tax shall be and shall remain 2 cents per barrel coming to rest in Florida not subject to the tax in s. 376.11, until the fund again equals or exceeds \$10 million. The fiscal year immediately following the year in which the fund again is equal to or exceeds \$10 million, the excise tax and fund shall be controlled as when the fund first was equal to or exceeded \$10 million.

2. The fund is unable to pay any proven claims against the fund at the end of the fiscal year. Notwithstanding any other provision of this section, the fiscal year following the year in which the fund is unable to pay any proven claims against the fund at the end of the fiscal year, the excise tax shall be and shall remain 5 cents per barrel until all outstanding proven claims have been paid and the fund again equals or exceeds \$1.5 million. The fiscal year immediately following the year in which the fund, after levy of the 5-cent excise tax, again is equal to or exceeds \$10 million, the excise tax and fund shall be controlled in accordance with subparagraph 1., unless otherwise provided.

3. The fund has had appropriated to it by the Legislature, but not yet repaid, state funds from the General Revenue Fund. In such event, the excise tax shall continue in effect until all such funds are repaid to the General Revenue Fund.

(c) The excise tax provided for in this section shall be collected monthly by the Department of Revenue on the basis of records certified to the Department of Revenue and Department of Environmental Regulation and shall be credited to the fund. However, for the purposes of this section, the excise tax on each barrel of the pollutant shall be imposed only once, at the first transfer of the specific pollutant. Each tax barrel of the refined petroleum product shall only be considered once for the purpose of this excise tax. This excise tax shall be in addition to all other taxes imposed upon or paid by the registrant. However, any facility with a storage capacity of 250 barrels or less shall report and pay the excise tax semiannually.

(d) Except for the 3-percent collection allowance, the same duties and privileges imposed by chapter 212 respecting the remission of tax; the making of returns; penalties and interest; the keeping of books, records, and accounts; and the compliance with the rules of the Department of Revenue in the administration of that chapter shall apply to and be binding on all registrants who are subject to this section, except for the provisions of s. 212.12(1).

(e) The Department of Revenue shall maintain records indicating the amount of taxes collected. These records shall be confidential, as provided in s. 213.072.

(f) The Department of Revenue shall promulgate rules, establish audit procedures for the audit of registrants under this section, assess for delinquencies, and prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

(g) The Department of Revenue, according to the applicable rules of the Career Service Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature.

(5) Moneys in the fund shall be disbursed for the following purposes and no others

(a) Administrative expenses of the department related to the enforcement of this part.

(b) All immediate costs involved in the abatement of pollution related to the discharge of refined petroleum products covered by this part.

(c) All costs and expenses of the cleanup and all other natural resources damaged by the discharge of pollutants, whether performed by the department or any other state or local agency.

(d) All provable costs and damages which are the proximate results of the discharge of pollutants covered by this part.

(6) The department shall recover to the use of the fund from the person or persons causing the discharge or from the Federal Government, jointly and severally, all sums owed or expended therefrom, pursuant to s. 376.65(4), except that recoveries resulting from damage due to a discharge of a pollutant or other similar disaster shall be apportioned between the fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of any sums disbursed therefrom as a result of such disaster. Requests for reimbursement to the fund for the above costs, if not paid within 30 days of demand, shall be turned over to the Department of Legal Affairs for collection.

376.65 Liabilities and defenses of refined petroleum facilities.—

(1) Because it is the intent of this part to provide the means for rapid and effective cleanup and to minimize damages, when a discharge of pollutants occurs from a facility, recovery of costs of abatement and cleanup shall be limited to an amount not to exceed \$8 million; from a local bulk plant facility recovery costs of abatement and cleanup shall be limited to an amount not to exceed \$2 million; from a retail facility recovery costs of abatement and cleanup shall be limited to an amount not to exceed \$1 million; and from an end user recovery cost of abatement and cleanup shall be limited to the following amounts: 1,500 gallons to 29,999 gallons would be limited to \$500,000, and 30,000 gallons or more would be limited to \$1 million. However, when a discharge of pollutants occurs from a facility with less than a 1,500 gallon capacity, recovery of costs of abatement and cleanup shall be limited to \$250,000. When the department can show that such discharge was the result of willful or gross negligence or willful misconduct within the privity or knowledge of the owner or operator, such owner or operator shall be liable to the fund for the full amount of such sums expended. In addition to the foregoing costs of cleanup, facilities shall be liable to the fund for all damages in accordance with the terms of subsections (2), (3) and (4) and s. 376.60(6).

(2) Any person claiming to have suffered damages as a result of a discharge of pollutants prohibited by s. 376.35 may, within 180 days after the date of such discharge, apply to the department for reimbursement from the fund. It shall be the responsibility of the claimant to provide the department with the required documentation concerning the damages suffered as a direct result of the discharge. The department shall prescribe appropriate forms and details for such application, which application shall include a provision requiring the applicant to make a sworn verification of the damage claim to the best of his knowledge. The secretary of the department may, upon petition and for good cause shown, waive the 180-day limitation for filing damage claims.

(a) The secretary shall establish the amount of damage award and shall certify the amount of the award and the name of the claimant to the treasurer, who shall pay the award from the fund, subject to the provisions of subsection (5). If the claimant agrees with the established amount of damage, the settlement shall be binding upon both parties as to all issues and cannot be further attached, collaterally or by separate action, in the future. If the total amount of such awards exceeds the amount available to any claimant or claimants from the fund, such claimant or claimants shall have the right to a pro rata share of all funds available in the fund until the total amount of awards is paid to the claimant or claimants.

(b) If either the claimant or the person determined by the secretary to be responsible for the discharge disagrees with the amount of the damage award, such person may request a hearing pursuant to s. 120.57. If a hearing is requested, the final order shall be issued by the secretary of the department.

(c) Each person's damage claims arising from a single occurrence shall be stated in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

(d) If a person damaged by a discharge of pollutant chooses to make a claim against the fund and accepts payment from, or a judgment against, the fund, then the department shall be subrogated to any cause of action that the claimant may have had, to the extent of such payment or judgment, and shall diligently pursue recovery on that cause of action pursuant to subsection (4) and s. 376.60(6). In any such action, the

amount of damages shall be proved by the department by submitting to the court a written report of the amount paid or owed from the fund to claimants. Such written report shall be admissible in evidence, and the amounts paid from or owed by the fund to the claimants stated therein shall be irrebuttably presumed to be the amount of damages.

(e) The fund is absolutely liable for all proven damages against the fund as provided for in this section.

(f) The department shall be a necessary party to all administrative hearings and court proceedings under this section.

(3) It shall be the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup, abatement, and damages in accordance with the provisions of this part. In any suit to enforce claims of the fund under this part, it shall not be necessary for the department in administering the fund to plead or prove negligence in any form or manner. The department in administering the fund need only plead and prove that the prohibited discharge or other polluting condition occurred. The only defenses of a person alleged to be responsible for the discharge to an action for damages, costs, and expenses of cleanup, or abatement shall be to plead and prove that the occurrence was solely the result of any of the following or any combination of the following:

(a) An act of war.

(b) An act of government, either state, federal, or municipal.

(c) An act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party, without regard to whether any such act or omission was or was not negligent.

(4) In the event the total awards against the fund shall exceed the present balance of the fund, the claimants shall be paid from the future income of the fund.

(5) In the event the total awards for a specific occurrence exceed the current balance of the fund, the immediate award shall be paid on a prorated basis, and all claimants paid on a prorated basis shall be paid a pro rata share of all funds received by the fund until the total amount of the proven damages is paid to the claimant or claimants. However, amounts collected by the fund from the prosecution of causes of action pursuant to paragraph (2)(d) and subsection (4) shall be utilized to satisfy the claims as to which such prosecutions relate to the extent theretofore unsatisfied.

376.70 Facilities, financial responsibility.—

(1) Each owner or operator of a facility shall be required to establish and maintain evidence of financial responsibility. Such evidence of financial responsibility shall be the only evidence required by the department that such registrant has the ability to meet the liabilities which may be incurred under this part.

(2) Any claim brought pursuant to this part by the fund or any damaged party may be brought directly against the bond, the insurer, or any other person providing a facility with evidence of financial responsibility.

(3) Each owner or operator of a facility subject to the provisions of this part shall designate a person in the state as his legal agent for service of process under this part, and such designation shall be filed with the Department of State. In the absence of such designation, the Secretary of State shall be the designated agent for purposes of service of process under this part.

376.75 Enforcement and penalties.—

(1) It is unlawful for any person to intentionally violate any provision of this part or any rule, regulation, or order of the department made hereunder. Violation shall be punishable by a civil penalty of up to \$25,000 per violation per day to be assessed by the department. Each day during any portion of which the violation occurs constitutes a separate offense.

(2) Penalties assessed herein for a discharge shall be the only penalties assessed by the state, and the assessed person or persons shall be excused from paying any additional penalty for water pollution assessable under chapter 403 for the same occurrence.

(3) The penalty provisions of this section shall not apply to any discharge promptly reported and removed by a registrant in accordance with the rules, regulations and orders of the department.

376.80 County and municipal ordinances; powers limited.—Nothing in this part shall be construed to deny any county or municipality authority to exercise police powers by ordinance or law under any general or special act. Laws and ordinances promulgated in furtherance of the intent of this part to promote the general welfare, public health, and public safety shall be valid unless they are in direct conflict with the provisions of this part or any rule, regulation, or order of the department adopted or rendered under authority of this part. However, in order to avoid unnecessary duplication, no county, municipality, or other political subdivision of the state may adopt or establish a similar program of licensing and fees for the accomplishment of the purposes of this part. The department may delegate enforcement and other responsibilities, except licensing and fee collection, to approved county and municipal programs, and may remit all or any portion of license fees collected by the Department to counties or municipalities having approved programs, for use in the operation of the approved local programs.

376.85 Individual cause of action for damages.—The remedies in this act shall be deemed to be cumulative and not exclusive. Nothing in this act shall require pursuit of any claim against the fund as a condition precedent to any other remedy. Notwithstanding any other provision of law, nothing contained herein shall prohibit any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by this part. In any such suit, it shall not be necessary for the person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it occurred. The only defenses to such cause of action shall be those specified in subsection 376.65(3). In addition to any other remedy, the injured party shall be entitled to recover costs of the action and reasonable attorneys' fees.

376.90 Construction.—This part, being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under this part and Federal Water Pollution Control Act, as amended.

Section 4. Paragraph (b) of subsection (4) of section 376.11, Florida Statutes, is amended to read:

376.11 Florida Coastal Protection Trust Fund.—

(4)

(b) The excise tax shall be 2 cents per barrel transferred until the balance in the fund equals or exceeds \$30 ~~\$35~~ million. The fiscal year immediately following the year in which the balance in the fund equals or exceeds \$30 ~~\$35~~ million, no excise tax shall be levied unless:

1. The balance in the fund is less than or equal to \$25 ~~\$30~~ million. The fiscal year immediately following the year in which the balance in the fund is less than or equal to \$25 ~~\$30~~ million, the excise tax shall be and shall remain 2 cents per barrel transferred until the fund again equals or exceeds \$30 ~~\$35~~ million. The fiscal year immediately following the year in which the fund again is equal to or exceeds \$30 ~~\$35~~ million, the excise tax and fund shall be controlled as when the fund first was equal to or exceeded \$30 ~~\$35~~ million.

2. There is a discharge of catastrophic proportions, the results of which could significantly reduce the balance in the fund. In the event of such a catastrophic occurrence, the Governor and Cabinet as the head of the Department of Natural Resources may, by rule, relevy the excise tax in an amount not to exceed 10 cents per barrel for a period of time sufficient to maintain the fund at a balance of \$30 ~~\$35~~ million, after payment of the costs and damages related to the catastrophic discharge.

3. The fund is unable to pay any proven claims against the fund at the end of the fiscal year. Notwithstanding any other provision of this section, the fiscal year following the year in which the fund is unable to pay any proven claims against the fund at the end of the fiscal year, the excise tax shall be and shall remain 5 cents per barrel transferred until all outstanding proven claims have been paid and the fund again equals or exceeds \$10 million. The fiscal year immediately following the year in which the fund, after levy of the 5-cent excise tax, again is equal to or exceeds \$10 million, the excise tax and fund shall be controlled in accordance with subparagraph 1., unless otherwise provided.

4. The Florida Coastal Protection Trust Fund has had appropriated to it by the Legislature, but not yet repaid, state funds from the General Revenue Fund. In such event, the excise tax shall continue in effect until all such funds are repaid to the General Revenue Fund.

Section 5. The sum of \$5 million is hereby appropriated from the Florida Coastal Protection Trust Fund to the Florida Groundwater Refined Petroleum Protection Trust Fund for use in accordance with this part. This initial appropriation shall preclude the initial levy of the excise tax specified in s. 376.60(4)(b).

PART II
HAZARDOUS WASTE MANAGEMENT

Section 6. Section 208.001, Florida Statutes, is amended to read:

208.001 Tax on generation of hazardous wastes; levy.—

(1) There is hereby levied, to be paid by each generator of hazardous waste regulated by in the state, an excise tax for the privilege of generating hazardous wastes. The tax shall be levied at a rate of 5 4 percent of the price of disposing of, storing, or treating hazardous waste. This tax shall be in addition to all other taxes imposed upon or paid by a generator of hazardous waste. However, no tax shall be imposed upon a generator that is a municipality, county, or other unit of government.

(2) ~~The 4 percent rate provided in subsection (1) shall be suspended for a period of 4 years beginning October 1, 1980. During such period the following rates shall be applicable:~~

(a) ~~There shall be no tax charged from October 1, 1980, through September 30, 1981.~~

(b) ~~October 1, 1981, through September 30, 1982, 1 percent of the price of disposing of, storing, or treating hazardous waste.~~

(c) ~~October 1, 1982, through September 30, 1983, 2 percent of the price of disposing of, storing, or treating hazardous waste.~~

(d) ~~October 1, 1983, through September 30, 1984, 3 percent of the price of disposing of, storing, or treating hazardous waste.~~

Section 7. Section 208.006, Florida Statutes, is created to read:

208.006 Tax on commercial hazardous waste facilities.—

(1) The owner or operator of each privately owned, permitted, commercial, hazardous waste storage, treatment, or disposal facility which is operated for compensation shall, on or before January 25 of each year, file with the chief fiscal officer of the primary host local government a certified, notarized statement. The statement shall indicate the gross receipts from all charges imposed during the preceding calendar year for the treatment, storage, or disposal of hazardous waste at the facility.

(2) A 3 percent tax is hereby levied on the annual gross receipts of a privately owned, permitted, commercial hazardous waste storage, treatment, or disposal facility, which tax is payable annually by the owner of the facility to the primary host local government.

(3) All moneys received by the appropriate local government pursuant to subsection (2) shall be appropriated and used to pay for:

(a) The costs of collecting the tax;

(b) Any local inspection costs incurred by the local government to ensure that the facility is operated pursuant to the provisions of chapter 403, part IV, and any rule adopted pursuant thereto;

(c) Additional security costs incurred as a result of operating the facility, including fire and police protection;

(d) Hazardous waste contingency planning implementation;

(e) Road construction or repair costs for public roads adjacent to and within 1,000 feet of such hazardous waste facility.

Section 8. Section 220.184, Florida Statutes, is created to read:

220.184 Hazardous waste facility tax credit.—

(1) A credit against the tax imposed by this chapter shall be allowed to the owner of any commercial hazardous waste facility who spends moneys for hydrologic, geologic, or soil site evaluations and permit fees required by the Department of Environmental Regulation, which credit shall be equal to the amount of such moneys spent.

(2) A credit against the tax imposed by this chapter shall be allowed to the owner of any state permitted commercial hazardous waste recycling facility, which credit shall be an amount equal to 5 percent of the cost of the stationary facility equipment used for the recycling of hazardous wastes.

(3) If any credit granted pursuant to this section is not fully used in any 1 year, the unused amount may be carried forward for a period not to exceed 5 years. The carryover may be used in a subsequent year when the tax imposed by this act for such year exceeds the credit for such year under this section.

Section 9. Subsection (3) of section 376.11, Florida Statutes, is amended to read:

376.11 Florida Coastal Protection Trust Fund.—

(3)(a) Moneys in the Florida Coastal Protection Trust Fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this chapter shall be deposited with the Treasurer to the credit of the Florida Coastal Protection Trust Fund and may be invested in such manner as is provided for by statute. Interest received on such investment, less those sums authorized to be spent for department administrative purposes, shall be credited to the Hazardous Waste Site Restoration Florida Coastal Protection Fund and the Port Spoil Site Acquisition Trust Fund as provided herein. Effective July 1, 1983, and every year thereafter, 50 percent of the interest earned from investments of the Florida Coastal Protection Trust Fund, not otherwise committed for other purposes by this section, when the balance of the Florida Coastal Protection Fund is greater than \$35 million shall be credited to the Hazardous Waste Site Restoration Fund and shall be used in accordance with Section 15 of this act. In the event that the balance of the Florida Coastal Protection Trust Fund is reduced to \$35 million or less, the interest normally accruing to the Hazardous Waste Site Restoration Fund shall be discontinued until the balance of the Florida Coastal Protection Trust Fund exceeds \$35 million. The provisions of this subparagraph shall not apply if the Governor and Cabinet declare an emergency related to a major pollutant hazard authorized to be protected by this chapter.

(b)1. Effective July 1, 1980, and every year thereafter, 50 percent of the interest earned from investments of the Florida Coastal Protection Trust Fund when the balance of the fund is greater than \$30 \$35 million shall be credited to the Port Spoil Site Acquisition Trust Fund and shall be used for the acquisition of spoil disposal sites and improvements to existing and future spoil sites for the ports of St. Petersburg Bayboro Harbor, Jacksonville, Port Canaveral, Ft. Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, Port St. Joe, Tampa, Panama City, Pensacola, and other navigable waters of the state. In the event that the balance of the fund is reduced to \$30 \$35 million or less, the interest normally accruing to the Port Spoil Site Acquisition Trust Fund ~~priority acquisition and improvement program for spoil disposal sites~~ shall be discontinued until the balance of the fund exceeds \$30 \$35 million. The provisions of this subparagraph shall not apply if the Federal Government preempts the authority to levy, collect, and use an excise tax pursuant to this section or if the Governor and Cabinet declare an emergency related to a major pollutant hazard. In the event that the Port Spoil Site Acquisition Trust Fund shall accrue \$8 million in unspent moneys, interest earned from investments of the Florida Coastal Protection Trust Fund, as provided herein, shall be credited to the Coastal Protection Trust Fund until such time that there is less than the \$8 million in the Port Spoil Site Acquisition Trust Fund at which time interest earned from investments of the Florida Coastal Protection Trust Fund shall be credited to the Port Spoil Site Acquisition Trust Fund.

2. The Department of Natural Resources shall establish a priority acquisition and improvement program for spoil disposal sites, to be acquired using moneys from the Florida Port Spoil Site Acquisition Coastal Protection Trust Fund, based upon its recommendations and the recommendations made by the specific ports and the Department of Environmental Regulation. Such priority acquisition and improvement program shall take into consideration the existing need of each port for spoil disposal sites, the frequency and volume of maintenance dredging at each port, the movement of petroleum and other pollutant hazards at each port, the protection of recreational and environmental quality, and whether the proposed site meets the permit requirements of chapters 403 and 253. The Governor and Cabinet, as head of the Department of Natural Resources, shall approve the priority list of spoil sites as proposed by the Department of Natural Resources.

3. The recipient port authority or appropriate governmental entity shall contribute not less than 50 percent of the cost of acquisition of a spoil disposal site. Such contribution may include land owned or improvements to the spoil disposal site. The department shall establish procedures for the payment of funds and matching contributions consistent with the provisions herein.

4. Any moneys received from the sale of dredged materials deposited on a spoil disposal site acquired hereunder or from the sale of an acquired spoil disposal site shall be paid to the Florida Coastal Protection Trust Fund until the fund has been reimbursed for its participation in the purchase of that site. Any remaining funds shall be paid to the contributing governmental entity until that entity is reimbursed for its contribution. Any funds remaining thereafter shall be paid to the Florida Coastal Protection Trust Fund.

Section 10. Paragraph (c) of subsection (2) of section 403.702, Florida Statutes, is amended to read:

403.702 Legislative findings; public purpose.—

(2) It is declared to be the purpose of this act to:

(c) Provide the authority, and require counties and municipalities, to adequately plan and provide for efficient, environmentally acceptable resource recovery and management and to plan for proper hazardous waste management ~~except for hazardous wastes.~~

Section 11. Subsection (18) of section 403.703, Florida Statutes, is amended to read:

403.703 Definitions.—As used in this act:

(18) "Closure" means the cessation of operation of a resource recovery and management facility and the preparation of such facility to prevent any significant threat to human health or the environment.

Section 12. Subsections (21), (22), (23), (24), and (25) are added to section 403.704, Florida Statutes, to read:

403.704 Powers and duties of the department.—The department shall have responsibility for the implementation and enforcement of the provisions of this act. In addition to other powers and duties, the department shall:

(21) Receive and administer funds appropriated for county hazardous waste management plans.

(22) Facilitate consistency between county hazardous waste management plans, coordinate the development of such plans with the assistance of the appropriate regional planning councils, review and make recommendations to the Legislature relative to the plans' sufficiency in meeting the state's hazardous waste management needs.

(23) Promote, through local and regional meetings, public awareness of hazardous waste issues and proper methods of management.

(24) Assist the hazardous waste storage, treatment, or disposal industry by providing to the industry any data produced on the types and quantities of hazardous waste generated.

(25) Institute a hazardous waste emergency response program which would include emergency telecommunication capabilities and coordination with appropriate agencies.

Section 13. Paragraph (c) of subsection (1) of section 403.7045, Florida Statutes, 1982 Supplement, is amended to read:

403.7045 Application of act and integration with other acts.—

(1) The following wastes or activities shall not be regulated pursuant to this act:

(c) Emissions to the air from a stationary installation or source regulated under provisions of chapter 403 or under the Clean Air Act, Pub. L. No. 95-95 95-11;

Section 14. Section 403.713, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 403.713, F.S., for present text.)

403.713 Transport of solid waste.—Nothing in this act or in any local act or ordinance shall be construed to limit the free flow of solid waste across municipal or county boundaries provided such solid waste is transported or disposed of pursuant to the provisions of this part. However, any local government that undertakes resource recovery of solid waste pursuant to general law or special act may control the collection and disposal of solid waste, as defined by general law or such special act, which is generated within the territorial boundaries of such local government and other local governments which enter into interlocal agreements for

the disposal of solid waste with the local government sponsoring the resource recovery facility. Any local government which undertakes resource recovery of solid waste pursuant to general law or special act may institute a flow control ordinance for the purpose of insuring that the resource recovery facility receives an adequate quantity of solid waste from solid waste generated within their jurisdiction. Such solid waste would not include scrap, or new or used material, separated at the point of generation and held for purposes of recycling, which shall be subject to state and local public health and safety laws.

Section 15. Subsections (9) and (10) of section 403.722, Florida Statutes, 1982 Supplement, are amended to read:

403.722 Permits; hazardous waste disposal, storage, and treatment facilities.—

(9) ~~The department shall process permit applications pursuant to s. 120.60. It shall not be a requirement for the issuance of such a permit that the facility complies with an adopted local government comprehensive plan, local land use ordinances, zoning ordinances or regulations, or other local ordinances. However, such a permit issued by the department shall not override such adopted local government comprehensive plans, local land use ordinances, zoning ordinances or regulations, or other local ordinances.~~

(10) Notwithstanding ss. 120.60(2) and 403.815:

(a) ; The time specified by law for permit review shall be tolled by the request of the department for publication of notice of proposed agency action to issue a permit for a hazardous waste treatment, storage, or disposal facility and shall resume 45 days after receipt by the department of proof of publication. If, within 45 days after publication of the notice of the proposed agency action, the department receives written notice of opposition to the intention of the agency to issue such permit and receives a request for a hearing, the department shall provide for a hearing pursuant to s. 120.57, if requested by a substantially affected party, or an informal public meeting, if requested by any other person. Failure to request a hearing within 45 days after publication of the notice of the proposed agency action shall constitute a waiver of the right to a hearing under s. 120.57. The permit review time period shall continue to be tolled until the completion of such hearing or meeting. ~~and shall resume pursuant to the time periods and tolling provisions of s. 120.60.~~

(b) Within 60 days after receipt of an application for a hazardous waste facility permit, the department shall examine the application, notify the applicant of any apparent errors or omissions and request any additional information the department is permitted by law to require. Failure to correct an error or omission or to supply additional information shall not be grounds for denial of the permit unless the department timely notified the applicant within the 60-day period, except that this paragraph shall not prevent the department from denying an application if it does not possess sufficient information to ensure that the facility is in compliance with applicable statutes and rules.

(c) The department shall approve or deny every hazardous waste facility permit within 135 days after receipt of the original application or after receipt of the requested additional information or correction of errors or omissions. However, failure of the department to approve or deny within the 135-day time period shall not result in the automatic approval or denial of the permit and shall not prevent the inclusion of specific permit conditions which are necessary to ensure compliance with applicable statutes and rules. If the department fails to approve or deny the permit within the 135-day period, the applicant may petition for a writ of mandamus to compel the department to act consistent with applicable regulatory requirements.

Section 16. Section 403.7225, Florida Statutes, is created to read:

403.7225 Local hazardous waste management plans.—

(1) The Legislature recognizes that there is a need for estimating the amount, type, and sources of hazardous waste generated in the state. There is also a need for facilitating proper storage, transportation, volume reduction treatment, resource recovery, and disposal of these wastes. Proper management of these wastes is imperative in order to protect the public health, safety, and welfare and the environment.

(2) Each regional planning council shall prepare a needs assessment for each county within its region and submit them to the department. Any county which chooses to perform its own needs assessment or any county which does not belong to a regional planning council shall coordi-

nate its needs assessment and area selection with the department. Such county shall receive a reasonably proportionate share of the general revenue allocated to the region for this purpose, such share to be determined by the department.

- (3) The county needs assessment shall include identification of:
 - (a) Hazardous waste generators;
 - (b) The quantities and types of hazardous wastes generated;
 - (c) Hazardous waste management practices of generators; and
 - (d) Types of facilities needed to serve hazardous waste generators.
- (4) Each county shall choose areas within the county in which a hazardous waste storage facility may be located. Public hearings shall be held to determine the area locations. Each county shall amend its comprehensive plans, if necessary, after areas have been chosen. Area preference shall be given to appropriate public lands and industrial areas as designated on local comprehensive plans, but this shall not prohibit a county from amending their comprehensive plan to designate other areas for this purpose.
- (5) No county shall amend its comprehensive plan or undertake rezoning actions in order to prevent areas from being designated for a hazardous waste storage facility once the selection process begins.
- (6) The needs assessment and hazardous waste storage facility area selections shall constitute the county hazardous waste management plan.
- (7) Regional planning councils shall, upon direction by the department:
 - (a) Facilitate county needs assessments, and area selection procedures;
 - (b) Coordinate county needs assessments and area selections;
 - (c) Provide any technical expertise needed by the counties; and
 - (d) Promote local and regional public information programs for citizens and generators of hazardous waste.
- (8) The department shall:
 - (a) Assemble the county hazardous waste management plans;
 - (b) Determine if the needs of hazardous waste generators will be met by hazardous waste storage facility area selections, if additional storage or treatment and disposal facilities are needed in the state, and which regions have the greatest need, and submit their determination to the Legislature.
 - (c) Prepare a progress report on the development of each county hazardous waste management plan and submit such report to the Legislature no later than January 1 of the year in which such plan is due.
- (9) The schedule for completion of county hazardous waste management plans by region is as follows:
 - (a) For counties within the geographic areas of the Tampa Bay Regional Planning Council, the South Florida Regional Planning Council, and the Northeast Florida Regional Planning Council; by July 1, 1984.
 - (b) For counties within the geographic areas of the Treasure Coast Regional Planning Council, the East Central Florida Regional Planning Council, and the Central Florida Regional Planning Council; by July 1, 1985.
 - (c) For counties within the geographic areas of the West Florida Regional Planning Council, the Apalachee Regional Planning Council, the North Central Florida Regional Planning Council, the Withlacoochee Regional Planning Council, and Southwest Florida Regional Planning Council; by July 1, 1986.
- (10) Preparation of county hazardous waste management plans shall not prevent siting of storage, treatment, or disposal facilities in any area of the state.
- (11) Any county or region which undertakes and completes a hazardous waste management plan prior to the scheduled completion date, shall receive a proportionate share of general revenue upon being appropriated for such purpose.

(12) Water management districts shall provide technical assistance relative to water resources to local, regional, and state agencies during the development of the local hazardous waste management plans.

(13) The department shall administer any general revenue funds appropriated for the purpose of developing the local hazardous waste management plans.

(14) No local government law, ordinance, or rule pertaining to the subject of hazardous waste regulation shall be more stringent than state regulations adopted under authority of this chapter.

Section 17. Section 403.723, Florida Statutes, is amended to read:

403.723 Siting of hazardous waste facilities.—*The Legislature intends to facilitate siting of proper hazardous waste storage facilities in each county and any additional storage, treatment, or disposal facilities as required. The Legislature recognizes the need for facilitating disposal of small generators' waste, reducing the volume of wastes generated in the state, and providing treatment and disposal facilities in the state in the future.*

(1) *Each county shall complete a hazardous waste needs assessment and choose areas within the county at which a hazardous waste storage facility could be constructed to meet a demonstrated need. Such needs assessment and area selections shall constitute a hazardous waste management plan.*

(2)(1) The department, within 30 days of receipt of a complete application for a hazardous waste facility construction or modification permit, shall notify each unit of local government within 3 miles of the proposed facility that a permit application has been received and shall publish notice, in a newspaper of general circulation in the area of the proposed facility, that a complete permit application has been received.

(3)(2) Upon request by a person who has applied for a hazardous waste facility permit from the department, the local government having jurisdiction over the proposed site shall, within 90 days of such request, determine whether or not the proposed site is consistent and in compliance with adopted local government comprehensive plans, local land use ordinances, local zoning ordinances or regulations, and other local ordinances in effect at the time a hazardous waste facility construction or modification permit application is made.

(4)(3) If the local government determines within 90 days of the request that construction or modification of the facility does not comply with such plans, ordinances, or regulations, the person requesting the determination may request a variance from such plans, ordinances, or regulations.

(5)(4) If the variance requested by the applicant is denied by local government or if there is no determination made by local government pursuant to subsection (3)(2) within 90 days of the request, or if there is no action on the variance requested by the applicant within 90 days of the request for the variance, the person requesting such determination or variance may petition the Governor and Cabinet for a variance from the local ordinances, regulations, or plans, ~~but only if the applicable regional planning council, by a vote of a majority of the members present, has previously recommended a variance from any local ordinances, regulations, or plans that prohibit the siting of the hazardous waste facility.~~

(6) ~~The Governor and Cabinet shall grant the (5) A regional planning council may recommend a variance from any local ordinances, regulations, or plans only if a hazardous waste permit has been issued by the department and if the Governor and Cabinet find the regional planning council finds, based upon competent substantial evidence that clearly and convincingly establishes, that the facility:~~

(a) Will not have a significant adverse impact on the environment, including ground and surface water ~~and natural~~ resources, of the region; and

(b) Will not have a significant adverse impact on the economy of the region.

~~(c) Does not pose a significant danger to the public in the region due to transportation of hazardous waste to or from the facility.~~

~~(d) Complies with adopted local and state resource recovery and management programs.~~

(6) ~~Only if the regional planning council recommends a variance from local ordinances, regulations, or plans, or if the regional planning council does not take any action within 90 days of the request for such recommendations, may the person requesting the recommendation for variance petition the Governor and Cabinet for a variance from the local ordinances, regulations, or plans in question.~~

(7) The Governor and Cabinet shall also consider, ~~the following~~ when determining whether to grant a petition for a variance from local ordinances, regulations, or plans:

(a) The record of the proceeding before the *local government regional planning council*.

(b) ~~Such studies, reports, and information as the Governor and Cabinet may request of the department, addressing the feasibility of alternative methods of storage, treatment, or disposal of the hazardous waste to be handled at the proposed facility; the need for the hazardous waste facility based on the amount of hazardous waste being produced in this state; the availability of possible suitable locations for the hazardous waste facility elsewhere in this state; and the economics of transporting the hazardous waste to be disposed of, stored, or treated at the proposed or existing facility to alternative existing facilities in or out of this state.~~

(c) ~~Such studies, reports, and information as the Governor and Cabinet may request of the Department of Veteran and Community Affairs addressing whether or not the facility unreasonably interferes with the achievement of the goals and objectives of any adopted state or local comprehensive plan and any other matter within its jurisdiction. The Governor and Cabinet may grant a variance from local ordinances, regulations, or plans only if the permit has been issued by the department and if they find that there is a clear and convincing need for the facility. A clear and convincing need for a facility is established if the proposed method of storage, treatment, or disposal of the hazardous waste to be handled at the proposed facility is the most feasible method and if it seems probable that the proposed or existing facility will be more advantageous economically to generators of hazardous waste at the proposed site than at possible alternative sites. The Governor and Cabinet may attach conditions and restrictions to any variance granted pursuant to this subsection.~~

(8) ~~Regional planning councils and The Governor and Cabinet may adopt rules of procedure that govern these proceedings.~~

Section 18. Subsection (7) is added to section 403.724, Florida Statutes, to read:

403.724 Financial responsibility.—

(7) *A generator or transporter of hazardous wastes who has complied with this act, and with the applicable rules adopted under this act, and who has contracted for the treatment, reuse, or disposal of hazardous wastes with a licensed hazardous waste disposal or processing facility is relieved from liability for such wastes upon receipt of a certificate of disposal from the disposal or processing facility.*

Section 19. Subsections (1), (3), and (5) of section 403.725, Florida Statutes, 1982 Supplement, are amended to read:

403.725 Hazardous Waste Management Trust Fund.—

(1) The purpose of this section is to create a method to provide financial resources to: ~~abate or substantially reduce an imminent hazard due to hazardous waste, to maintain and~~

(a) *Monitor and inspect hazardous waste storage, treatment, or disposal facilities, to respond to hazardous waste emergencies, and to implement hazardous waste contingency plans, and*

(b) *Fund the "Amnesty Days" project. This project shall be administered and supervised by the department, but shall be contracted to a department approved, bonded, waste handling company for execution. The purpose of the project shall be to collect from homeowners, farmers, educational institutions, state agencies and small businesses, small quantities of hazardous waste which need to be disposed of properly and to transport these wastes out of the state for proper disposal at a federally approved facility. This project shall be completed by July 1, 1984. an area where hazardous waste has been disposed of, to prevent damage from hazardous waste, to pay for all provable property damages which are the proximate results of hazardous wastes released into the environment after the effective date of this act, and to pay for restoration of areas*

~~damaged by hazardous waste from abandoned hazardous waste sites. It shall be the responsibility of any person claiming damages from this fund to provide the department with documentation of the destruction to, or loss of, any real or personal property. The claimant shall also provide the department with documentation that the damages were the direct result of the release of hazardous waste into the environment. This section shall be liberally construed to effect the purposes set forth, such construction being especially imperative due to the danger which hazardous waste poses to human health, safety, and welfare; the environment; and private and public property.~~

(3) Into the fund shall be deposited:

(a) Appropriations to the fund by the Legislature;

(b) Hazardous waste facility permit fees;

(c) *Fines other than uncontrolled site or abandoned site violation fines* collected for violations of this act, department rules, or permit conditions;

(d) Moneys collected from reimbursement requests and actions;

(e) Grants, moneys, or gifts from public or private agencies which are specifically designated to be deposited into the fund for hazardous waste management; and

(f) Excise tax fees.

(5) ~~Moneys expended from the fund, if any, shall be recoverable, jointly and severally, from the person or persons responsible for the management of the hazardous waste causing the need for the expenditure; and the moneys recovered shall be deposited in the fund. Requests for reimbursement to the fund for moneys expended, if not paid within 30 days after receipt of demand, shall be turned over to the Department of Legal Affairs. A generator or transporter of hazardous wastes who has complied with this act, and with the applicable rules and regulations promulgated under this act, and who has contracted for the disposal of hazardous wastes with a licensed hazardous waste disposal or processing facility is relieved from liability for those wastes upon receipt of a certificate of disposal from the disposal or processing facility.~~

Section 20. Section 403.7255, Florida Statutes, is created to read:

403.7255 Hazardous Waste Site Restoration Fund.—

(1) The purpose of this section is to create a method to provide financial resources to abate or substantially reduce an imminent hazard due to hazardous waste, to maintain and monitor an area where hazardous waste has been disposed of, to prevent damage from hazardous waste, to pay for all provable property damages which are the proximate results of hazardous wastes released into the environment and to pay for restoration of areas damaged by hazardous waste from abandoned hazardous waste sites or damaged by substances which are carcinogenic, mutagenic, teratogenic or toxic to humans, plants or animals. It shall be the responsibility of any person claiming damages from this fund to provide the department with documentation of the destruction to, or loss of, any real or personal property. The claimant shall also provide the department with documentation that the damages were the direct result of the release of hazardous waste into the environment. This section shall be liberally construed to effect the purposes set forth, such construction being especially imperative due to the danger which hazardous waste poses to human health, safety, and welfare; the environment; and private and public property.

(2) The Hazardous Waste Site Restoration Fund is established and shall be used by the department for the purposes, and shall receive funds and be administered in the manner, specified in this section.

(3) Into the fund shall be deposited:

(a) Appropriations to the fund by the Legislature;

(b) Fines collected for uncontrolled site or abandoned site violations;

(c) Moneys collected from reimbursement requests and actions;

(d) Grants, moneys, or gifts from public or private agencies which are specifically designated to be deposited into the fund for hazardous waste site restoration;

(e) Interest on investments of Florida Coastal Protection Trust Fund moneys; and

(f) Interest on deposits in the fund.

(4) Moneys in the fund not currently needed to meet the obligations of the department in the exercise of its responsibilities under this act shall be deposited with the Treasurer to the credit of the fund and may be invested in such manner as is provided by statute. Interest received on the investment shall be credited to the fund.

(5)(a) Moneys expended from the fund, if any, shall be recoverable from the person or persons responsible for the management of the hazardous waste causing the need for the expenditure; and the moneys recovered shall be deposited in the fund. Requests for reimbursement to the fund for moneys expended, if not paid within 30 days after receipt of demand, shall be turned over to the Department of Legal Affairs.

(b) If money expended from the fund is recoverable from two or more persons, each person shall be jointly and severally liable for such money. However, if damages claimed from the fund are divisible and may be attributed to a particular person, each person shall be liable for only the amount expended that is attributable to damage caused by that person.

(6) Moneys in the fund shall not be expended to clean up hazardous waste which is being removed from navigable waters by a federal agency in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan established pursuant to the Federal Water Pollution Control Act, Pub. L. No. 92-500, as amended, or which is being removed from any coastal waters, estuaries, tidal flats, beaches, or lands adjoining the coastline of the state by the Department of Natural Resources pursuant to chapter 376.

(7) Fund moneys shall be expended in a manner which is consistent with s. 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 94 Stat. 2767.

(8) Whenever it becomes necessary for the state to protect the public interest under this chapter, it shall be the duty of the department to diligently pursue any available funds under any appropriate federal act before expending moneys in the Hazardous Waste Site Restoration Fund created in s. 403.7255.

Section 21. Paragraph (b) of subsection (4) of section 403.727, Florida Statutes, 1982 Supplement, is amended to read:

403.727 Violations; defenses, penalties, and remedies.—

(4) The following defenses shall be available to a person alleged to be in violation of this act, who shall plead and prove that the alleged violation was solely the result of any of the following or combination of the following:

(b) An act of government, either state, federal, or local, *except if such act was committed by a government pleading such defense.*

Section 22. Section 403.729, Florida Statutes, is hereby repealed.

Section 23. The sum of \$300,000 is hereby appropriated from the General Revenue Fund for fiscal year 1983-1984 to the Department of Environmental Regulation for the sole purpose of funding the hazardous waste management plans for counties in the Tampa Bay, South Florida and Northeast Florida regions, wherein the most immediate need lies.

Section 24. Effective July 1, 1983, the sum of \$4.8 million shall be appropriated from the Florida Coastal Protection Trust Fund to the Hazardous Waste Site Restoration Fund for use in accordance with section 15 of this act.

Section 25. The sum of \$400,000 shall be appropriated to the Hazardous Waste Management Trust Fund from the Hazardous Waste Site Restoration Fund for use in accordance with s. 403.725(1)(b).

PART III WATER RESOURCES DATA COLLECTION

Section 26. Subsections (2) and (5) of section 373.026, Florida Statutes, are amended to read:

373.026 General powers and duties of the department.—The Department of Environmental Regulation, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, the department may enter into interagency agreements with any other state agency conducting programs related to or materially affecting the water resources of the state. All such interagency agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department is authorized:

(2) To collect, compile, and analyze, and prepare for its use by any person and guidance in administering the water resource laws of this state, scientific and factual data on water resources from the United States Geological Survey or any public or private state agency. All local governments, water management districts, and state State agencies are directed to cooperate with the department or its agents in making available to it for this purpose such scientific and factual data as the department deems necessary ~~they may have~~. Each year the department shall publish a bibliography and brief description of the water resource investigations which have been done or are being done in the state, and a listing of any collected information on such investigations. The department shall assemble appropriate ground water research data reasonably available for the purpose of developing a statewide ground water investigation plan. The department may prescribe a format for submissions of data by other agencies.

(5) To identify by continuing study those areas of the state where saltwater intrusion or any other contamination is a threat to water ~~freshwater~~ resources and make ~~report~~ its findings available to the water management districts, boards of county commissioners, and public concerned.

PART IV SEWAGE TREATMENT

Section 27. Section 403.1821, Florida Statutes, is amended to read:

403.1821 Water pollution control and sewage treatment.—Sections 403.1821-403.1832 ~~403.1833~~ shall be known and cited as the "Florida Water Pollution Control and Sewage Treatment Plant Grant Act of 1970."

Section 28. Section 403.1822, Florida Statutes, is amended to read:

403.1822 Definitions for ss. 403.1821-403.1832 ~~403.1833~~.—As used in ss. 403.1821-403.1832 ~~403.1833~~:

(1) "Local governmental agencies" refers to any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing, acting jointly in connection with a ~~an~~ eligible project, having jurisdiction over collection, transmission, treatment, or disposal of sewage, industrial wastes, or other wastes.

(2) "Department" refers to the Department of Environmental Regulation.

(3) "Grants," "grant," "state grants," or "state grant" refer to disbursements from the State Water Pollution Control Trust Fund pursuant to s. 403.1825.

(4) "Project" means a sewage treatment or disposal facility, or other cost-effective alternative, and may include the construction or reconstruction of existing sewage collection or transmission lines.

Section 29. Section 403.1823, Florida Statutes, is amended to read:

403.1823 Department of Environmental Regulation to administer; develop rules and regulations.—The department shall:

(1) Promulgate rules and regulations to carry out the purposes of ss. 403.1821-403.1832 ~~403.1833~~.

(2) Administer and control all funds appropriated to or received by the department for the purposes of ss. 403.1821-403.1832 ~~403.1833~~.

Section 30. Section 403.1824, Florida Statutes, is amended to read:

403.1824 Establish fund.—A trust fund to be known as the State Water Pollution Control Trust Fund is established in the State Treasury to be used for state grants to local governmental agencies for the construction or reconstruction of sewage collection, transmission, treatment or disposal facilities or cost-effective alternatives. All funds received by the department to carry out the purposes of ss. 403.1821-403.1832 ~~403.1833~~ shall be deposited in this fund. The department may expend up to 2 percent of the trust fund to cover the costs of reviewing and acting upon grant applications by a local governmental agency and the cost of surveillance and other field services associated with the application.

Section 31. Section 403.1826, Florida Statutes, is amended to read:

403.1826 Grants, requirements for eligibility.—

(1) Grants shall be made under ss. 403.1821-403.1832 ~~403.1833~~ only for projects eligible for federal grants under Public Law 84-660, as amended, or other applicable federal law, as provided in rules of the department. Only those projects constructed after the effective date of this act shall be eligible for a grant pursuant to this act.

(2) No grant shall be made for any project sewage treatment facility unless such project facility and the plans and specifications therefor are approved by the department, and such facility is constructed in accordance with a time schedule of the department, and subject to such requirements as the department shall impose. *Because of limited state financial resources for this grant program, no grant shall be made for the incremental costs of a project involving sewage treatment beyond secondary treatment levels. If the department requires that the facility be approved by the Federal Water Quality Administration, such grant shall be conditioned upon the local governmental agency complying with all of the requirements of said water pollution control administration.*

(3) No grant shall be made until the local governmental agency has available to it agreed to provide that part of the total cost of the project facility which is in excess of the applicable state and federal grant grants.

(4) *The department shall require local governmental funds in the amount of 45 percent of eligible project costs as determined by rules of the department. The grant to each local governmental agency shall not exceed 25 percent of that portion of the project cost that is eligible for a federal grant.*

(5) Grants made under ss. 403.1821-403.1832 ~~403.1833~~ shall be paid to the local governmental agency as provided by department rule in partial payments similar to the time schedule that such payments are provided to the local governmental agency by the Federal Water Quality Administration.

(6) No grant shall be made unless the local governmental agency assures the department of the proper and efficient operation and maintenance of the project sewage treatment facility after construction. *Revenue sufficient to ensure that the facility will be self-supporting shall be generated from sources including but not limited to service charges and connection fees and shall reflect the amortized capital investment in existing facilities as well as the cost of the facility for which the grant is sought.*

(7) No grant shall be made unless the local governmental agency has filed properly executed forms and applications prescribed by the department.

(8) Any local government agency receiving assistance under ss. 403.1821-403.1832 ~~403.1833~~ shall keep such records as the department shall prescribe, including records which fully disclose the amount and disposition by the recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with such assistance given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. The department and the Auditor General or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received under ss. 403.1821-403.1832 ~~403.1833~~.

(9) *Any project satisfactorily planned and designed in accordance with the United States Environmental Protection Agency requirements shall be eligible for funding under this act. Effective July 1, 1971, a grant shall not be made until the local governmental agency's governing body has adopted and submitted to the department a comprehensive long-range plan for the control of water pollution in the area within its jurisdiction, hereinafter referred to as the official plan. If more than one local governmental agency has authority to provide service for sewage treatment in the same area, the required plan may be submitted jointly by the local governmental agencies concerned or by one local governmental agency with the concurrence of the others. The official plan shall:*

(a) *Provide for a timely construction of sewage treatment facilities which will prevent the discharge of untreated or inadequately treated sewage or other wastes as defined by this chapter into the waters of the state.*

(b) *Provide for adequate planning, zoning, population projections, and engineering and economic studies to delineate with all practicable precision those portions of the area which public sewerage systems may reasonably be expected to serve within 10 years and within 20 years, and any areas in which the provision of such services is not reasonably foreseeable.*

(c) ~~Be in compliance with the state pollution control plan required by Public Law 84-660, as amended, or other applicable federal law.~~

(d) ~~Set forth a time schedule and proposed method of financing, construction, and operation of the water pollution control system.~~

(e) ~~Be reviewed by the official planning agencies having jurisdiction within the local governmental agency, and by the regional planning agency, if any, for consistency with programs of planning for the area and region, which reviews shall be transmitted to the department with the plan.~~

Section 32. Section 403.1829, Florida Statutes, is amended to read:

403.1829 Funding of projects; priorities.—Eligible projects shall be funded according to priorities in descending order of their priority as established by the department rule, until the State Water Pollution Control Fund is exhausted. The priority list as established by the Department of Health and Rehabilitative Services as agent of the board for the fiscal year beginning July 1, 1960, is ratified and confirmed. If funds available for the last project so funded are less than the amount of the grant to which the project is entitled, the balance due on such grant shall be paid from receipts of the fund in the next succeeding fiscal year before any other projects are so funded.

Section 33. Section 403.1832, Florida Statutes, is amended to read:

403.1832 Department to accept federal aid.—The department is designated as the administrative agency of the state to apply for and accept any funds or other aid and to cooperate and enter into contracts and agreements with the federal government relating to the planning, design, construction, operation, maintenance and enforcement activities developing, maintaining, and enforcing of the program to provide clean water and pollution abatement of the waters of the state or to any other related purpose which the Congress of the United States has authorized or may authorize. The department is authorized in the name of the state to make such applications, sign such documents, give such assurances, and do such other things as are necessary to obtain such aid from or cooperate with the United States Government or any agency thereof. The department may consent to enter into contracts and agreements and cooperate with any other state agency, local governmental agency, person, or other state when it is necessary to carry out the provisions of ss. 403.1821-403.1832 ~~403.1833~~.

Section 34. Subsection (3) of section 403.804, Florida Statutes, is amended to read:

403.804 Environmental Regulation Commission; powers and duties.—

(3) The Commission shall establish priorities and have final state approval on applications for, and disbursements of, federal and state grants for the construction of waste-water or water treatment works. In establishing priorities for state grants under this act, an application shall not receive a lower priority solely because the proposed project includes reserve capacity for which the incremental costs will be paid by the applicant in accordance with s. 403.1826(2).

Section 35. Sections 403.1836, 403.1837, 403.1838, and 403.1839, Florida Statutes, are created to read:

403.1836 Sections 403.1836-403.1839 may be cited as the Small Community Sewer Construction Assistance Act.

403.1837 Trust Fund.—

(1) There is established within the Department of Environmental Regulation the Small Community Sewer Construction Assistance Trust Fund. All funds received by the department for purposes of this act shall be deposited in this fund.

(2) The funds shall be used by the department to assist small communities with their needs for adequate sewer facilities. "Small community" means an incorporated municipality with a population of 10,000 or less, according to the latest decennial census.

403.1838 Grants to small communities.—

(1) The department may provide grants to small communities. Grants shall be made from the Small Communities Sewer Construction Assistance Trust Fund in accordance with rules adopted by the department. No grant shall exceed \$3 million.

(2) The department shall:

(a) Require a 45 percent nonstate match, except that grants of less than \$50,000 may be funded 100 percent by the department, and the commission may waive all or a part of the matching requirement:

1. Where water quality standards have been exceeded by an amount that constitutes an immediate health hazard; or

2. In communities where the gross per capita income is below the state average, as determined by the U.S. Department of Commerce, where sewer systems have failed to meet department standards.

(b) Require appropriate user charges and connection fees sufficient to ensure the long-term operation and maintenance of the facility to be constructed under any grant.

(c) Require compliance with all water quality standards.

(d) Establish a system to determine eligibility and relative priority for applications for grants by small communities.

(e) Require applications for grants to be submitted on appropriate forms with appropriate supporting documentation, require construction to be in accordance with plans approved by the department, and require recordkeeping.

(f) Any project satisfactorily planned and designed in accordance with the United States Environmental Protection Agency requirements shall be eligible for funding under this act.

403.1839 The sum of \$20 million shall be transferred from the Water Pollution Control Trust Fund and deposited in the Small Communities Sewer Construction Assistance Trust Fund each October 1.

Section 36. Sections 403.1827, 403.1828, 403.1830, 403.1831, and 403.1833, Florida Statutes, are hereby repealed.

PART V ONSITE SEWAGE DISPOSAL

Section 37. Section 381.272, Florida Statutes, 1982 Supplement, is amended to read:

(Substantial rewording of section. See s. 381.272, F.S., 1982 Supp., for present text.)

381.272 Onsite sewage disposal systems; installations; conditions.—

(1) The Legislature declares that it is the policy of this state to require that all onsite sewage disposal systems, except approved onsite graywater systems, developed under the provisions of this act connect to a publicly-owned or investor-owned sewerage system within 365 days after notification that such a system is available. Where a publicly-owned or investor-owned sewerage system is not available, the Department of Health and Rehabilitative Services may issue permits for the construction or installation of onsite sewage disposal systems under conditions as described in this section. Provision shall be made, such as the inclusion of sewer utility easements and rights-of-way in a subdivision, to assure the eventual construction and utilization of a sewerage system in said subdivision. The developer of any lot that is developed under the provisions of this section shall provide advance notice of this requirement to the purchaser of such lot.

(2) Subdivisions and lots where each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a private potable well and onsite sewage disposal system, provided the projected daily domestic sewage flow does not exceed an average of 1,500 gallons per acre, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules promulgated hereunder can be met.

(3) Subdivisions and lots with a public water system may utilize onsite sewage disposal systems, provided there are no more than four lots per acre, provided the projected daily domestic sewage flow does not exceed an average of 2,500 gallons per acre, and provided that all distance and setback, soil condition, water table elevation, and other related requirements which are generally applicable to the use of onsite sewage disposal systems are met.

(4) Notwithstanding the provisions of subsections (2) and (3), where a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the Department of Health and Rehabilitative Services, that a central water system will be installed by a regulated public utility based on a density formula then private potable wells may be used on a temporary basis with onsite sewage disposal systems until the agreed upon densities are reached. In subdivisions regulated by this subsection, the average daily domestic sewage flow shall not exceed 2,500 gallons per acre. This provision shall not affect existing prior agreements.

(5) Subsections (2) and (3) shall not apply to areas where a municipally owned or investor-owned public sewerage system is available contiguous to the proposed subdivision or within one-fourth mile thereof with public right-of-way accessibility.

(6) Onsite sewage disposal systems shall be placed no closer than the minimum distances indicated for the following:

(a) Seventy-five feet from a private potable well.

(b) Two hundred feet from a public potable well.

(c) Fifty feet from surface waters.

(7) All provisions of this section and rules promulgated hereunder relating to soil condition, water table elevation, distance, and other setback requirements shall be equally applied to all lots regardless of the date of platting. Provided, however, lots platted prior to 1972 shall not be subject to lot size requirements as long as the projected daily domestic sewage flow does not exceed 2,500 gallons per acre, except for those lots platted before 1972 served by private wells, which shall be limited to a 1,500 gallon per acre flow per day.

(8) The Department of Health and Rehabilitative Services is directed to promulgate rules governing the installation of onsite sewage disposal systems. Such rules shall give primary consideration to soil conditions in Florida taking into account the ability and suitability of different types of soils for safe and efficient septic tank utilization.

(9) The Department of Health and Rehabilitative Services may adopt variances in hardship cases which may be less restrictive than the provisions specified in this section. No variance shall be granted pursuant to this section until the applicant affirmatively shows the following:

(a) That the hardship was not caused intentionally by the action of the applicant;

(b) That no reasonable alternative exists for the treatment of the sewage; and

(c) That discharge from the individual sewage disposal system will not adversely affect the health of the applicant or other members of the public or significantly degrade the ground or surface waters. Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration shall be given to those lots platted prior to 1972. The department shall appoint an advisory review variance board which shall meet monthly to recommend agency action on variance requests.

(10) Organic chemical compounds shall not be advertised, sold, or used in the state for the purpose of degreasing or declogging onsite sewage disposal systems.

(11) No permit shall be issued for an onsite sewage disposal system in areas zoned for industrial or manufacturing use, or its equivalent, where possible use is to dispose of toxic or hazardous chemicals. Where business enterprises currently use onsite sewage disposal systems to dispose of toxic or hazardous chemicals, alternative disposal systems shall be used within 3 years of the enactment of this act.

(12)(a) As used in this subsection:

1. "Blackwater" means all residential waste carried off by toilet and kitchen drains and sewers.

2. "Graywater" means all residential waste not described in subparagraph 1. and includes bath, lavatory, sink (but not kitchen sink), and laundry wastes.

3. "Individual graywater disposal system" means a system of piping, a tank or treatment device, and a subsurface absorption bed or drainfield for handling and treating graywater where blackwater is treated by a central sewerage system.

(b) The Department of Health and Rehabilitative Services is authorized to approve on a limited and experimental basis the installation of individual graywater disposal systems.

(c) The general requirements of chapter 10D-6, Florida Administrative Code, governing the installation of individual sewage disposal facilities, shall apply for installation of individual graywater disposal systems except for the following:

1. The required septic tank or interceptor shall not be less than 250 gallons in capacity.
2. The required drainfield or absorption bed shall not be less than 100 square feet in area.

(13) With respect to the installation of experimental onsite sewage disposal systems, the department is authorized to issue a temporary permit, provided the permitholder maintains such monitoring equipment and makes and files such records and reports as the department deems necessary to evaluate the effect of such systems on public health and receiving waters.

(14) The provisions of this section shall not apply to those parts of any Florida county in which more than 60 percent of the surface and subsurface soils consist of Key Largo limestone and to those islands in the state in which more than 60 percent of the surface and subsurface soils consist of Miami limestone. For such areas, the department shall promulgate rules governing the installation of onsite sewage treatment systems, considering soil conditions, water table elevations, densities and setback requirements.

Section 38. Section 381.273, Florida Statutes, is created to read:

381.273 Fees.—The Department of Health and Rehabilitative Services is authorized, in addition to any other fees authorized by law, to collect the following:

(1) A \$3 fee for each permit issued during fiscal years 1983-1988. Such fees are hereby appropriated to the Department of Health and Rehabilitative Services to be used for septic tank research to determine whether high density installation of systems, installation of systems under certain soil and water table conditions, and current methods of system installation are polluting the groundwater of the state. The research shall be supervised by the department.

(2) Until January 1, 1991, an additional \$7 fee for each permit issued on or after the effective date of this act to be used to fund the accelerated soil survey program for the state.

Section 39. (1) The sum of \$1,216,200 for fiscal year 1983-1984 and the sum of \$1,330,225 for fiscal year 1984-1985 are hereby appropriated, from the Professional Regulation Trust Fund out of moneys deposited to the credit of the Construction Industry Licensing Board, to the Department of Agriculture and Consumer Services to be used for the 10-year Accelerated Soil Survey Program.

(2) The additional permit fee collected pursuant to s. 381.273(2), Florida Statutes, shall be paid annually to the Department of Professional Regulation to be deposited in the Professional Regulation Trust Fund to the credit of the Construction Industry Licensing Board to reimburse such board for the moneys appropriated by subsection (1).

Section 40. Sections 37, 38, and 39 of this act are repealed on October 1, 1993, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

PART VI EMINENT DOMAIN FOR WATER SUPPLY

Section 41. Subsection (1) of section 127.01, Florida Statutes, is amended to read:

127.01 Counties delegated power of eminent domain; ~~limitations recreational purposes, issue of necessity of taking.~~

(1) All counties of the state are delegated authority to exercise the right and power of eminent domain; that is, the right to appropriate property, except state or federal, for any public ~~county~~ purpose; ~~provided that a county seeking to exercise the power of eminent domain outside its territorial boundaries for the purpose of water supply or seeking to privately purchase property for water supply outside its territorial boundaries shall apply for a consumptive use permit from the water~~

~~management district exercising consumptive use authority in the area to be condemned. No order of taking for water supply may be entered until the condemnor has a valid consumptive use permit. The circuit court of the county wherein the property to be condemned is located shall, upon motion of the petitioner, grant access to the subject property for the purpose of allowing tests necessary to complete the consumptive use permit application. Nothing herein shall be construed to alter or amend the standards or criteria for issuance of a consumptive use permit as provided in chapter 373 or rules promulgated thereunder. However, the consumptive use permit may be conditioned upon acquisition of fee simple or lesser interest in the subject property by the applicant. ~~and~~ The absolute fee simple title to all property so taken and acquired shall vest in such county, unless the county seeks to condemn a particular right or estate in such property.~~

Section 42. Section 166.401, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 166.401, F.S., for present text.)

166.401 Right of eminent domain.—All municipalities of the state are delegated authority to exercise the right and power of eminent domain; that is, the right to appropriate property, except federal or state property, for any public purpose. A municipality seeking to exercise the power of eminent domain outside its territorial boundaries for the purpose of water supply shall apply for a consumptive use permit from the water management district exercising consumptive use authority in the area to be condemned. No order of taking for water supply may be entered until the condemnor has a valid consumptive use permit. The circuit court of the county wherein the property to be condemned is located shall, upon motion of the petitioner, grant access to the subject property for the purpose of allowing tests necessary to complete the consumptive use permit application. Nothing herein shall be construed to alter or amend the standards or criteria for issuance of a consumptive use permit as provided in chapter 373 or rules promulgated thereunder. However, the consumptive use permit may be conditioned upon acquisition of fee simple or lesser interest in the subject property by the applicant.

PART VII PESTICIDES

Section 43. Section 487.0615, Florida Statutes, is created to read:

487.0615 Pesticide Review Council.—

(1) There is hereby created within the Department of Agriculture and Consumer Services the Pesticide Review Council to consist of nine scientific members as follows: a scientific representative from the Department of Environmental Regulation, from the Department of Natural Resources, from the Department of Health and Rehabilitative Services, and from the Game and Fresh Water Fish Commission, to be appointed by each agency; the state chemist, and the dean of research of the Institute of Food and Agricultural Sciences of the University of Florida; a hydrologist, a toxicologist, and a pesticide industry scientific representative, to be recommended by the Commissioner of Agriculture, and appointed by the Governor. Immediately after their appointment, the members of the council shall meet and organize by electing a chairman, a vice chairman, and a secretary, whose terms shall be for 1 year. The council shall meet at the call of its chairman, at the request of a majority of its membership, at the request of the department or at such time as a public health or environmental emergency arises.

(2) The Pesticide Review Council shall have the following powers and duties:

(a) Review U.S. Environmental Protection Agency data on newly registered restricted-use pesticides.

(b) Initiate scientific studies on any registered restricted-use pesticide when substantive preliminary data indicates that the restricted-use pesticide, as presently being used, poses an unreasonable adverse effect on the hydrogeologic environment or human health, or that claims made by the registrant relative to its sale, distribution, use, or effects, to the U.S. Environmental Protection Agency in the registration application are substantially different from actuality. The council shall utilize the available services of state agencies or the state university system to conduct scientific studies determined to be necessary in the performance of its duties.

(c) Apprise the U.S. Environmental Protection Agency of the specific soil, hydrogeological, and other environmental conditions in Florida counties of intense restricted-use pesticide application.

(d) Formally request the U.S. Environmental Protection Agency to require registrants of new restricted-use pesticides to provide them with environmental test data generated in Florida or generated by simulating Florida environmental conditions.

(e) Request information from the U.S. Environmental Protection Agency relative to findings upon which U.S.E.P.A. based their registration determinations for restricted-use pesticides registered in the state.

(f) Make recommendations, subject to a majority vote, directly to the Commissioner of Agriculture, for required actions to be taken relative to the sale or use of a restricted-use pesticide, which the council had studied or reviewed.

(g) Provide information to appropriate government agencies, as requested, relative to information gleaned about restricted-use pesticides which have been reviewed or studied by the councils. However, confidential data received from the U.S. Environmental Protection Agency or the registrant shall be treated as such and it shall be unlawful for any member of the council to use the data for his own advantage or to reveal it to the general public, provisions of chapter 119 notwithstanding.

(h) Evaluate the feasibility of using biological controls to replace the use of restricted-use pesticides.

(3) The Pesticide Review Council is defined as a substantially interested person and may have standing under chapter 120 in any proceeding conducted by the Department of Agriculture and Consumer Services relating to the registration of a pesticide under this chapter.

(4) Members of the Pesticide Review Council shall receive no compensation for their services but shall be entitled to be reimbursed for per diem and travel expenses as provided in s. 112.061.

Section 44. Section 487.0615, Florida Statutes, is repealed on October 1, 1988, and shall be reviewed pursuant to section 11.611, Florida Statutes.

Section 45. Short title.—This act may be cited as the “Florida Agriculture Policy Act.”

Section 46. Definition.—For the purpose of this act the term “agricultural production” means growing, harvesting, processing and marketing of agricultural crops, including but not limited to animals and plants for food, horticultural and sod products, horses, and products from the forest.

Section 47. Legislative declaration; public policy.—The Legislature declares that:

(1) It is the public policy of this state and the purpose of this act to achieve and maintain the production of agricultural commodities for food and fiber as an essential element for the survival of mankind.

(2) The production of agricultural commodities in this state is a large and basic industry that is important to the health and welfare of the people and to the economy of the state.

(3) A sound agricultural industry in this state requires the efficient and profitable use of energy and many natural, commercial, and industrial resources.

(4) The efficient and profitable use of energy and resources in agricultural production in this state is often difficult to achieve because of problems that are not well known or fully understood by the people, such as weather, climatic changes, and market conditions.

(5) It is important to the health and welfare of the people of this state and to the economy of the state that additional problems are not created for growers and ranchers engaged in the Florida agricultural industry by laws and regulations that cause, or tend to cause, agricultural production to become inefficient or unprofitable.

(6) The laws and regulations that have caused problems for agricultural production in this state have been due primarily to a lack of adequate and informed consideration of the adverse impact such laws and regulations would have on efficient and profitable agricultural production in this state.

(7) It is the policy of the state that, concerning the enactment or enforcement of laws or regulations related to agricultural production in this state, the following procedures shall be observed:

(a) Every state agency shall carefully review each law or regulation it is responsible for enforcing to determine whether such law or regulation adversely affects the efficiency or profitability of agricultural production in this state.

(b) Every state agency shall carefully consider recommendations made to it by agricultural groups and organizations concerning amendments to the laws or regulations the agency is responsible for enforcing.

(c) Every state agency responsible for enforcing any law or regulation related in any way to agricultural production in this state shall, once each year prior to the opening of the regular legislative session, forward to the President of the Senate and to the Speaker of the House of Representatives, any recommendations it may have for amending laws or regulations in order to make agricultural production in this state more profitable or efficient.

(d) No law shall be passed by the Legislature of Florida that relates to agriculture in any way unless such law is reviewed by the committees on agriculture in both the Senate and the House of Representatives.

(e) No administrative rule or executive order shall be implemented or enforced without first having been reviewed by the agency administering such rule or executive order for any negative impact on any facet of agricultural production in this state.

Section 48. Subsection (4) is added to section 570.44, Florida Statutes, to read:

570.44 Division of Inspection; powers and duties.—The Division of Inspection shall be divided into not less than ~~four~~ *three* bureaus as follows:

(4) *BUREAU OF PRODUCT DATA EVALUATION.*—

(a) *It shall be the duty of this bureau to review and evaluate technical and scientific data associated with the production, manufacture, storage, transportation, sale or use of any article or product with respect to any statutory authority which is conferred on the department.*

(b) *The department is authorized to establish the following positions within the bureau: experts in the fields of toxicology, hydrology, and biology to conduct such reviews and evaluations. The department is also authorized to establish appropriate clerical support positions to implement the duties and responsibilities of the bureau.*

PART VIII
ENVIRONMENTAL REORGANIZATION

Section 49. Section 403.802, Florida Statutes, is amended to read:

403.802 Declaration of policy.—Reasserting the ~~policies~~ *policy* of the Governmental Reorganization Act of 1969 and the Florida Environmental Reorganization Act of 1975 which recognize as stated in s. 20.02, that structural reorganization should be a continuing process, and recognizing that many 6 years have passed since the passage of said acts ~~1969 reorganization~~, it is the intent of the Legislature to promote ~~more the~~ efficient, effective, and economical operation of certain environmental agencies by ~~transferring decision-making authority to environmental district centers and delegating to the water management districts water quality related permitting functions centralizing authority over, and pinpointing responsibility for the management of, the environment by authorizing the delegation of substantial decisionmaking authority to the district level and by consolidating compatible administrative, planning, permitting, enforcement, and operational activities.~~ Further, it is the intent of this act to promote proper administration of Florida's landmark environmental laws.

Section 50. Section 403.803, Florida Statutes, is amended to read:

403.803 Definitions.—When used in this act the term, phrase, or word:

(1) “Commission” means the Environmental Regulation Commission.

(2) “Department” means the Department of Environmental Regulation.

(3) “Headquarters” means the physical location of the offices of the secretary and the division directors of the department.

(4) ~~(3)~~ “Environmental district center” means the facilities and personnel which are centralized in each district for the purposes of carrying out the provisions of this act.

(5)(4) "District" or "environmental district" means one of the geographical areas, the boundaries of which are established pursuant to this act.

(6)(6) "Manager" means the head of an environmental district or branch office who shall supervise all environmental functions of the department within such environmental district or branch office.

(7)(6) "Secretary" means the Secretary of the Department of Environmental Regulation.

(8)(7) "Branch office" "~~Subdistrict~~" means a geographical area, the boundaries of which may be established as a part of a district.

(9)(8) "Channel" is a trench, the bottom of which is normally covered entirely by water, with the upper edges of its sides normally below water.

(10)(9) "Canal" is a manmade trench, the bottom of which is normally covered by water with the upper edges of its sides normally above water.

(11)(10) "Drainage ditch" or "irrigation ditch" is a manmade trench dug for the purpose of draining water from the land or for transporting water for use on the land and is not built for navigational purposes.

(12)(11) "Swale" is a manmade trench which only contains contiguous areas of standing or flowing water following the occurrence of rainfall or flooding.

(13)(12) "Standard" means any rule of the Department of Environmental Regulation relating to air and water quality, noise, and solid-waste management. The term "standard" does not include rules of the department which relate exclusively to the internal management of the department, the procedural processing of applications, the administration of rulemaking or adjudicatory proceedings, the publication of notices, the conduct of hearings, or other procedural matters.

Section 51. Section 403.805, Florida Statutes, is amended to read:

403.805 Secretary; powers and duties.—The secretary shall have the powers and duties of heads of departments set forth in chapter 20, including the power to adopt rules under chapters 403, 253, and 373, except that the Environmental Regulation Commission shall exercise the exclusive standard-setting authority of the department pursuant to s. 403.804. The secretary shall employ legal counsel to represent the department in matters affecting the department. Except for appeals on permits specifically assigned by this act to the Governor and Cabinet, and unless otherwise prohibited by law, the secretary may delegate the authority assigned to the department by this act to the assistant secretary, division directors, and district and branch office ~~subdistrict~~ managers, and to the water management districts.

Section 52. Section 403.807, Florida Statutes, is amended to read:

403.807 Division of Environmental Programs; powers and duties.—

(1) The Division of Environmental Programs shall perform duties including, but not limited to:

- (a) Processing construction grants for wastewater treatment projects.
- (b) Coordinating water restoration programs.
- (c) Coordinating the state public works program.
- (d) Coordinating solid and hazardous waste management programs.
- (e) Developing water quality based effluent limitations.
- (f) Reviewing environmental impact statements.
- (g) Coordinating the air pollution control program.
- (h) Coordinating and overseeing department laboratory functions.
- (i) Coordinating the designation of outstanding Florida waters.

(2) No permits required under chapters 253, 373, or 403 other than those for major air pollution sources shall be processed or issued by the Division of Environmental Programs, ~~administration, coordination, and supervision of programs relating to planning, grants, air quality, water quality and quantity, noise, and solid-waste management.~~

Section 53. Section 403.808, Florida Statutes, is amended to read:

403.808 Division of Environmental Permitting; powers and duties.—The Division of Environmental Permitting shall perform duties including, but not limited to, the following:

(1) Processing of applications for powerplant or transmission line site certifications pursuant to part II which applications shall be processed at headquarters.

(2) Processing applications for variances under s. 403.201.

(3)(2) Processing ~~of these~~ other classifications of permits, licenses, and certificates which the secretary may designate.

(4)(3) Establishing uniform procedures and forms for the orderly determination of decisions relating to permits, licenses, certificates, and exemptions.

(5)(4) Providing the necessary technical and legal support to carry out enforcement functions of the department.

(6)(6) Supervising and directing all district operations.

Section 54. Section 403.809, Florida Statutes, is amended to read:

403.809 Environmental districts; establishment; managers; functions.—

(1) The secretary shall establish environmental districts. *The boundaries of the environmental districts shall coincide with the boundaries of the water management districts and a water management district may be divided into more than one environmental district. The secretary shall have the authority to adjust the environmental district boundaries upon a determination that exceptional circumstances require such adjustment in order to more properly serve the needs of the public or the environment. The environmental districts shall be collocated with the water management districts to the maximum extent practicable. The secretary shall have the authority to adjust the environmental district boundaries to best serve the purposes of this act.* The secretary may establish ~~subdistricts with one branch offices office in each~~, for the purpose of making services more accessible to the citizens of each district. *In the Suwannee River Water Management District, a branch office may serve as the environmental district center. By July 1, 1984, the department shall collocate part of its permitting operations with each of the central offices of the water management districts and the water management districts shall collocate part of their permitting operations with each of the department's district offices.*

(2) There shall be a manager for each environmental district who shall be appointed by, and serve at the pleasure of, the secretary. The district manager shall maintain his office in the environmental district center, which shall be collocated with ~~an the office of a water management district to the maximum extent practicable.~~ *Each branch office shall have a branch office manager who shall be appointed by and serve at the pleasure of the secretary. The water management districts are encouraged to collocate part of their permitting operations with the department's branch offices to the maximum extent practicable.*

(3)(a) Under the supervision of the Division of Environmental Permitting, all field services and inspections required in support of the decisions of the department relating to the issuance of permits, licenses, certificates, or exemptions shall be accomplished at the environmental district center level to the maximum extent practicable.

(b) The processing of all applications for permits, licenses, certificates, and exemptions shall be accomplished at the district center or the branch office, except for those applications specifically assigned to the Division of Environmental Permitting or to the water management districts under s. 403.812 and those applications assigned by interagency agreement as provided in this act, provided, however, the secretary, as head of the department, may not delegate to district or subdistrict managers, water management districts, or any unit of local government, the authority to act on the following types of permit applications:

1. Certification of NPDES permits pursuant to Public Law 92-500, Section 401;
2. Construction and operation of major air pollution sources;
3. Certifications under the Power Plant Siting Act or Transmission Line Siting Act.

Section 55. Section 403.812, Florida Statutes, is amended to read:

403.812 Delegation of functions to Water Management Districts.—

(1) *By October 1, 1984, the department shall delegate to those water management districts that it finds to be financially and technically capable of implementing the delegation, its powers and duties pertaining to the administration of the department's "Regulation of Storm-water Rule." Provided, however, no later than October 1, 1984, the department shall delegate such powers and duties to the South Florida Water Management District and the Southwest Florida Water Management District.*

(2) *In addition to any function delegated under subsection (1), when the secretary determines that a water management district has the financial and technical capability to carry out water quality and other functions of the department, those powers, duties, and functions, or parts thereof, may be contracted or delegated to such water management district. This may include, but shall not be limited to, planning, regulation, and permitting of point sources and nonpoint sources of pollution and other field services. Any powers, duties, and functions so delegated shall be carried out in accordance with the rules, regulations, and standards of the department and shall follow the uniform procedures and forms established by the Division of Environmental Permitting. Nothing contained in this act shall be construed to adversely affect or divest any water management district of the power to levy ad valorem taxes.*

Section 56. Subsection (1) of section 403.813, Florida Statutes, 1982 Supplement, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) The secretary is authorized to adopt procedural rules providing for a short-form application for, and issuance at the district center of, permits for certain activities. These activities shall include the following and any others established by rule:

(a) Projects not exceeding 10,000 4,000 cubic yards of material placed in or removed from the navigable waters of the state;

(b) Dockage or marina facilities not exceeding 30,000 20,000 square feet of submerged lands;

(c) New seawalls or similar structures not exceeding 500 300 linear feet of shoreline;

(d) The installation of buoys, signs, fences, ski ramps, and fish attractors by the Florida Game and Fresh Water Fish Commission;

(e) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state carrying water, electricity, communication cables, oil, and gas, except as exempted by paragraph (m) or paragraph (n) of subsection (2); and

(f) The performance, for 10 years from the issuance of the original permit, of maintenance dredging of permitted navigation channels, port harbors, turning basins, and harbor berths. The Trustees of the Internal Improvement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material. However, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Internal Improvement Trust Fund.

Section 57. Subsection (2) of section 373.016, Florida Statutes, is amended to read:

373.016 Declaration of policy.—

(1) The waters in the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.

(2) It is further declared to be the policy of the Legislature:

(a) To provide for the management of water and related land resources;

(b) To promote the conservation, development, and proper utilization of surface and ground water;

(c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;

(d) To prevent damage from floods, soil erosion, and excessive drainage;

(e) To preserve natural resources, fish and wildlife;

(f) To promote the public policy set forth in s. 403.021.

(g)(f) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and

(h)(g) Otherwise to promote the health, safety, and general welfare of the people of this state.

(3) The Legislature recognizes that the water resource problems of the state vary from region to region, both in magnitude and complexity. It is therefore the intent of the Legislature to vest in the Department of Environmental Regulation or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts. The department may exercise any power herein authorized to be exercised by a water management district; however, to the greatest extent practicable, such power should be delegated to the governing board of a water management district.

Section 58. Subsection (7) of section 373.026, Florida Statutes, is amended to read:

373.026 General powers and duties of the department.—The Department of Environmental Regulation, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, the department may enter into interagency agreements with any other state agency conducting programs related to or materially affecting the water resources of the state. All such interagency agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department is authorized:

(7) To exercise general supervisory authority over all water management districts. The department may exercise any power herein authorized to be exercised by a water management district. ~~The department shall review, and may rescind or modify, any policy, rule, regulation, or order of a water management district, except those policies, rules, or regulations which involve only the internal management of the district, to insure compliance with the provisions and purposes of this chapter. Such review may be initiated at any time either by the department or by an interested person aggrieved by such policy, rule, regulation, or order by filing a request for such review with the department and serving a copy on the water management district. Such request for review is not a precondition to the effectiveness of such policy, rule, regulation, or order, or to the seeking of judicial review as otherwise provided.~~

Section 59. Section 373.106, Florida Statutes, is amended to read:

373.106 Permit required for construction involving underground formation.—

(1) No construction may be begun on a project involving artificial recharge or the intentional introduction of water into any underground formation except as permitted in chapter 377, without the written permission of the governing board of any water management district within which the construction will take place. Such application shall contain the detailed plans and specifications for the construction of the project.

(2) *Each water management district shall have the exclusive authority to process and issue permits under this section and permits and licenses delegated under s. 403.812, except permits required by the department pursuant to 42 U.S.C., s. 300(1) until delegated by the department to the districts.*

(3)(2) A water management district may do any act necessary to replenish the ground water of said district. The district may, among other things, for the purposes of replenishing the ground water supplies within the district:

(a) Buy water;

(b) Exchange water;

(c) Distribute water to persons in exchange for ceasing or reducing ground water extractions;

(d) Spread, sink, and inject water into the underground;

(e) Store, transport, recapture, reclaim, purify, treat, or otherwise manage and control water for the beneficial use of persons or property within the district; and

(f) Build the necessary works to achieve ground water replenishment.

Section 60. Section 373.114, Florida Statutes, is amended to read:

373.114 Land and Water Adjudicatory Commission; review of district policies, rules, and orders.—

(Substantial rewording of section. See s. 373.114, F.S., for present text.)

(1) Except as provided in subsection (2), the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, shall have the exclusive authority to review any order or rule of a water management district, other than rules relating to internal procedures of the district, to insure consistency with the provisions and purposes of this chapter.

(a) Such review may be initiated by the department or by a party to the proceedings by filing a request for review with the Land and Water Adjudicatory Commission and serving a copy on the department and on any person named in the rule or order, within 20 days after adoption of the rule or rendering of the order; provided however, where the rule or order to be reviewed has statewide or regional significance, as determined by the Land and Water Adjudicatory Commission within 60 days after receipt of a request for review, the commission may accept a request for review from any affected person within 30 days after adoption of the rule or the rendering of the order.

(b) Review by the Land and Water Adjudicatory Commission shall be appellate in nature and based on the record below. The matter shall be heard by the commission not more than 60 days after receipt of the request for review or the commission's determination that the rule or order has statewide or regional significance, whichever is later.

(c) If the Land and Water Adjudicatory Commission determines that a rule or order is not consistent with the provisions and purposes of this chapter, it may, in the case of a rule, require the water management district to initiate rulemaking proceedings to amend or repeal the rule, or in the case of an order, rescind or modify the order or remand the proceeding to the water management district for further action consistent with the order of the Land and Water Adjudicatory Commission.

(d) Request for review under this section shall not be a precondition to the seeking of judicial review pursuant to s. 120.68 or the seeking of an administrative determination of rule validity pursuant to s. 120.56.

(2) The department shall have the exclusive authority to review rules of the water management districts, other than rules relating to internal management of the districts, to insure consistency with the state water policy as set forth in the rules of the department. Within 30 days after adoption or revision of any water management district rule, the department shall initiate a review of such rule pursuant to this section.

(a) Within 30 days after adoption of a rule, any affected person may request that a hearing be held before the secretary of the department at which evidence and argument may be presented relating to the consistency of the rule with state water policy by filing a request for hearing with the department and serving a copy on the water management district.

(b) If the department determines that the rule is inconsistent with the state water policy, it may order the water management district to initiate rulemaking proceedings to amend or repeal the rule.

(c) An order of the department requiring amendment or repeal of a rule may be appealed to the Land and Water Adjudicatory Commission by the water management district or any other party to the proceeding before the secretary.

Section 61. Subsection (1) of section 373.116, Florida Statutes, is amended to read:

373.116 Procedure for water use and impoundment construction permit applications.—

(1) Applications for water use permits, under part II of this chapter, and for permits for construction or alteration of dams, impoundments, reservoirs, and appurtenant works, under part IV of this chapter, and for permits under s. 403.812, shall be filed with the water management district on appropriate forms provided by the governing board.

Section 62. Subsections (1) and (2) of section 373.308, Florida Statutes, are amended to read:

373.308 Implementation of programs for regulating water wells.—

(1) The department shall ~~may~~ authorize the governing board of a water management district to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells.

(2) The department shall ~~may~~ authorize the governing board of a water management district to exercise any power authorized to be exercised by the department under ss. 373.309, 373.313, 373.316, 373.319, 373.323, 373.326, 373.329, and 373.333 and shall encourage the district to fully exercise such powers as soon as practicable ~~may withhold from delegation such power as the department chooses not to delegate.~~

Section 63. Section 373.323, Florida Statutes, is amended to read:

373.323 Licenses; driller and drilling equipment registration.—

(1) LICENSES AUTHORIZED.—

(a) Every person who wishes to engage in business as a water well contractor shall obtain from the water management district ~~department~~ a license to conduct such business.

~~(b)(2)~~ The department may adopt and from time to time amend rules and regulations governing applications for water well contractor licenses. The water management district ~~department~~ shall license as a water well contractor any person properly making application therefor who is an adult for all legal purposes, has knowledge of rules and regulations adopted under this part, and has had not less than 2 years' experience in the work for which he is applying for a license. The department shall prepare an examination which each such applicant must pass in order to qualify for such license.

~~(3) This section shall not apply to any person who performs labor or services at the direction and under the supervision of a licensed water well contractor.~~

~~(c)(4)~~ A political subdivision engaged in well-drilling shall be licensed under this part but shall be exempt from paying the license fees for the drilling done by regular employees of, and with equipment owned by, it.

~~(d)(5)~~ Licenses issued pursuant to this section are not transferable and shall expire on July 1 of each year. A license may be renewed without examination for an ensuing year by making application not later than 30 days after the expiration date and paying the applicable fee. Such application shall have the effect of extending the validity of the current license until a new license is received or the applicant is notified by the department that it has refused to renew his license. After July 31 of each year, a license will be renewed only upon application and payment of the applicable fee plus a penalty of \$50.

~~(e)(6)~~ Whenever the department or water management district determines that the holder of any license issued pursuant to this section has violated any provision of this part or any rule or regulation adopted pursuant thereto, the department or water management district is authorized to suspend or revoke any such license. Any order issued pursuant to this subsection shall become effective 30 days after service thereof unless a written petition requesting hearing under the procedure provided in chapter 120 is filed sooner.

~~(f)(7)~~ No application for a license issued pursuant to this section may be made within 1 year after revocation thereof.

~~(g) No later than October 1, 1984, the department shall delegate to the water management districts the powers and duties relating to processing and issuing water well contractor licenses. A license issued by any water management district shall be valid anywhere in the state.~~

(2) DRILLER AND DRILLING EQUIPMENT REGISTRATION.—

(a) Every person who operates drilling equipment for the purpose of constructing wells shall register with each water management district in which construction activity takes place. The governing board shall, as minimum conditions of such registration, require:

1. Written recommendation from a licensed water well contractor verifying status of the driller as an employee of the contractor.

2. Demonstration of sufficient experience and practical knowledge needed to operate drilling equipment of the type to be used in actual well construction.

3. Written examination as considered appropriate by the board designed to verify the driller's knowledge of commonly accepted drilling practices and applicable rules of the district and department.

(b) It shall be the responsibility of each licensed water well contractor to annually notify the governing board of the district in which he resides or in which his principal place of business is located of all registered drillers in his employ. In addition, a licensed contractor shall notify the board in a timely manner if a registered driller ceases to be an employee.

(c) The licensed water well contractor shall register with the governing board each piece of drilling equipment he owns, leases, or operates. Upon registration, the water well contractor's license number shall be prominently displayed on the equipment.

Section 64. Section 373.333, Florida Statutes, is amended to read:

373.333 Enforcement.—

(1) Whenever the *water management district* ~~department~~ has reasonable grounds for believing that there has been a violation of this part or any rule or regulation adopted pursuant thereto, it shall give written notice to the person alleged to be in violation. Such notice shall identify the provision of this part or regulation issued hereunder alleged to be violated and the facts alleged to constitute such violation.

(2) Such notice shall be served in the manner required by law for the service of process upon persons in a civil action *or by registered United States mail to the last known address of the person.* ~~and~~ Notice alleging violations of rules setting minimum standards for the location, construction, repair, or abandonment of wells shall be accompanied by an order of the department requiring described remedial action which, if taken within the time specified in such order, will effect compliance with the requirements of this part and regulations issued hereunder. Such order shall become final unless a request for hearing as provided in chapter 120 is made within 30 days from the date of service of such order.

Section 65. Section 373.413, Florida Statutes, is amended to read:

373.413 Permits for construction or alteration.—

(1) Except for the exemptions set forth herein, the governing board ~~or the department~~ may require such permits and impose such reasonable conditions as are necessary to assure that the construction or alteration of any dam, impoundment, reservoir, appurtenant work, or works will not be harmful to the water resources of the district. ~~The department or the governing board~~ may delineate areas within the district wherein permits may be required.

(2) A person proposing to construct or alter a dam, impoundment, reservoir, appurtenant work, or works subject to such permit shall apply to the governing board ~~or department~~ for a permit authorizing such construction or alteration. The application shall contain the following:

- (a) Name and address of the applicant.
- (b) Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land.
- (c) Location of the work.
- (d) Sketches of construction pending tentative approval.
- (e) Name and address of the person who prepared the plans and specifications of construction.
- (f) Name and address of the person who will construct the proposed work.
- (g) General purpose of the proposed work.
- (h) Such other information as the governing board ~~or department~~ may require.

(3) After receipt of an application for a permit, the governing board ~~or department~~ shall cause a notice thereof to be published in a newspaper

having general circulation within the affected area. In addition, the governing board ~~or department~~ shall send a copy of such notice to any person who has filed a written request for notification of any pending applications affecting the particular designated area. This notice shall be sent by regular mail prior to the date of publication. The notice shall contain:

- (a) The name and address of the applicant or, in the case of a corporation, the address of its principal business office;
- (b) The date of filing;
- (c) The date set for a hearing, if any;
- (d) The source of the water to be contained;
- (e) The quantity of water to be contained;
- (f) The use to be made of the water and any limitation thereon; and
- (g) Such other information as the governing board ~~or the department~~ may deem necessary.

(4) The notice provided for in subsection (3) shall state that written objections to the proposed permit may be filed with the governing board ~~or department~~ by a specified date. The governing board ~~or department~~, at its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses.

(5) If no substantial objection to the application is received, the governing board ~~or the department~~, after proper investigation by its staff, may at its discretion approve the application without a hearing. Otherwise, it shall set a time for a hearing in accordance with the provisions of chapter 120.

Section 66. Subsection (1) of section 373.069, Florida Statutes, is amended to read:

(Substantial rewording of subsection. See s. 373.069(1), F.S., for present text.)

373.069 Creation of water management districts.—

(1) At 11:59 p.m. on December 31, 1984, the state shall be divided into the following water management districts:

- (a) Northwest Florida Water Management District.
- (b) Suwannee River Water Management District.
- (c) St. Johns River Water Management District.
- (d) Southwest Florida Water Management District.
- (e) South Florida Water Management District.

(2) Notwithstanding the provisions of any other special or general act to the contrary, the boundaries of the respective districts named in subsection (1) shall include the areas within the following boundaries:

(a) Northwest Florida Water Management District.—Such district shall consist of the following counties, Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, Jefferson and Wakulla.

(b) Suwannee River Water Management District.—Such district shall consist of the following counties; Madison, Taylor, Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Alachua, Bradford, and Union.

(c) St. Johns River Water Management District.—Such district shall consist of the following counties; Nassau, Baker, Duval, Clay, Marion, St. Johns, Putnam, Flagler, Volusia, Lake, Seminole, Brevard, Indian River and those portions of Orange and Osceola not included in paragraph (e).

(d) Southwest Florida Water Management District.—Such district shall consist of the following counties; Citrus, Sumter, Hernando, Pasco, Hardee, DeSoto, Charlotte, Sarasota, Manatee, Hillsborough, Pinellas and those portions of Polk not included in paragraph (e).

(e) South Florida Water Management District.—Such district shall consist of the following counties; Okeechobee, Highlands, St. Lucie, Martin, Palm Beach, Broward, Dade, Monroe, Collier, Lee, Hendry, Glades and those portions of Polk, Orange, and Osceola described as part of the South Florida Water Management District by ch. 73-190, Laws of Florida.

Section 67. The South Florida Water Management District shall by interagency agreement upon the request of the county commissions of the affected counties, contract as soon as practical with the St. Johns River Water Management District to carry out its regulatory programs under chapter 373, Florida Statutes, for that part of the South Florida Water Management District within Orange and Osceola Counties. In addition the South Florida Water Management District shall by interagency agreement upon the request of the county commissions of the affected counties, contract as soon as practical with the Southwest Florida Water Management District to carry out its regulatory programs under chapter 373, Florida Statutes, for that part of the South Florida Water Management District within Polk County.

Section 68. The boundaries of the environmental districts shall coincide with the boundaries of the water management districts as set forth in chapter 373, Florida Statutes, except that a water management district may be divided into more than one environmental district, and in the Suwannee River Water Management District a branch office may serve as the environmental district center. Further, Osceola and Orange Counties shall be under the jurisdiction of the St. Johns River Environmental District and Polk County shall be under the jurisdiction of the Southwest Environmental District.

Section 69. This act shall take effect July 1, 1983, or upon becoming a law, whichever occurs later, except section 6 which shall take effect July 1, 1983.

Senator Kirkpatrick moved the following amendments to Amendment 9 which were adopted:

Amendment 9A—On page 61, line 24, strike “381.273(2)” and insert: 381.273(1) and (2)

Amendment 9B—On page 60, between lines 29 and 30, insert:

Section 37. Sufficient funds not to exceed \$150,000 are hereby borrowed from the Professional Regulation Trust Fund based on the fees levied pursuant to s. 489.109(1)(b), Florida Statutes, and transferred to the Department of Agriculture and Consumer Services for funding the accelerated soil survey program and to the Department of Health and Rehabilitative Services for septic tank research relative to septic tank density soil and water conditions and methods of installation.

(Renumber subsequent sections.)

Amendment 9C—On page 61, line 28, strike the period (.) and insert: , and any moneys used pursuant to Section 37 of this act.

Senator Vogt moved the following amendment to Amendment 9 which was adopted:

Amendment 9D—On page 58, strike all of lines 16-21 and renumber subsequent sections

Senators Vogt, Stuart and Dunn offered the following amendment to Amendment 9 which was moved by Senator Vogt and adopted:

Amendment 9E—On page 89, strike lines 16-30, on page 90, strike lines 1-31 and on page 91, strike lines 1-22

The vote was:

Yeas—21

Castor	Gordon	Maxwell	Thurman
Childers, D.	Hair	McPherson	Vogt
Dunn	Jenne	Meek	Weinstein
Frank	Johnston	Rehm	
Gersten	Malchon	Scott	
Girardeau	Margolis	Stuart	

Nays—12

Mr. President	Crawford	Grizzle	Myers
Carlucci	Fox	Kirkpatrick	Neal
Childers, W. D.	Grant	Mann	Thomas

Vote after roll call:

Nay—Plummer

Senator Vogt moved the following amendment to Amendment 9 which was adopted:

Amendment 9F—On pages 6, 7 and 8, strike all of Sub 7(a)(b)(c)(d) and (e)

Senator McPherson moved the following amendment to Amendment 9 which failed:

Amendment 9G—On page 20, line 21, strike “in direct conflict with” and insert: less stringent than

On motion by Senator Barron, the Senate recessed at 11:59 a.m. to reconvene at 2:00 p.m.

AFTERNOON SESSION

The Senate was called to order by the President at 2:00 p.m. A quorum present—40:

Mr. President	Frank	Jennings	Myers
Barron	Gersten	Johnston	Neal
Beard	Girardeau	Kirkpatrick	Plummer
Carlucci	Gordon	Langley	Rehm
Castor	Grant	Malchon	Scott
Childers, D.	Grizzle	Mann	Stuart
Childers, W. D.	Hair	Margolis	Thomas
Crawford	Henderson	Maxwell	Thurman
Dunn	Hill	McPherson	Vogt
Fox	Jenne	Meek	Weinstein

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable Curtis Peterson, President

I am directed to inform the Senate that the House of Representatives has refused to recede from House Amendments 1 and 2 to CS for CS for SB 357 and again requests the Senate to concur and in the event the Senate refuses to concur, requests a Conference Committee of 5 members with 2 alternates.

Allen Morris, Clerk

On motions by Senator Meek, the Senate again refused to concur in the House amendments and acceded to the request for a Conference Committee.

The President appointed Senator Gordon, chairman; Senators Maxwell, Grant, Barron and Vogt as conferees; Senator Hair, alternate.

The action of the Senate was certified to the House.

On motion by Senator D. Childers, the rules were waived and the Committee on Health and Rehabilitative Services was granted permission to meet May 30 from 11:00 a.m. until 12:00 noon to consider SB 1034.

On motion by Senator Castor, the rules were waived and SB 783 was ordered immediately certified to the House.

On motion by Senator Dunn, the rules were waived and CS for SB 1119 after being engrossed was ordered immediately certified to the House.

SPECIAL ORDER

By the Committees on Appropriations; and Corrections, Probation and Parole—

CS for SB 91—A bill to be entitled An act relating to crime victims; amending s. 960.03(3), (7), Florida Statutes; amending the definitions of “crime” and “victim” for purposes of chapter 960, Florida Statutes; adding s. 316.660(3), Florida Statutes; providing for the collection and distribution of certain costs and surcharges on criminal traffic offenses; amending s. 960.20, Florida Statutes, 1982 Supplement; increasing the costs imposed for certain offenses from \$10 to \$20 and including in said offenses for which costs are imposed the violation of certain municipal and county ordinances; providing an effective date.

—was read the first time by title and SB 91 was laid on the table.

On motions by Senator Hair, by two-thirds vote CS for SB 91 was read the second time by title, and by two-thirds vote was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—30

Mr. President	Carlucci	Childers, D.	Crawford
Beard	Castor	Childers, W. D.	Dunn

Fox	Hair	Maxwell	Scott
Frank	Henderson	McPherson	Stuart
Gersten	Hill	Myers	Thurman
Girardeau	Jenne	Neal	Weinstein
Grant	Johnston	Plummer	
Grizzle	Langley	Rehm	

Nays—None

By the Committees on Appropriations; and Corrections, Probation and Parole and Senators Hair, Rehm, Dunn, Jenne and Castor—

CS for CS for SB 644—A bill to be entitled An act relating to criminal justice; providing a short title; providing findings; providing definitions; creating s. 944.022, Florida Statutes; creating a maximum inmate population ratio for the state correctional system; providing procedures for correcting inmate population levels in excess of the maximum level; amending s. 921.001(3), (5)-(8), Florida Statutes, 1982 Supplement, and adding subsection (9) to said section; requiring the Florida Supreme Court to develop and implement statewide sentencing guidelines; repealing parole eligibility for persons sentenced under guidelines; providing for legislative repeal of guidelines; amending ss. 924.06, 924.07, Florida Statutes, to provide for district court of appeal review of sentences imposed outside of guidelines; providing additional sentencing considerations; creating s. 921.187, Florida Statutes, providing sentencing alternatives; creating s. 775.075, Florida Statutes; providing sentencing criteria for persons sentenced prior to guidelines; amending s. 944.275, Florida Statutes; changing gain-time amounts and considerations; amending s. 947.16(3)(a), (g), Florida Statutes, 1982 Supplement, and adding paragraph (h) to said subsection; changing the date of reinterviews of inmates where parole release orders have been vacated by the sentencing court reducing the period of retained jurisdiction from one-half to one-third of sentence; amending s. 947.135(3)(a), (4), Florida Statutes, 1982 Supplement; changing participation criteria; providing for panels of two commissioners to establish contract parole dates; creating s. 948.001, Florida Statutes, providing definitions; creating s. 948.005, Florida Statutes, to provide for the implementation of a community control manual by the Office of the State Court Administrator; amending s. 948.01, Florida Statutes, providing for placement of certain offenders into community control as an alternative to probation; limiting the duration of supervision; providing for the applicability of workers' compensation benefits to offenders in certain work programs; authorizing discharge from certain programs; amending s. 948.011, Florida Statutes, conforming provisions relating to imposition of fines and probation; amending s. 947.23(6), Florida Statutes, authorizing placement of certain parolees into community control; amending s. 948.03, Florida Statutes, changing terms and conditions of probation and providing terms and conditions of community control; amending s. 948.031, Florida Statutes, authorizing the Department of Corrections to establish public service programs in counties for offender public service; amending s. 948.04, Florida Statutes, to conform to the act; amending s. 948.05, Florida Statutes, providing for judicial admonishment and commendation of offenders in community control; amending s. 948.06(2), Florida Statutes, providing for placement of persons violating probation into community control; providing for revocation, modification, or continuance of community control; renumbering s. 945.26(2), Florida Statutes, and adding new subsections (2)-(4) to said section providing for a community control program as a sentencing alternative; amending s. 947.04(1), Florida Statutes, 1982 Supplement, authorizing the Parole and Probation Commission to assign temporary duties to retired commissioners; amending s. 947.01, Florida Statutes, to increase the membership of the Parole and Probation Commission from seven to nine voting members; deleting the Secretary of Corrections from the Commission; abolishing the two new commission memberships on July 1, 1985; amending s. 947.02, Florida Statutes, to revise procedures for the screening and appointment of parole and probation commissioners; amending s. 947.03(1), (3), Florida Statutes, to provide for 4-year terms of office for the Parole and Probation Commission; amending s. 947.175, Florida Statutes, to provide notice to local criminal justice agencies of parole releases; creating s. 947.1746, Florida Statutes, to provide for the establishment of an effective parole release date without a final interview; amending s. 944.927(1), (2), Florida Statutes, as created by chapter 82-411, Laws of Florida, expanding the applicability of the Local Offender Advisory Council Act; renumbering s. 951.23(3), (4), Florida Statutes, and adding a new subsection (3) to said section; authorizing the Department of Corrections to provide certain assistance to local governments; creating s. 253.061, Florida Statutes; providing for the acquisition or use of lands for correction facilities; creating s. 945.275, Florida Statutes; providing for a study of siting of additional correctional facilities;

providing procedures for acquisition of property for such facilities over the objections of local governments; repealing s. 958.08, Florida Statutes, relating to community control program; providing for the future repeal and review of s. 20.32, Florida Statutes, and chapter 947, Florida Statutes, relating to the Parole and Probation Commission; providing for legislative review; providing severability; directing that certain changes in the Florida Statutes be made; providing effective dates.

—was read the first time by title and SB 644 was laid on the table.

On motion by Senator Rehm, by two-thirds vote CS for CS for SB 644 was read the second time by title.

Senator W. D. Childers presiding

Senator Carlucci moved the following amendments which failed:

Amendment 1—On page 13, lines 3-31, and on page 14, lines 1-7, strike all of said lines

Amendment 2—On page 21, line 23, strike "third" and insert: *half third*

Amendment 3—On page 11, line 13, strike "not" and insert: *not*

Amendment 4—On page 11, lines 15-31, on page 12, lines 1-31, and on page 13, lines 1 and 2, strike all of said lines and insert:

~~(6) The sentencing guidelines may provide that any sentences imposed thereunder be explained in writing by the trial court judge under certain circumstances.~~

~~(6)(7) The Sentencing Commission and the office of the State Court Administrator shall conduct ongoing research regarding the impact of sentencing guidelines adopted by the commission on sentencing practices, the use of imprisonment and alternatives to imprisonment, and plea bargaining. The commission, with the aid of the office of the State Court Administrator, the department, and the Parole and Probation Commission, shall estimate the impact of any proposed sentencing guidelines on future rates of incarceration and levels of prison population. Such estimates shall be based in part on historical data of sentencing practices which have been accumulated by the office of the State Court Administrator and on department records reflecting average time served for offenses covered by the proposed guidelines. Projections of impact shall be reviewed by the commission and made available to other appropriate agencies of state government including the Legislature. shall study the interrelationship between the implementation of a statewide sentencing guidelines system and the discretion exercised by the Parole and Probation Commission in establishing presumptive parole release dates for inmates committed to the state correctional system. Prior to implementation of a statewide system of sentencing guidelines, the Sentencing Commission shall make a recommendation to the Governor, President of the Senate, and Speaker of the House of Representatives on the need for legislation regarding the proper relationship between sentences set by judges under a guidelines system and the amount of time actually served by inmates in light of their presumptive parole release dates established by the Parole and Probation Commission.~~

~~(7)(8) A person convicted of crimes committed on or after October 1, 1983, and sentenced pursuant to sentencing guidelines adopted under this section shall only be released:~~

- ~~(a) Upon expiration of his sentence;~~
- ~~(b) Upon expiration of his sentence as reduced by accumulated gain-time; or~~
- ~~(c) As directed by an executive order granting clemency.~~

~~The provisions of chapter 947 shall not be applied to such persons. The provisions of this section shall not be implemented unless funds are specifically appropriated for the provisions of this section.~~

~~(8)(9) Sentencing guidelines may be repealed by the Legislature.~~

Senators Hair and Johnston offered the following amendments which were moved by Senator Hair and adopted:

Amendment 5—On page 7, strike all of lines 5-29

Amendment 6—On page 6, strike all of lines 8-12

Senator Rehm moved the following amendment which was adopted:

Amendment 7—On page 40, strike all of lines 1-18 and insert:

947.01 Creation of Parole and Probation Commission; number and qualifications of its members.—A Parole and Probation Commission is created to consist of *nine* ~~eight~~ citizens who are residents of the state. The members of the commission shall include:

(1) ~~nine~~ *seven* members who are qualified by their knowledge of penology and allied social sciences to discharge the duties and perform the work of the commission efficiently; ~~and residents of the state; and.~~

~~(2) One member who shall be the Secretary of Corrections. The secretary shall participate in the policymaking decisions of the commission, including the development and review of objective parole guidelines, but shall not participate in decisions on the granting and revocation of parole. The secretary shall be ineligible for appointment as chairman and shall receive no compensation for his services on the commission, and shall not be required to attend any minimum number of meetings. Effective July 1, 1985, the membership of the commission shall be reduced to seven members. The Secretary of Corrections shall act in a liaison capacity between the Parole and Probation Commission and the Department of Corrections.~~

Senator Hair moved the following amendment which was adopted:

Amendment 8—On page 47, line 21 through page 51, line 11, strike all of said lines and insert:

945.275 Siting of additional correctional facilities.—

(1) The Department of Corrections is directed to conduct a statewide comprehensive study to determine the current and future needs for all types of correctional facilities in the State of Florida.

(2) The study shall assess, rank, and designate appropriate sites and be reflective of the different purposes and uses for all correctional facilities based upon the following criteria:

(a) Current and future estimates of offenders originating from each county;

(b) Current and future estimates of types of crimes committed in each county;

(c) Current geographic location of state correctional facilities;

(d) The availability of personnel within the local labor market;

(e) Current capacity of facilities in the area;

(f) The total usable and developable acreage of various sites based upon the use and purpose of the facility;

(g) The accessibility of the site to existing utility, transportation, law enforcement, health care, fire protection, refuse collection, water, and sewage disposal services;

(h) The susceptibility of the site to flooding hazards or other adverse natural environmental consequences;

(i) Site location in relation to desirable and undesirable proximity to other public facilities, including schools;

(j) Patterns of residential growth and projected population growth; and

(k) Other criteria as the Department of Corrections in conjunction with local governments deems appropriate.

(3) The Department of Corrections shall recommend certification by the Governor and Cabinet of the study within 2 months of its receipt.

(4) Upon certification of the study by the Governor and Cabinet, the Department of Corrections shall notify those counties designated as in need of a correctional facility.

(5) When the department proposes a site for a state correctional facility, it shall request that the local government having jurisdiction over such proposed site determine whether or not the proposed site is in compliance with local government comprehensive plans, local land use ordinances, local zoning ordinances or regulations, and other local ordinances in effect at the time of such request. If no such determination is made within 90 days of the request, it shall be presumed that the proposed site is in compliance with such plans, ordinances or regulations.

(6) If the local government determines within 90 days of the request that construction of a correctional facility on the proposed site does not comply with such plans, ordinances, or regulations, the department may request a modification of such plans, ordinances, or regulations without having an ownership interest in such property. For the purposes of this section, modification shall include but not be limited to a variance, rezoning, special exception, or any other action of the local government having jurisdiction over the proposed site which would authorize siting of a correctional facility.

(7) Upon receipt of a request for modification from the department, the local government may recommend alternative sites to the department and shall give notice and hold a public hearing on the request for modification in the same manner as for a rezoning as provided under the appropriate special or local law or ordinance, except that such proceedings shall be recorded by tape or by a certified court reporter and made available for transcription at the expense of any interested party.

(8) When the department requests such a modification and:

(a) It is denied by the local government; or

(b) There is no action on the modification requested by the department within 90 days of the request:

The department may appeal the decision of the local government on the requested modification of local plans, ordinances, or regulations to the Governor and Cabinet.

(9) The Governor and Cabinet shall consider the following when determining whether to grant the appeal from the local government's decision on the requested modification:

(a) The record of the proceedings before the local government.

(b) Reports and studies of any other agencies relating to matters within that agency's jurisdiction which may be potentially affected by the proposed site.

(c) The statewide study, as established in subsection (1), other existing studies, reports and information maintained by the department as the Governor and Cabinet may request addressing the feasibility and availability of alternative sites in the general area, and the need for a correctional facility in the area based on the county's average number of commitments to state correctional facilities for the most recent 3 calendar years.

(10) The Governor and Cabinet, upon determining that the local government has recommended no feasible alternative site and that the interests of the state in providing correctional facilities outweigh the concerns of the local government, shall authorize construction and operation of a correctional facility on the proposed site notwithstanding any local plans, ordinances or regulations.

(11) The Governor and Cabinet may adopt rules of procedure to govern these proceedings in accordance with the provisions of s. 120.54.

(12) Actions taken by the department or the Governor and Cabinet pursuant to this section shall not be subject to the provisions of ss. 120.56 and 120.57. The decision by the Governor and Cabinet shall be subject to judicial review pursuant to s. 120.68, in the District Court of Appeal, First District.

(13) Insofar as the provisions of this section are inconsistent with the provisions of any other law, general, special, or local, the provisions of this section shall be controlling.

Pending further consideration of CS for CS for SB 644 as amended, on motion by Senator Hair, the rules were waived and by two-thirds vote CS for CS for HB 1012 was withdrawn from the Committee on Appropriations.

On motion by Senator Hair—

CS for CS for HB 1012—A bill to be entitled An act relating to corrections and parole; providing a short title; providing findings; providing definitions; creating s. 944.022, Florida Statutes, creating an inmate to population ratio for the state correctional system for specified purposes; providing for certification of legislative budget requests for corrections residential facilities by a Criminal Justice Estimating Conference; providing for review of such requests; providing procedures for correcting inmate population levels in excess of certain levels; creating s. 921.187,

Florida Statutes, providing sentencing alternatives; creating s. 775.075, Florida Statutes, providing sentencing criteria; amending s. 944.275, Florida Statutes, changing gain-time amounts and considerations; amending s. 947.16(3)(a), (b), and (g), Florida Statutes, 1982 Supplement, and adding a paragraph, reducing the portion of sentence over which a sentencing judge may retain jurisdiction; changing the date of reinterviews of inmates where parole release orders have been vacated by the sentencing court; amending s. 947.135(3)(a), Florida Statutes, 1982 Supplement, changing participation criteria for the mutual participation program; creating s. 948.001, Florida Statutes, providing definitions; creating s. 948.005, Florida Statutes, providing for the implementation of community control programs; amending s. 948.01, Florida Statutes, providing for placement of certain offenders into community control as an alternative to probation; limiting the duration of supervision; providing for the applicability of workers' compensation benefits to offenders in certain work programs; authorizing discharge from certain programs; amending s. 948.011, Florida Statutes, conforming provisions relating to imposition of fines and probation; amending s. 947.23(6), Florida Statutes, authorizing placement of certain parolees into community control; amending s. 948.03, Florida Statutes, changing terms and conditions of probation and providing terms and conditions of community control; amending s. 948.031, Florida Statutes, authorizing the Department of Corrections to establish public service programs in counties for offender public service; amending s. 948.04, Florida Statutes, to conform to the act; amending s. 948.05, Florida Statutes, providing for judicial admonishment and commendation of offenders in community control; amending s. 948.06, Florida Statutes, providing for placement of persons violating probation into community control; providing for revocation, modification, or continuance of community control; adding new subsections (2), (3), and (4) to s. 945.26, Florida Statutes, providing for a community control program as a sentencing alternative; amending s. 947.04(1), Florida Statutes, 1982 Supplement, authorizing the Parole and Probation Commission to assign temporary duties to retired commissioners; amending s. 947.01, Florida Statutes, removing the Secretary of Corrections as a member of the Parole and Probation Commission and providing for the future reduction in the membership of the commission; amending s. 947.02, Florida Statutes, revising provisions relating to the appointment of commissioners; amending s. 947.03(1) and (3), Florida Statutes, and adding a subsection, reducing the terms of office of commissioners; providing for new appointment of commissioners; amending s. 947.175, Florida Statutes, changing persons to be notified by the commission upon establishing an effective parole release date and prior to release of an inmate on work release; creating s. 947.1746, Florida Statutes, authorizing the commission to establish an effective parole release date without final interview under certain circumstances; amending s. 944.927(1) and (2), Florida Statutes, as created by chapter 82-411, Laws of Florida, expanding the applicability of the Local Offender Advisory Council Act; adding a new subsection (3) to s. 951.23, Florida Statutes, authorizing the Department of Corrections to provide certain assistance to local governments; creating s. 253.061, Florida Statutes, providing for the acquisition or use of lands for correction facilities; creating s. 945.275, Florida Statutes, providing for a study of siting of additional correctional facilities; providing procedures for acquisition of property for such facilities over the objections of local governments; repealing s. 958.08, Florida Statutes, relating to community control program; providing for the future repeal and review of s. 20.32, Florida Statutes, and chapter 947, Florida Statutes, relating to the Parole and Probation Commission; providing for legislative review; providing severability; directing that certain changes in the Florida Statutes be made; providing an effective date.

—a companion measure, was substituted for CS for CS for SB 644 and read the second time by title.

The Committee on Corrections, Probation and Parole recommended the following amendment which was moved by Senator Hair:

Amendment 1—On page 4, line 20, strike everything after the enacting clause and insert:

Section 1. This act may be cited as the "Correctional Reform Act of 1983."

Section 2. Legislative findings.—The Legislature finds that:

(1) Prudent management of the growth of the state must include the reasonable containment of criminal justice expenditures.

(2) State government can no longer afford an uncritical and continuing escalation in capital outlay for prison construction at the expense of other competing social and economic priorities.

(3) The effectiveness of incarceration of offenders as a means to reduce the likelihood that they will return to criminal activities and to develop individuals who will become useful members of society, thereby reducing the threat of crime in our society, varies among individuals and types of offenders and is not conclusively positive.

(4) The increased use of noncustodial alternatives and nonprison custodial alternatives can alleviate prison overcrowding while still providing a sufficient measure of public safety and assuring an element of punishment.

(5) An emphasis upon the swift and certain punishment of offenders as a deterrent to crime and as retribution for the commission of a crime is warranted.

(6) There exists both a need for more standardization in the sentencing of offenders and a need for the punishment imposed to be proportionate to the seriousness of the offense.

(7) The lack of certain punishment of criminals exacerbates the sufferings of their victims and of society as a whole.

Section 3. Definitions.—As used in this act:

(1) "State correctional system" means the system as defined in s. 944.02, Florida Statutes.

(2) "Department" means the Department of Corrections.

(3) "Commission" means the Parole and Probation Commission.

(4) "Maximum capacity" of the state corrections system means the maximum number of inmates who can be safely housed in the corrections system based on current constitutional standards.

(5) "Criminal Justice Estimating Conference" means the designated professional staffs of the Governor's Office, the Legislature, and the executive agencies who meet in regularly scheduled meetings chaired by the State Economist or his designee to forecast the inmate and caseload counts, and other information needed to support the state budgeting process.

Section 4. Section 944.022, Florida Statutes, is created to read:

944.022 Inmate to population ratio; appropriations process; certification of bedspace need.—

(1) Beginning October 1, 1983, through the end of fiscal year 1987-1988, the ratio of inmates in the state correctional system to the general population of the state should not exceed 275/100,000. Beginning fiscal year 1988-1989 through the end of fiscal year 1992-1993, such ratio should be reduced in equal increments to a ratio of 250/100,000. Notwithstanding the provisions of s. 216.351, all fixed capital outlay appropriations to the Department of Corrections for additional bedspace should be allocated by general law so as to maintain bedspace consistent with the ratios established in this section. Such ratios shall be used only as a means of planning for future capital outlay of the Department of Corrections to ensure available bedspace consistent with the growth of the state population. However, the ratios established herein shall not be a basis for the emergency release of inmates from the state correctional system. The emergency release of inmates shall occur when a state of emergency exists as set forth in section 5.

(2) Beginning October 1, 1983, all legislative budget requests for the construction of additional residential facilities in the Department of Corrections shall be certified as needed by the Criminal Justice Estimating Conference. The certification shall be based on current constitutional standards and accompanied by a supporting projected estimate of the inmate population for the period covered by the budget request. Each estimate shall include but not be limited to consideration of the following factors:

(a) Current law.

(b) Current sentencing practices.

(c) Current parole practices.

(d) Current Department of Corrections program rules.

(3) The Legislature shall accept the projected estimate from the Criminal Justice Estimating Conference as accurate, but shall not be obligated to fund any budget based on such estimate. The Legislature

may elect to modify any programs, practices or procedures listed in subsection (2) and, based on a revised estimate of the impact of these modifications by the Criminal Justice Estimating Conference, adjust the level of required funding accordingly. Alternatively, the Legislature may elect to offset the need for funding the construction of residential facilities to meet the projected need through establishing alternative programs to incarceration.

(4) In the event the inmate population exceeds the maximum capacity of the residential facilities provided by the Legislature pursuant to this section, the emergency release procedures as defined in section 5 shall apply.

Section 5. (1) The Department of Corrections shall advise the Governor of the existence of a state of emergency in the state correctional system whenever the population of the state correctional system exceeds 98 percent of the maximum capacity of the system for males or females, or both. In conveying this information, the secretary of the department shall certify the rated design capacity, system maximum capacity, and current population of the state correctional system. When the Governor verifies such certification by letter, the secretary shall declare a state of emergency.

(2) Following the declaration of a state of emergency, the sentences of all inmates in the system who are eligible to earn gain-time shall be reduced by the credit of up to 30 days' gain-time in 5-day increments as may be necessary to reduce the inmate population to 97 percent of maximum capacity.

(3) If a state of emergency still exists 15 days after the credit of gain-time pursuant to subsection (2), the secretary of the department and the Parole and Probation Commission, as appropriate to their respective functions, shall authorize, prior to scheduled release by parole, gain-time or expiration of sentence, the early termination of incarceration for those inmates confined in state correctional facilities serving sentences of 3 years or less, unless sentenced pursuant to s. 775.087 or s. 893.135, Florida Statutes, who are within the last 60 days prior to release by parole, gain-time or expiration of sentence. The secretary and the Parole and Probation Commission shall release such inmates by applying in 5-day increments credit for time served to all in this category.

(4) Within 15 days after the declaration of a state of emergency, the department shall supply the commission with the names of those inmates in the following categories, who shall be considered for compulsory conditional release:

(a) Any inmate confined in a state correctional facility with a sentence of 3 years or less, unless serving a mandatory minimum sentence, who is within the last 6 months prior to release.

(b) Any inmate confined in a state correctional facility with a sentence of more than 3 but less than 8 years, unless serving a mandatory minimum sentence, who is within the last year prior to release.

(c) Any inmate confined in a state correctional facility with a sentence of 8 years or more, unless serving a mandatory minimum sentence, who is within the last 18 months prior to release.

As used in this subsection, "Compulsory conditional release" means a release from incarceration by commission action specifying the terms of release, including the period of time the person shall be subject to such conditions as the commission shall determine, and subject to supervision as if on parole, but in no event shall such supervision extend beyond the maximum term or terms for which he was actually sentenced. The commission shall consider all inmates not otherwise ineligible for parole who have maintained satisfactory institutional behavior and who are not serving a term of imprisonment for any forcible felony as defined in s. 776.08, or for drug trafficking under s. 893.135, or as a habitual felony offender under s. 775.084.

(5) A violation of the terms or conditions of a compulsory conditional release pursuant to subsection (4) may render the person released liable to arrest and returned to prison to serve out the term for which he was sentenced. However, an offender whose compulsory conditional release is revoked may, at the discretion of the commission, be credited with any portion of his time he has satisfactorily served while on release. For the purposes of this section, the releasee shall be subject to the provisions of s. 947.22, s. 947.23, and s. 947.26, as though such releasee were on parole.

(6) The authority granted in this section shall cease whenever the secretary certifies to the Governor that the level of inmate population has remained less than 97 percent of the system maximum capacity for five consecutive days.

Section 6. Subsections (3), (5), (6), (7), and (8) of section 921.001, Florida Statutes, 1982 Supplement, are amended and a new subsection (9) is added to said section to read:

921.001 Sentencing Commission.—

(3) *Following initial implementation of statewide sentencing guidelines by the court, the commission shall meet annually or at the call of the chairman to review sentencing practices and recommend modifications to the guidelines. In establishing or modifying the sentencing guidelines, the commission shall take into consideration current sentence and release practices and correctional resources, including the capacities of local and state correctional facilities in addition to other relevant factors. In order to develop a system of sentencing guidelines which is representative of current sentencing decisions within the state, the commission shall identify, not only the offense and offender-related characteristics exerting the greatest influence on sentencing decisions, but also the relative importance assigned to each characteristic by the trial judge. For this purpose, the commission is authorized to collect and evaluate data on sentencing practices in the state from each of the judicial circuits.*

(5) Sentences imposed by trial court judges must be in all cases within any relevant minimum and maximum sentences provided by statute and must conform to all other statutory provisions. The failure of a trial court to impose a sentence within the sentencing guidelines shall not be subject to appellate review pursuant to chapter 924.

(6) The sentencing guidelines shall may provide that any sentences imposed outside the guidelines thereunder be explained in writing by the trial court judge under certain circumstances.

(7) *The Sentencing Commission and the office of the State Court Administrator shall conduct ongoing research regarding the impact of sentencing guidelines adopted by the commission on sentencing practices, the use of imprisonment and alternatives to imprisonment, and plea bargaining. The commission, with the aid of the office of the State Court Administrator, the department, and the Parole and Probation Commission, shall estimate the impact of any proposed sentencing guidelines on future rates of incarceration and levels of prison population. Such estimates shall be based in part on historical data of sentencing practices which have been accumulated by the office of the State Court Administrator and on department records reflecting average time served for offenses covered by the proposed guidelines. Projections of impact shall be reviewed by the commission and made available to other appropriate agencies of state government including the Legislature. ~~shall study the interrelationship between the implementation of a statewide sentencing guidelines system and the discretion exercised by the Parole and Probation Commission in establishing presumptive parole release dates for inmates committed to the state correctional system. Prior to implementation of a statewide system of sentencing guidelines, the Sentencing Commission shall make a recommendation to the Governor, President of the Senate, and Speaker of the House of Representatives on the need for legislation regarding the proper relationship between sentences set by judges under a guidelines system and the amount of time actually served by inmates in light of their presumptive parole release dates established by the Parole and Probation Commission.~~*

(8) *A person convicted of crimes committed on or after October 1, 1983, and sentenced pursuant to sentencing guidelines adopted under this section shall only be released:*

(a) *Upon expiration of his sentence;*

(b) *Upon expiration of his sentence as reduced by accumulated gain-time; or*

(c) *As directed by an executive order granting clemency.*

The provisions of chapter 947 shall not be applied to such persons. The provisions of this section shall not be implemented unless funds are specifically appropriated for the provisions of this section.

(9) *Sentencing guidelines may be repealed by the Legislature.*

Section 7. Subsection (1) of section 924.06, Florida Statutes, is amended to read:

924.06 Appeal by defendant.—

(1) A defendant may appeal from:

(a) A final judgment of conviction when probation has not been granted under chapter 948, except as provided in subsection (3);

(b) An order granting probation under chapter 948;

(c) An order revoking probation under chapter 948; ~~or~~

(d) A sentence, on the ground that it is illegal; *or*—

(e) A sentence imposed outside the guidelines authorized by s. 921.001.

Section 8. Section 924.07, Florida Statutes, is amended to read:

924.07 Appeal by state.—The state may appeal from:

(1) An order dismissing an indictment or information or any count thereof;

(2) An order granting a new trial;

(3) An order arresting judgment;

(4) A ruling on a question of law when the defendant is convicted and appeals from the judgment;

(5) The sentence, on the ground that it is illegal;

(6) A judgment discharging a prisoner on habeas corpus;

(7) An order adjudicating a defendant insane under the Florida Rules of Criminal Procedure; ~~or~~

(8) All other pretrial orders, except that it may not take more than one appeal under this subsection in any case; *or*—

(9) A sentence imposed outside the guidelines authorized by s. 921.001.

Such appeal shall embody all assignments of error in each pretrial order that the state seeks to have reviewed. The state shall pay all costs of such appeal except for the defendant's attorney's fee.

Section 9. Section 921.187, Florida Statutes, is created to read:

921.187 Disposition and sentencing; alternatives.—The following alternatives for the disposition of criminal cases shall be used in a manner which will best serve the needs of society, which will punish criminal offenders, and which will provide the opportunity for rehabilitation. The court may:

(1) Place an offender on probation with or without an adjudication of guilt pursuant to s. 948.01.

(2) Impose a fine and probation pursuant to s. 948.011 when the offense is punishable by both a fine and imprisonment and probation is authorized.

(3) Place a felony offender into community control requiring intensive supervision and surveillance pursuant to chapter 948.

(4) Impose, as a condition of probation, or community control a period of treatment which shall be restricted to either a county facility, a Department of Corrections probation and restitution center, or a community residential facility excluding community correctional centers as defined in s. 944.026 which is owned and operated by any public or private entity providing such services. Admission to such a facility shall be contingent upon consultation with the supervisor of any such center who shall approve or disapprove said placement depending on the purpose and function of the facility. If the supervisor of such center finds that such placement is inappropriate, he shall recommend alternative placement. Placement in such a facility shall not exceed 364 days. Early termination of placement shall be recommended to the court, when appropriate, by the center supervisor. Contracts shall be developed with agencies for the provision of services.

(5) Sentence an offender pursuant to s. 922.051 to imprisonment in a county jail when a statute directs imprisonment in a state prison, if the offender's cumulative sentence, whether from the same or separate circuits, is not more than 364 days.

(6) Sentence an offender who is to be punished by imprisonment in a county jail to a jail in another county if there is no jail within the county suitable for such prisoner pursuant to s. 950.01.

(7) Impose a split sentence whereby the offender is to be placed on probation upon completion of any specified period of such sentence, which may include a term of years or less.

(8) Require the offender to participate in a work release or educational or vocational training program pursuant to s. 951.24 while serving a sentence in a county jail if such a program is available.

(9) Require an offender to make restitution pursuant to s. 775.089.

(10) Require an offender to perform a specified public service pursuant to s. 775.091.

(11) Require an offender who violates chapter 893 or violates any law while under the influence of a controlled substance or alcohol to participate in a substance abuse program.

(12) Sentence an offender to imprisonment in a state correctional institution.

(13) Make any other disposition that is authorized by law.

Section 10. Section 775.075, Florida Statutes, is created to read:

775.075 Criteria for sentencing.—

(1) The court shall use the following criteria for sentencing all persons who committed crimes prior to the effective date of this act.

(2)(a) The court shall not impose a sentence of imprisonment unless, after considering the nature and circumstances of the crime and the prior criminal record, if any, of the defendant, the court finds that imprisonment is necessary for the protection of the public because:

1. A lesser sentence is not commensurate with the seriousness of the defendant's crime; or

2. There is a probability that during the period of a suspended sentence or probation the defendant will commit another crime.

(b) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of withholding a sentence of imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm;

2. The defendant did not know and had no reason to know that his criminal conduct would cause or threaten serious harm;

3. The defendant acted under a strong provocation;

4. There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

5. The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that the victim sustained;

6. The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

7. The defendant's criminal conduct was the result of circumstances unlikely to recur;

8. The character and attitudes of the defendant indicate that he is unlikely to commit another crime;

9. The defendant is particularly likely to respond affirmatively to noncustodial treatment;

(3)(a) The court shall sentence a defendant to pay a fine unless the court finds that the defendant is unable or will be unable to pay the fine and the imposition of a fine will not prevent the defendant from being rehabilitated or from making restitution to the victim of his crime.

(b) The court shall sentence a defendant to pay a fine whenever the imposition of a fine is sufficient to punish the defendant and protect the public.

(c) The court shall sentence a defendant to pay a fine in addition to imprisonment or probation if, in the opinion of the court, the defendant has derived a pecuniary gain from his crime or the fine is specially adapted to deterrence of the particular crime or the punishment and rehabilitation of the offender.

Section 11. Section 944.275, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 944.275, F.S., for present text.)

944.275 Gain-time.—

(1) The department is authorized to grant deductions from sentence in the form of gain-time to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities and to reward prisoners who perform outstanding deeds or services.

(2)(a) The department shall establish for each prisoner sentenced to a term of years a maximum sentence expiration date which shall be the date when the sentence or combined sentences imposed on a prisoner will expire. In establishing this date, the department shall reduce the total time to be served by any time lawfully credited.

(b) When a prisoner with an established maximum sentence expiration date is sentenced to an additional term or terms without having been released from custody, the department shall extend the maximum sentence expiration date by the length of time imposed in the new sentence or sentences, less lawful credits.

(c) When an escaped prisoner or a parole violator is returned to the custody of the department, the maximum sentence expiration date in effect when the escape occurred or the parole was effective shall be extended by the amount of time the prisoner was not in custody plus the time imposed in any new sentence or sentences, but reduced by any lawful credits.

(3)(a) The department shall also establish for each prisoner sentenced to a term of years a tentative release date which shall be the date projected for the prisoner's release from custody by virtue of gain-time granted or forfeited as described in this section. The initial tentative release date shall be determined by deducting basic gain-time granted from the maximum sentence expiration date. Other gain-time shall be applied when granted or restored to make the tentative release date proportionately earlier and forfeitures of gain-time, when ordered, shall be applied to make the tentative release date proportionately later.

(b) When an initial tentative release date is reestablished because of additional sentences imposed before the prisoner has completely served all prior sentences, any gain-time granted during service of those prior sentences and not forfeited shall be applied.

(c) The tentative release date shall not be later than the maximum sentence expiration date.

(4)(a) As a means of encouraging satisfactory behavior, the department shall grant basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner, subject to the following:

1. Portions of any sentences to be served concurrently shall be treated as a single sentence when determining basic gain-time.

2. Basic gain-time for a partial month shall be prorated on the basis of a 30-day month.

3. When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time shall be granted for the amount of time the maximum sentence expiration date was extended.

(b) For each month a prisoner works diligently, or participates in training, or uses time constructively or otherwise engages in positive activities, the department may grant up to 20 days of incentive gain-time, which shall be credited and applied monthly.

(c) An inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his sentence, may be granted meritorious gain-time of from 1 to 60 days.

(5) When a prisoner is found guilty of an infraction of the laws of this state or the rules of the department, gain-time may be forfeited according to law.

(6)(a) Basic gain-time under this section shall be computed on and applied to all sentences imposed for offenses committed on or after July 1, 1978.

(b) On the effective date of the act, all incentive and meritorious gain-time shall be granted according to the provisions of this act.

(c) All additional gain-time previously awarded under subsections (2) and (3) and all forfeitures ordered prior to the effective date of this act shall remain in effect and be applied in establishing an initial tentative release date.

(7) The department shall promulgate rules to implement the granting, forfeiture, and restoration of gain-time.

Section 12. Paragraphs (a) and (g) of subsection (3) of section 947.16, Florida Statutes, 1982 Supplement, are amended, and paragraph (h) is added to said subsection to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission.—

(3) Persons who have become eligible for an initial parole interview and who may, according to the objective parole guidelines of the commission, be granted parole shall be placed on parole in accordance with the provisions of this law; except that, in any case of a person convicted of murder, robbery, burglary of a dwelling or burglary of a structure or conveyance in which a human being is present, aggravated assault, aggravated battery, kidnapping, sexual battery or attempted sexual battery, incest or attempted incest, an unnatural and lascivious act or an attempted unnatural and lascivious act, lewd and lascivious behavior, assault or aggravated assault when a sexual act is completed or attempted, battery or aggravated battery when a sexual act is completed or attempted, arson, or any felony involving the use of a firearm or other deadly weapon or the use of intentional violence, at the time of sentencing the judge may enter an order retaining jurisdiction over the offender for review of a commission release order. This jurisdiction of the trial court judge is limited to the first one-third of the maximum sentence imposed. When any person is convicted of two or more felonies and concurrent sentences are imposed, then the jurisdiction of the trial court judge as provided herein shall apply to the first third of the maximum sentence imposed for the highest felony of which the person was convicted. When any person is convicted of two or more felonies and consecutive sentences are imposed, then the jurisdiction of the trial court judge as provided herein shall apply to one-third of the total consecutive sentences imposed.

(a) In retaining jurisdiction for the purposes of this act, the trial court judge shall state the justification with individual particularity, and such justification shall be made a part of the court record. *A copy of such justification shall be delivered to the department together with the commitment issued by the court pursuant to s. 944.16.*

(g) ~~The decision of the original sentencing trial court judge or in his absence, the Chief Judge of the Circuit, to vacate any parole release order as provided in this act shall not be appealable, and the commission shall take no further action during the pendency of the retained jurisdiction, except that~~ Each inmate whose parole release order has been vacated by the court shall be reinterviewed within 2 years after the date of receipt of the vacated release order and every 2 years thereafter, 90 days of the expiration of the court's retained jurisdiction or earlier by order of the court retaining jurisdiction.

(h) *An inmate whose parole release order has been vacated by the court shall not be given a presumptive parole release date during the period of the court's retained jurisdiction. During such period, a new effective parole release date may be authorized at the discretion of the commission without further interview unless an interview is requested by no fewer than two commissioners. Any such new effective parole release date shall be reviewed in accordance with the provisions of paragraphs (c), (d), (e), (f), and (g).*

Section 13. Paragraph (a) of subsection (3) and subsection (4) of section 947.135, Florida Statutes, 1982 Supplement, are amended to read:

947.135 Mutual participation program.—

(3) **MUTUAL PARTICIPATION PROGRAM; DEVELOPMENT; CRITERIA; DEPARTMENT AND COMMISSION RULES.—**

(a) The department and the commission shall jointly develop a mutual participation program which sets forth for each eligible offender the terms of his institutional confinement, a parole date, and terms of parole supervision and release, provided each offender meets the criteria set forth in this act and any additional criteria established by the department and the commission.

1. The department and the commission, as a portion of the mutual participation program, shall require that each eligible offender satisfactorily work at a job within the institution or as a part of a correctional industries program or and satisfactorily participate in a vocational training or educational program offered by the department. *Nothing in this subsection shall be construed to exclude eligible offenders from meeting both the work and training and educational requirements when deemed appropriate by the department and commission.*

2. Additional criteria shall be established and required by the commission and the department for participation in the program, including, but not limited to, vocational counseling and work release programs; however, criteria for satisfactory participation in the program shall not include academic classroom instruction at the college level:

3. A panel of at least two members of the commission shall establish a parole date for each eligible offender, based on the satisfactory completion of the program. In no case shall such date fall after the date which would have been established under s. 947.172.

~~(4) ANNUAL EVALUATION.—The department shall submit to the Legislature an annual evaluation of the mutual participation program.~~

Section 14. Section 948.001, Florida Statutes, is created to read:

948.001 Definitions.—As used in this chapter:

(1) "Probation" means a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03.

(2) "Community control" means a form of intensive supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of the offender is restricted within the community, home, or noninstitutional residential placement, and specific sanctions are imposed and enforced.

Section 15. Section 948.005, Florida Statutes, is created to read:

948.005 Implementation of Community Control.—

(1) The office of the State Court Administrator shall contract for the development of an implementation manual, a resource directory, and training programs for implementing community control programs.

(2) The Community Control Implementation Manual shall include, but not be limited to, an explanation of the types of offenders that should be placed in community control programs, procedures for diagnosing offenders, objectives and goals of such placements, examples of alternative placements based upon other states' experiences, and instruction in developing an individualized program for each offender which shall include diagnosis of treatment needs in the areas of education, substance abuse and mental health, community sanction provisions, restitution and community service provisions, rehabilitation objectives and programs, and a schedule for periodic review and reevaluation of programs.

(3) The Community Control Resource Directory shall include but not be limited to, for each circuit in the state, an identification and description of community resources that are available for the implementation of community control programs which include the following:

- (a) Name, address, phone, county location, capacity, and cost,
- (b) Client eligibility and characteristics which prohibit acceptance,
- (c) Objectives of program,
- (d) Primary source of referral,
- (e) Average length of stay, and
- (f) Services offered.

(4) Training programs shall be provided for judges, correctional field staff, Local Offender Advisory Councils, and others responsible for the implementation of community control programs.

Section 16. Section 948.01, Florida Statutes, is amended to read:

948.01 When courts may place defendant on probation or into community control.—

(1) Any court of the state having original jurisdiction of criminal actions, where the defendant in a criminal case has been found guilty by the verdict of a jury or has entered a plea of guilty or a plea of nolo contendere or has been found guilty by the court trying the case without a jury, except for an offense punishable by death, may at a time to be determined by the court, either with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of such defendant.

(2) When the penalty for the offense may involve imprisonment in the state prison, the circuit court, prior to such hearing, shall, and in misdemeanor cases may, refer the case to the Department of Corrections for investigation and recommendation. The court, upon such reference, shall direct the department, and it shall be the duty of the department, to make an investigation and report in writing at a specified time prior to sentencing to the court upon the circumstances of the offense, the criminal record, the social history, and the present condition of the defendant, together with its recommendation pursuant to the provisions of s. 921.231.

(3) If it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt, and in either case stay and withhold the imposition of sentence upon such defendant, and shall place him upon probation under the supervision and control of the department for the duration of such probation. And the department shall thereupon and thereafter, during the continuance of such probation, have the supervision and control of the defendant. However, no defendant placed on probation for a misdemeanor shall be placed under the supervision of the department unless the court affirmatively and specifically orders such supervision after finding that supervision in the community is necessary to provide adequate protection to the community or to assist in the rehabilitation of the offender, or both.

(4) *If, after considering the provisions of s. 948.01(3) and the offender's prior record or the seriousness of the offense, it appears to the court in the case of a felony disposition that probation is an unsuitable dispositional alternative to imprisonment, the court may place the offender in a community control program. Or, in cases of prior disposition of a felony commitment, upon motion of the offender, the department, or upon its own motion, the court may, within the court's period of retained jurisdiction following commitment, suspend the further execution of the disposition and place the offender in a community control program upon such terms as the court may require. The court may consult with a local offender advisory council pursuant to s. 944.927 with respect to the placement of an offender into community control. Not later than 3 working days prior to the hearing on the motion, the department shall forward to the court all relevant material on the offender's progress while in custody. If this sentencing alternative to incarceration is utilized the court shall:*

(a) *Determine what community-based sanctions will be imposed in the community control plan. Community-based sanctions may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver's license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the offender's liberty.*

(b) *After appropriate sanctions for the offense are determined, the court shall develop, approve, and order a plan of community control which will contain rules, requirements, conditions, and programs that are designed to encourage noncriminal functional behavior and promote rehabilitation of the offender and protection of the community.*

(5) *The sanctions imposed by order of the court shall be commensurate with the seriousness of the offense. When supervision or a program of public service is ordered by the court, the duration of such supervision or program shall not be longer than the sentence that could be imposed if the offender were committed for the offense, or for a period not to exceed 2 years, whichever is less. When restitution or public service is ordered by the court, the amount of restitution or public service shall not be greater than an amount the offender could reasonably be expected to pay or perform. An offender who participates in any work program under the provisions of this chapter shall be considered an employee of the state for purposes of liability, unless otherwise provided by law.*

(6) Whenever an offender is required by the court to participate in any work program under the provisions of this chapter or whenever an offender volunteers to work in a supervised work program conducted by a specified state, county, municipal, or community service organization or to work for the victim, either as an alternative to monetary restitution or as a part of the rehabilitative or community control program, the offender shall be considered an employee of the state for the purposes of chapter 440. In determining the average weekly wage, unless otherwise determined by a specific funding program, all remuneration received from the employer shall be considered a gratuity, and the offender shall not be entitled to any benefits otherwise payable under s. 440.15, regardless of whether the offender may be receiving wages and remuneration from other employment with another employer and regardless of his future wage-earning capacity.

(7) Upon completion of the sanctions imposed in the community control plan prior to the expiration of the term ordered by the court, the department may petition the court to discharge the offender from community control supervision or return the offender to a program of regular probation supervision. In considering the petition the court should recognize the limited staff resources committed to the community control program, purpose of the program, and the offender's successful compliance with the conditions as set forth in the court's order.

(8)(4) Whenever punishment by imprisonment for a misdemeanor or a felony, except for a capital felony, is prescribed, the court, in its discretion, may, at the time of sentencing, direct the defendant to be placed on probation or, with respect to any such felony, into community control, upon completion of any specified period of such sentence. In such case, the court shall stay and withhold the imposition of the remainder of sentence imposed upon the defendant, and direct that the defendant be placed upon probation or into community control after serving such period as may be imposed by the court. The period of probation shall commence immediately upon the release of the defendant from incarceration, whether by parole or gain-time allowances.

(9)(5) In no case shall the imposition of sentence be suspended and the defendant thereupon placed on probation or into community control unless such defendant be placed under the custody of the department, Salvation Army, or other public or private entity.

(10)(6) When the court, under any of the foregoing subsections, places the defendant on probation or into community control, it may specify that the defendant serve all or part of the probationary or community control period in a community residential facility under the jurisdiction of the Department of Corrections or the Department of Health and Rehabilitative Services or owned or operated by the Salvation Army or any public or private entity providing such services, and it shall require the payment prescribed in s. 945.30.

(11) Procedures governing violations of community control shall be the same as those described in s. 948.06 with respect to probation.

Section 17. Section 948.011, Florida Statutes, is amended to read:

948.011 When court may impose fine and place on probation or into community control as to imprisonment.—When the law authorizes the placing of a defendant on probation, and when his offense is punishable by both fine and imprisonment, the trial court may, in its discretion, impose a fine upon him and place him on probation or into community control as to imprisonment.

Section 18. Subsection (6) of section 947.23, Florida Statutes, 1982 Supplement, is amended to read:

947.23 Action of commission upon arrest of parolee.—

(6) Within a reasonable time after the hearing, the commission, commissioner, or duly authorized representative of the commission who conducted the hearing shall make findings of fact in regard to the alleged parole violation.

(a) If the hearing was conducted by the commission, a majority of the commission shall enter an order determining whether the charges of parole violation have been sustained, based on the findings of fact made by the commission. The commission, by such order, shall revoke the parole and return the parolee to prison to serve the sentence theretofore imposed upon him, reinstate the original order of parole, order the placement of the parolee into a community control program as set forth in s. 948.03, or enter such other order as is proper.

(b) If the hearing was conducted by a single commissioner or a duly authorized representative of the commission, at least two commissioners shall enter an order determining whether or not the charges of parole violation have been sustained, based on the findings of fact made by the commissioner or the duly authorized representative of the commission. The two or more commissioners, by such order, shall revoke the parole and return the parolee to prison to serve the sentence theretofore imposed upon him, reinstate the original order of parole, order the placement of the parolee into a community control program as set forth in s. 948.03, or enter such other order as is proper.

(c) If the revocation hearing disposition is to place the parolee into a community control program, the commission shall be guided by the procedures and requirements provided in chapter 948 which apply to the courts regarding the development and implementation of community control.

However, any decision to revoke parole shall be based on a violation of a term or condition specifically enumerated in the parole release order. In cases in which parole is revoked, the majority of the commission or the two commissioners shall make a written statement of the evidence relied on and the reasons for revoking parole.

Section 19. Section 948.03, Florida Statutes, is amended to read:

948.03 Terms and conditions of probation or community control.—

(1) The court shall determine the terms and conditions of probation or community control and may include among them the following, that the probationer or offender in community control shall:

(a) ~~Avoid injurious or vicious habits.~~

(b) ~~Avoid persons or places of disreputable or harmful character.~~

(a)(e) Report to the probation and parole supervisors as directed.

(b)(d) Permit such supervisors to visit him at his home, or elsewhere.

(c)(e) Work faithfully at suitable employment insofar as may be possible.

(d)(f) Remain within a specified place.

(e)(g) Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court.

(f)(h) Support his legal dependents to the best of his ability.

(g)(i) Make payment of the debt due and owing to the state under s. 960.17, subject to modification based on change of circumstances.

(h) Not associate with persons engaged in criminal activities.

(2) The court shall require intensive supervision and surveillance for offenders placed into community control, which may include, but not be limited to:

(a) Specified contact with the parole and probation officer.

(b) Confinement to an agreed upon residence during hours away from employment and public service activities.

(c) Mandatory public service.

(3)(2) The court shall require a diagnosis and evaluation to determine the need of a probationer or offender in community control for treatment. If the court determines that a need therefor is established by such diagnosis and evaluation process, the court shall require outpatient counseling as a term or condition of probation or community control for any person who was found guilty of any of the following, or whose plea of guilty or nolo contendere to any of the following was accepted by the court:

(a) A lewd, lascivious, or indecent assault or act upon, or in the presence of, a child.

(b) Sexual battery, as defined in chapter 794, against a child.

(c) Exploitation of a child for pornographic purposes, as provided in ss. 450.151 and 847.014, or for prostitution.

Such counseling shall be required to be obtained from a community mental health center, a recognized social service agency providing mental

health services, or a private mental health professional or through other professional counseling. The plan for counseling for the individual shall be provided to the court for review.

(4)(3) The enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto such other or others as it considers proper. The court may rescind or modify at any time of the terms and conditions theretofore imposed by the court upon the probationer or offender in community control.

Section 20. Section 948.031, Florida Statutes, is amended to read:

948.031 Condition of probation or community control; public service.—

(1) Any person who is convicted of a felony or misdemeanor and who is placed on probation or community control may be required as a condition of supervision probation to perform some type of public service for a tax-supported or tax-exempt entity, with the consent, and under the supervision, of such entity. Such public service shall be performed at a time other than during such person's regular hours of employment.

(2) Upon the request of the chief judge of the circuit, the Department of Corrections shall establish a public service program for that county which may include, but not be limited to, any of the following types of public service:

(a) Maintenance work on any property or building owned or leased by any state, county, or municipality or any nonprofit organization or agency.

(b) Maintenance work on any state-owned, county-owned, or municipally-owned road or highway.

(c) Landscaping or maintenance work in any state, county, or municipal park or recreation area.

(d) Work in any state, county, or municipal hospital or any Sunland Center or other nonprofit organization or agency.

Section 21. Subsection (1) of section 948.04, Florida Statutes, is amended to read:

948.04 Period of probation; duty of probationer.—

(1) Defendants found guilty of misdemeanors who are placed on probation shall be under supervision not to exceed 6 months unless otherwise specified by the court. Defendants found guilty of felonies who are placed on probation shall be under supervision not to exceed 2 years unless otherwise specified by the court. No defendant placed on probation pursuant to subsection 948.01(8)(4) shall be subject to the probation limitations of this subsection.

Section 22. Section 948.05, Florida Statutes, is amended to read:

948.05 Court to admonish or commend probationer or offender in community control.—The court may at any time cause the probationer or offender in community control to appear before it to be admonished, or commended, and when satisfied that its action will be for the best interests of justice and the welfare of society, may discharge the probationer or offender in community control from further supervision.

Section 23. Section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance.—

(1) Whenever within the period of probation or community control there is reasonable ground to believe that a probationer or offender in community control has violated his probation or community control in a material respect, any parole or probation supervisor may arrest such probationer or offender without warrant wherever found, and forthwith shall return him to the court granting such probation or community control. Any committing magistrate may issue a warrant upon the facts being made known to him by affidavit of one having knowledge of such facts for the arrest of the probationer or offender, returnable forthwith before the court granting such probation or community control. Any parole or probation supervisor, all officers authorized to serve criminal process, and all peace officers of this state shall be authorized to serve and execute said warrant. The court, upon the probationer or offender being brought before it, shall advise him of such charge of violation and if such charge is admitted to be true may forthwith revoke or, modify the probation, place the probationer in a community control program, or continue the

probation. and, If probation is revoked, the court shall adjudge the probationer guilty of the offense charged and proven or admitted, unless he shall have previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation or the offender in community control. If such violation of probation or community control is not admitted by the probationer or offender, the court may commit him or release him with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. If such charge is not at said time admitted by the probationer or offender and if it is not dismissed, the court, as soon as may be practicable, shall give the probationer or offender an opportunity to be fully heard on his behalf in person or by counsel. After such hearing, the court may revoke, modify, or continue the probation or community control or place the probationer in community control. If such probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he shall have previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer or offender on probation or community control.

(2) No part of the time that the defendant is on probation or in community control shall be considered as any part of the time that he shall be sentenced to serve.

(3) Parolees in community control programs who have allegedly violated terms and conditions of such placement shall be subject to the provisions of ss. 947.22 and 947.23.

Section 24. Present subsection (2) of section 945.26, Florida Statutes, is renumbered as subsection (5) and new subsections (2), (3), and (4) are added to said section to read:

945.26 Department powers and duties relating to parolees and probationers.—

(2) The department shall develop and administer a community control program. This complementary program shall be rigidly structured and designed to accommodate offenders who, in the absence of such a program, would have been incarcerated. The program shall focus on the provision of sanctions and consequences which are commensurate with the seriousness of the crime. The program shall offer the courts and the Parole and Probation Commission an alternative community-based method to punish an offender in lieu of incarceration for the following target groups:

(a) Probation violators charged with technical or misdemeanor violations;

(b) Parole violators charged with technical or misdemeanor violations, and

(c) Individuals found guilty of felonies, who, due to their criminal background or the seriousness of the offense, would not be placed on regular probation.

(3) The department shall commit not less than 10 percent of the probation and parole field staff and supporting resources to the operation of the community control program. Caseloads should be restricted to a maximum of 20 cases per supervisor in order to ensure an adequate level of staffing. Community control shall be an individualized program where the offender is restricted to non-institutional quarters or restricted to his own residence subject to an authorized level of limited freedom.

(4) The department shall develop and implement procedures to diagnose offenders during the prison intake process in order to recommend to the sentencing court during the period of retained jurisdiction, suitable candidates for placement in a program of community control.

Section 25. Subsection (1) of section 947.04, Florida Statutes, 1982 Supplement, is amended to read:

947.04 Organization of commission; officers; offices.—

(1) On July 1 of each even-numbered year, the members of the commission shall meet and select from their number a chairman who shall serve for a period of 2 years and until a successor is elected and qualified. The chairman shall not succeed himself. The chairman, as chief administrative officer of the commission, shall have the authority and responsibility to plan, direct, coordinate, and execute the powers, duties, and responsibilities assigned to the commission, except those of granting and

revoking parole as provided for in this chapter. *Subject to approval by the Governor and the Cabinet the chairman shall have the power to assign consenting retired commissioners to temporary duty when there is a workload need. Any such commissioner shall be paid \$100 for each day or portion of a day spent on the work of the commission and shall be reimbursed for travel expenses as provided in s. 112.061.* The chairman is authorized to provide or disseminate information relative to parole by means of documents, seminars, programs, or otherwise as he shall determine necessary. The chairman shall establish, execute, and be held accountable for all administrative policy decisions. However, parole granting and revocation decisions shall be made in accordance with the provisions of ss. 947.172, 947.174, and 947.23. The commissioners shall be directly accountable to the chairman in the execution of their duties as commissioners, and the chairman shall have authority to recommend to the Governor suspension of a commissioner who fails to perform the duties as provided for by statute.

Section 26. Section 947.01, Florida Statutes, is amended to read:

947.01 Creation of Parole and Probation Commission; number and qualifications of its members.—A Parole and Probation Commission is created to consist of *nine* eight citizens who are residents of the state. The members of the commission shall include:

(1) ~~nine~~ Seven members who are qualified by their knowledge of ~~penology and allied social sciences to discharge the duties and perform the work of the commission efficiently;~~ and residents of the state; and

(2) ~~One member who shall be the Secretary of Corrections. The secretary shall participate in the policymaking decisions of the commission, including the development and review of objective parole guidelines, but shall not participate in decisions on the granting and revocation of parole. The secretary shall be ineligible for appointment as chairman, shall receive no compensation for his services on the commission, and shall not be required to attend any minimum number of meetings. Effective July 1, 1985, the membership of the commission listed in subsection (1) shall be reduced to 7 members and the total membership of the commission shall be reduced from 9 to 7 members.~~

Section 27. Section 947.02, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 947.02, F.S., for present text.)

947.02 Commission; appointment.—

(1) The members of the Parole and Probation Commission shall be appointed by the Governor and Cabinet from a list of eligible applicants submitted by the Parole and Probation Qualifications Committee. The appointments of members of the commission shall be certified to the Senate by the Governor and Cabinet for confirmation.

(2) The Parole and Probation Qualifications Committee shall consist of five persons who are appointed by the Governor and Cabinet. One member shall be designated as chairman by the Governor and Cabinet. The committee shall provide for statewide advertisement and the receiving of applications for the position or positions on the commission and shall devise a plan for the determination of the qualifications of the applicants by investigation and comprehensive evaluations, including, but not limited to, the character, habits, and philosophy of the applicants. Each Parole and Probation Qualifications Committee shall exist for 2 years. If additional vacancies on the commission occur during this 2-year period, the committee may advertise and accept additional applications; however, all previously submitted applications shall be considered along with the new applications according to the previously established plan for the evaluation of the qualifications of the applicants.

(3) Whenever a vacancy occurs on the commission pursuant to s. 947.03(3) or by reason of the resignation, retirement, or death of a commissioner, the Governor and Cabinet shall appoint a Parole and Probation Qualifications Committee if one has not been appointed during the previous 2 years. The committee shall consider applications for the commission seat according to the provisions of subsection (2) and shall submit the names of three eligible applicants, without recommendation, to the Governor and Cabinet for appointment to the commission for the remainder of the unexpired term or until a successor is appointed and qualified. If more than one seat is vacant, the committee shall submit the names of a total of three eligible applicants for each seat; however, the names submitted shall not be distinguished by seat, and each submitted applicant shall be considered eligible for each vacancy.

(4) Whenever a vacancy occurs on the commission by reason of expiration of a commissioner's term, the Governor and Cabinet shall appoint a Parole and Probation Qualifications Committee if one has not been appointed during the previous 2 years. The committee shall consider applications for the commission seat according to the provisions of subsection (2). If a commissioner whose term has expired or will expire does not seek reappointment, the terms of subsection (3) shall apply. If a commissioner whose term has expired or will expire seeks reappointment, the Parole and Probation Qualifications Committee shall recommend to the Governor and Cabinet one of the following:

(a) That the incumbent member be reappointed to the commission. If the committee selects this option, only the name of the incumbent commissioner shall be submitted to the Governor and Cabinet.

(b) That the incumbent be considered along with other eligible persons. If the committee selects this option, the name of the incumbent and two eligible applicants shall be submitted to the Governor and Cabinet without recommendation.

(c) That the incumbent not be considered for reappointment. If the committee selects this option, the provisions of subsection (3) shall apply.

Except for a recommendation under paragraph (a), if two or more terms expire at the same time, the names submitted shall not be distinguished by seat and each submitted applicant shall be considered eligible for each vacancy.

(5) Upon receiving a list of eligible persons from the Parole and Probation Qualifications Committee, the Governor and Cabinet may reject the list. The committee shall reinstate the application and examination procedure according to the provisions of subsection (2).

(6) The provisions of s. 120.53 and chapters 119 and 286 shall apply to all activities and proceedings of the Parole and Probation Qualifications Committee.

Section 28. Subsections (1) and (3) of section 947.03, Florida Statutes, are amended to read:

947.03 Commission; tenure and removal.—

(1) *Members appointed by the Governor and Cabinet shall be appointed for terms of 4 years. However, of the initial appointments under this section, three members shall be appointed for terms of 4 years, three members for terms of 3 years, and three members for terms of 2 years, and the terms of such members shall be designated by the Governor and Cabinet at the time of appointment. No person shall be eligible to be appointed for more than 2 consecutive 4-year terms. Members of the commission shall be appointed for terms of 6 years and until their successors are appointed and qualified.*

(3) *Each member appointed by the Governor and Cabinet shall be accountable to the Governor and Cabinet for the proper performance of the duties of his office. The Governor and Cabinet may remove from office any such member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, or permanent inability to perform official duties or for pleading guilty or nolo contendere to, or being found guilty of, a felony. Each member shall devote his whole time and capacity to the duties of his office, and shall be subject to removal by the Governor and Cabinet for the same reasons that a state officer may be removed as provided in s. 7, Art. IV of the State Constitution. All such removals shall be submitted to the Senate for its consent as provided by said section of the Constitution.*

Section 29. Section 947.175, Florida Statutes, is amended to read:

947.175 Notice to local agencies.—

(1) The Parole and Probation Commission shall, *upon establishing at least 10 days prior to the effective parole release date of an inmate, notify the county law enforcement agency inform the appropriate local criminal justice agencies in the county in Florida community in which the inmate is scheduled to be released and any other criminal justice agency which, in writing, requests the commission to be provided such notice.*

(2) The department shall, at least 10 7 days prior to the anticipated date of release on work release of an inmate, notify the county law enforcement agency *inform the sheriff and the state attorney in the county in Florida community in which the inmate is scheduled to be released and in the community in which the inmate was convicted.*

Section 30. Section 947.1746, Florida Statutes, is created to read:

947.1746 Establishment of effective parole release date without final interview.—Within 30 days of the receipt of new information or upon receipt of a written recommendation from the department that an inmate be considered for mitigation of the authorized presumptive parole release date, the commission may, at its discretion, provide for a final interview to establish an effective parole release date or review the official record and establish an effective parole release date without provision of a final interview, unless an interview is requested by no fewer than 2 commissioners.

Section 31. Subsections (1) and (2) of section 944.927, Florida Statutes, as created by chapter 82-411, Laws of Florida, are amended to read:

944.927 Local Offender Advisory Council Act.—

(1) It is the intent of the Legislature that cities and counties or combinations thereof ~~within the 1st and 8th judicial circuit~~ have the option to develop, establish and maintain ~~as pilot projects~~ community programs to provide the judicial system with ~~community sentencing~~ alternatives for certain nonviolent offenders who may require less than institutional custody but more than probation supervision *pursuant to chapter 948*. It is further intended that such programs provide increased opportunities for offenders to make restitution to victims of crime through financial reimbursement or community service, while promoting efficiency and economy in the delivery of correctional services.

(2) In the event that cities or counties or combinations thereof ~~within the 1st and 8th judicial circuits~~ elect to develop, establish and maintain such community programs, they shall provide support to a local offender advisory council composed of members appointed by the county or city governing body; if a combination thereof, an equal number of members shall be appointed by each participating governing body. Each council shall also include in its membership two persons appointed by the chief judge of the circuit serving the jurisdiction or jurisdictions participating on the committee, and one person appointed by the appropriate regional office of the Department of Corrections. Such councils shall be responsible for:

(a) Identifying and developing community services and programs for use by the courts in diverting offenders from state correctional institutions.

(b) Providing a mechanism whereby all offenders with needs for services will be linked to appropriate agencies and individuals.

(c) Upon referral to the council by the circuit court, determining if an appropriate behavioral contract can be developed with an offender in a community program as an alternative to incarceration, and providing findings and recommendations to the referring judge.

Section 32. Present subsections (3) and (4) of section 951.23, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and a new subsection (3) is added to said section to read:

951.23 County and municipal detention facilities; definitions.—

(3) *ASSISTANCE TO LOCAL GOVERNMENT.*—*Upon the request of a sheriff, or the chairman of the board of county commissioners in those counties in which the chief corrections officer is not a constitutional officer, the department may provide technical assistance to local governments in the design and implementation of offender classification systems, evaluation of construction and financing alternatives, the development of community service programs, and the use of mutual aid programs in jail-sharing efforts.*

Section 33. Section 253.061, Florida Statutes, is created to read:

253.061 Use of stateowned land for correctional facilities.—

(1) The Department of Natural Resources shall review, identify, and secure stateowned lands which may be used for correctional facilities subject to the Department of Corrections' determination of where sites are needed and their appropriateness for use as a prison or other corrections facility.

(2) Notwithstanding the provisions of s. 253.025, the Board of Trustees of the Internal Improvement Trust Fund may purchase federal surplus lands for use as sites for correctional facilities, using federal land purchasing procedures, regulations, and requirements.

(3) The Auditor General is directed to conduct performance audits of any purchases made pursuant to the provisions of subsection (2).

Section 34. Section 945.275, Florida Statutes, is created to read:

945.275 Siting of additional correctional facilities.—

(1) The Department of Corrections is directed to conduct a statewide comprehensive study to determine the current and future needs for all types of correctional facilities in the State of Florida.

(2) The study shall assess, rank, and designate appropriate sites based on the following criteria:

(a) Current and future estimates of inmates originating from each county.

(b) Current and future estimates of types of crimes committed in each county.

(c) Current geographical location of state correctional facilities.

(d) The availability of capable staff personnel to aid in the rehabilitative process.

(e) Current carrying capacity of facilities in the area.

(f) Projected population growth.

(g) Other criteria as the Department of Corrections deems appropriate.

(3) The Department of Corrections shall recommend certification by the Governor and Cabinet of the study within 2 months of its receipt.

(4) Upon certification of the study by the Governor and Cabinet, the Department of Corrections shall notify those counties designated as in need of a correctional facility.

(5) When the department proposes a site for a state correctional facility, it shall request that the local government having jurisdiction over such a proposed site determine whether or not the proposed site is in compliance with local government zoning ordinances or regulations. Such determination shall be made within 30 days of the request.

(6) If the local government determines within 90 days of the request that construction of a correctional facility on the proposed site does not comply with such ordinances or regulations, the department is authorized to request a zoning of the proposed site without having an ownership interest in such property.

(7) Upon receipt of such request from the department, the appropriate local government may recommend alternative sites or shall give notice and hold a public hearing on the request for rezoning, and shall provide that such proceedings be recorded by tape or a certified court reporter and made available for transcription at the expense of any interested party.

(8) When the department requests such a rezoning and:

(a) It is denied by the local government; or

(b) There is no determination made by the local government pursuant to subsection (5) within 90 days of the request; or

(c) There is no action on the rezoning requested by the department within 90 days of such request;

the department may appeal the decision of the local government on the rezoning to the Governor and Cabinet.

(9) The Governor and Cabinet shall consider the following when determining whether to grant the appeal from the local government's decision on the rezoning:

(a) The record of the proceedings before the local government.

(b) The statewide study, as established in subsection (1), other existing studies, reports and information maintained by the department as the Governor and Cabinet may request addressing the feasibility and availability of alternative sites in the general area, and the need for a correctional facility in the area based on the county's average number of commitments to state correctional facilities for the most recent 3 calendar years.

(10) The department may request that any other agency perform studies and prepare reports as to matters within that agency's jurisdiction which may be potentially affected by the proposed site. The Govern-

nor and Cabinet shall grant the appeal on the request for rezoning if they find that the interests of the state in providing correctional facilities outweighs the interests of the local government in maintaining the health, safety and welfare of the citizens in the area.

(11) The Governor and Cabinet may adopt rules of procedure to govern these proceedings in accordance with the provisions of s. 120.54, Florida Statutes.

(12) Actions taken by the department or the Governor and Cabinet pursuant to this section shall not be subject to the provisions of ss. 120.56, 120.57, and 120.68, Florida Statutes.

Section 35. Section 958.08, Florida Statutes, is hereby repealed.

Section 36. Section 20.32, Florida Statutes, is repealed on July 1, 1987, and shall be reviewed by the Legislature pursuant to section 30 of this act.

Section 37. Chapter 947, Florida Statutes, consisting of sections 947.001, 947.002, 947.005, 947.01, 947.02, 947.03, 947.04, 947.05, 947.06, 947.07, 947.071, 947.09, 947.095, 947.10, 947.11, 947.12, 947.13, 947.15, 947.16, 947.165, 947.172, 947.173, 947.174, 947.1745, 947.175, 947.18, 947.181, 947.19, 947.20, 947.21, 947.22, 947.23, 947.24, 947.25, 947.26, and 947.275 is repealed on July 1, 1987, and shall be reviewed by the Legislature pursuant to section 30 of this act.

Section 38. Legislative committee review of the Parole and Probation Commission shall begin July 1, 1984, and shall include consideration of the following criteria:

- (1) The role of parole release in the corrections system.
- (2) The role of parole supervision in the corrections system.
- (3) The relationship of parole release to the sentencing system.
- (4) The cost to the state of eliminating parole release and other criminal justice mechanisms which could be adjusted to ameliorate this cost.
- (5) Those functions performed by the Parole and Probation Commission which must be continued.
- (6) The procedural and substantive effect of eliminating parole on the inmate population.

Section 39. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 40. The Division of Statutory Revision of the Joint Legislative Management Committee is directed to prepare such reviser's bills for introduction in subsequent sessions of the Florida Legislature as may be necessary to conform the Florida Statutes to the provisions of this act.

Section 41. This act shall take effect October 1, 1983, except that sections 5, 10, 11, 12, 24, 25, 26, 27, 28, and 29 shall take effect upon becoming a law.

Senator Hair moved the following amendments to Amendment 1 which were adopted:

Amendment 1A—On page 37, line 20, through page 38, line 8, strike all of said lines and insert:

947.01 Creation of Parole and Probation Commission; number and qualifications of its members.—A Parole and Probation Commission is created to consist of ~~nine~~ ^{eight} citizens who are residents of the state. The members of the commission shall include:

(1) ~~Nine~~ ^{Seven} members who are qualified by their knowledge of penology and allied social sciences to discharge the duties and perform the work of the commission efficiently; ~~and residents of the state; and~~

(2) ~~One member who shall be the Secretary of Corrections. The secretary shall participate in the policymaking decisions of the commission, including the development and review of objective parole guidelines, but shall not participate in decisions on the granting and revocation of parole. The secretary shall be ineligible for appointment as chairman and shall receive no compensation for his services on the commission, and shall not be required to attend any minimum number of meetings. Effective July 1, 1985, the membership of the commission shall be reduced to seven~~

members. The secretary of Corrections shall act in a liaison capacity between the Parole and Probation Commission and the Department of Corrections.

Amendment 1B—On page 3, line 19, through page 4, line 12, strike all of said lines

Amendment 1C—On page 2, lines 22-27, strike all of said lines

Amendment 1 as amended was adopted.

The Committee on Corrections, Probation and Parole recommended the following amendment which was moved by Senator Hair and adopted:

Amendment 2—In title, on page 1, line 1, strike everything before the enacting clause and insert: A bill to be entitled An act relating to criminal justice; providing a short title; providing findings; providing definitions; creating s. 944.022, Florida Statutes; creating a maximum inmate population ratio for the state correctional system; providing procedures for correcting inmate population levels in excess of the maximum level; amending s. 921.001(3), (5)-(8), Florida Statutes, 1982 Supplement, and adding subsection (9) to said section; requiring the Florida Supreme Court to develop and implement statewide sentencing guidelines; repealing parole eligibility for persons sentenced under guidelines; providing for legislative repeal of guidelines; amending ss. 924.06, 924.07, Florida Statutes, to provide for district court of appeal review of sentences imposed outside of guidelines; providing additional sentencing considerations; creating s. 921.187, Florida Statutes, providing sentencing alternatives; creating s. 775.075, Florida Statutes; providing sentencing criteria for persons sentenced prior to guidelines; amending s. 944.275, Florida Statutes; changing gain-time amounts and considerations; amending s. 947.16(3)(a), (g), Florida Statutes, 1982 Supplement, and adding paragraph (h) to said subsection; changing the date of reinterviews of inmates where parole release orders have been vacated by the sentencing court reducing the period of retained jurisdiction from one-half to one-third of sentence; amending s. 947.135(3)(a), (4), Florida Statutes, 1982 Supplement; changing participation criteria; providing for panels of two commissioners to establish contract parole dates; creating s. 948.001, Florida Statutes, providing definitions; creating s. 948.005, Florida Statutes, to provide for the implementation of a community control manual by the Office of the State Court Administrator; amending s. 948.01, Florida Statutes, providing for placement of certain offenders into community control as an alternative to probation; limiting the duration of supervision; providing for the applicability of workers' compensation benefits to offenders in certain work programs; authorizing discharge from certain programs; amending s. 948.011, Florida Statutes, conforming provisions relating to imposition of fines and probation; amending s. 947.23(6), Florida Statutes, authorizing placement of certain parolees into community control; amending s. 948.03, Florida Statutes, changing terms and conditions of probation and providing terms and conditions of community control; amending s. 948.031, Florida Statutes, authorizing the Department of Corrections to establish public service programs in counties for offender public service; amending s. 948.04, Florida Statutes, to conform to the act; amending s. 948.05, Florida Statutes, providing for judicial admonishment and commendation of offenders in community control; amending s. 948.06(2), Florida Statutes, providing for placement of persons violating probation into community control; providing for revocation, modification, or continuance of community control; renumbering s. 945.26(2), Florida Statutes, and adding new subsections (2)-(4) to said section providing for a community control program as a sentencing alternative; amending s. 947.04(1), Florida Statutes, 1982 Supplement, authorizing the Parole and Probation Commission to assign temporary duties to retired commissioners; amending s. 947.01, Florida Statutes, to increase the membership of the Parole and Probation Commission from seven to nine voting members; deleting the Secretary of Corrections from the Commission; abolishing the two new commission memberships on July 1, 1985; amending s. 947.02, Florida Statutes, to revise procedures for the screening and appointment of parole and probation commissioners; amending s. 947.03(1), (3), Florida Statutes, to provide for 4-year terms of office for the Parole and Probation Commission; amending s. 947.175, Florida Statutes, to provide notice to local criminal justice agencies of parole releases; creating s. 947.1746, Florida Statutes, to provide for the establishment of an effective parole release date without a final interview; amending s. 944.927(1), (2), Florida Statutes, as created by chapter 82-411, Laws of Florida; expanding the applicability of the Local Offender Advisory Council Act; renumbering s. 951.23(3), (4), Florida Statutes, and adding a new subsection (3) to said section; authorizing the Department of Corrections to provide certain assistance to local govern-

ments; creating s. 253.061, Florida Statutes; providing for the acquisition or use of lands for correction facilities; creating s. 945.275, Florida Statutes; providing for a study of siting of additional correctional facilities; providing procedures for acquisition of property for such facilities over the objections of local governments; repealing s. 958.08, Florida Statutes, relating to community control program; providing for the future repeal and review of s. 20.32, Florida Statutes, and chapter 947, Florida Statutes, relating to the Parole and Probation Commission; providing for legislative review; providing severability; directing that certain changes in the Florida Statutes be made; providing effective dates.

Senators Hair and Johnston offered the following amendments which were moved by Senator Hair and adopted:

Amendment 3—On page 7, lines 7 and 8, strike “be certified as needed by” and insert: utilize the estimates of

Amendment 4—On page 7, line 9, strike “certified” and insert: estimates

On motion by Senator Rehm, by two-thirds vote CS for CS for HB 1012 as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35

Mr. President	Gersten	Jennings	Myers
Barron	Girardeau	Johnston	Rehm
Beard	Gordon	Kirkpatrick	Scott
Castor	Grant	Malchon	Stuart
Childers, W. D.	Grizzle	Mann	Thomas
Crawford	Hair	Margolis	Thurman
Dunn	Henderson	Maxwell	Vogt
Fox	Hill	McPherson	Weinstein
Frank	Jenne	Meek	

Nays—3

Carlucci Childers, D. Neal

Vote after roll call:

Yea—Langley

CS for CS for SB 644 was laid on the table.

CS for SB 88—A bill to be entitled An act relating to youthful offenders; amending s. 958.021, Florida Statutes; providing legislative intent; amending s. 958.03, Florida Statutes; providing definitions; amending s. 958.04(1), Florida Statutes; authorizing the court to designate certain persons as youthful offenders; expanding the categories of persons who may be so designated; amending s. 958.05, Florida Statutes; providing for judicial disposition of youthful offenders; providing circumstances for early termination of placement; amending s. 958.06, Florida Statutes; expanding the period in which a court may suspend a sentence and place the defendant in a community control program; authorizing the court to set aside adjudication of guilt; providing that the Department of Corrections and the defendant, may petition for such relief; amending s. 958.09, Florida Statutes; requiring the department to adopt rules; amending s. 958.11, Florida Statutes; restricting youthful offender facilities programs and facilities to eligible youthful offenders; authorizing the assignment of certain youthful offenders to institutions not designated for their care and supervision; authorizing the department to assign certain inmates to the youthful offender program; authorizing assignment to a community correctional center under certain circumstances; providing for revocation of community control status by the court; amending s. 958.12, Florida Statutes; expanding the activities in which a youthful offender may be required to participate; amending s. 958.15, Florida Statutes; relating to the mutual participation program; prohibiting gain-time or parole for court classified youthful offenders under certain circumstances; creating s. 958.16, Florida Statutes; prohibiting parole in certain circumstances; repealing s. 958.08, Florida Statutes, relating to supervision of the community control program; repealing s. 958.10, Florida Statutes, relating to the term of confinement in the community control program for youthful offenders; repealing s. 958.14, Florida Statutes, relating to violations of probation; providing an effective date.

—was read the second time by title.

Senator Hair moved the following amendments which were adopted:

Amendment 1—On page 3, line 21 through page 4, line 7, strike all of said lines and insert:

(2) “Probation” means a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03.

(3) “Community control” means a form of intensive supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of the offender is restricted within the community, home, or noninstitutional residential placement, and specific sanctions are imposed and enforced. ~~“Community control program” means an individualized program of restriction or noninstitutional confinement for youthful offenders placed in the community in lieu of commitment to the custody of the department and for youthful offenders subsequent to release from the custody of the department as provided by law.~~

(4) “Court” means the judge or his successor who

Amendment 2—On page 4, line 14, after “person” insert: convicted of a forcible felony of the first, second, or third degree as defined in s. 776.08, and shall designate any person as a youthful offender convicted of a non-forcible felony of the first, second, or third degree and

Amendment 3—On page 5, strike all of lines 2-23 and insert:

958.05 Judicial disposition of youthful offenders.—If the court classifies a person a youthful offender, the court shall retain jurisdiction for the maximum period of the sentence imposed for the express purpose of modifying, suspending, or terminating the sentence or setting aside the adjudication of guilt as provided in s. 958.06. In lieu of other criminal penalties authorized by law, the court shall dispose of the criminal case as follows:

(1) The court may place a youthful offender under supervision on probation or in a community control program, with or without an adjudication of guilt, under such conditions as it may lawfully impose for a period of up to six years, not to exceed the maximum term of the offense for which the youthful offender was convicted.

(2) The court may impose a period of incarceration as a condition of probation or community control which shall be restricted to either a county facility, a Department of Corrections probation and restitution center, or a community residential facility, excluding community correctional centers as defined in s. 944.026, which is owned and operated by any public or private entity providing such services. Admission to a Department of Corrections facility or center shall be contingent upon the availability of bed space and shall take into account the purpose and function of such facility or center. Placement in such a facility or center shall not exceed 364 days. Early termination of placement shall be recommended to the court, when appropriate, by the facility or center supervisor.

(3) The court may impose a split sentence whereby the youthful offender is to be placed on probation or community control upon completion of any specified period of such sentence which may include a term of years or less, provided, however, that if the incarceration portion of such sentence is to be served in a Department of Corrections facility other than a probation and restitution center or community residential facility, it shall not be less than one (1) year or more than four (4) years. The period of probation or community control shall commence immediately upon the release of the youthful offender from incarceration. The period of incarceration imposed or served and the period of probation or community control, when added together, shall not exceed six (6) years.

(4) The court may commit the youthful offender to the custody of the Department of Corrections for a period of up to six (6) years, provided, however, that any such commitment shall not exceed the maximum term of the offense for which the youthful offender has been convicted.

Amendment 4—On page 5, line 28 through page 6, line 11, strike all of said lines and insert:

958.06 Suspension, modification, or termination of sentence or removal of adjudication of guilt by court.—The court, upon motion of the department, or upon its own motion, may after imposition of sentence suspend, modify, or terminate the further execution of the sentence and may further, upon consideration of the recommendation of the department, set aside the adjudication of guilt of a youthful offender. The

department shall forward to the court, not later than 10 working days prior to the hearing on the motion, all relevant material on the youthful offender's progress while in custody.

Amendment 5—On page 9, line 19 through page 12, line 15, strike all of said lines and insert:

(4) *The department shall continuously screen all institutions, facilities, and programs for any inmate who meets the eligibility requirements for youthful offender classification specified in s. 958.04(1) and whose sentence does not exceed 6 years or any inmate who is 17 years of age or younger who was not designated as a youthful offender by the court as specified in s. 958.04(2). The department may assign any such inmate to youthful offender institutions, facilities, or programs provided, however, that court designated youthful offenders and those assigned by the department to youthful offender institutions shall not be assigned initially to the same institutions.*

(5) *The Youthful Offender Program Office shall coordinate all youthful offender transfers with the Population Movement and Control Coordinator and the Adult Services Program Office which shall review and maintain full and complete documentation and substantiation of all such assignments, except assignments made pursuant to subparagraph (3)(a) 3.*

Amendment 6—On page 12, strike all of lines 5-8 and insert: *facilities, or programs.*

Amendment 7—On page 12, strike all of lines 9-15 and insert:

(6) *The Population Movement and Control Coordinator shall approve all assignments and transfers. Coordination and consultation between the Youthful Offender Program Office and the Adult Services Program Office will occur in effecting transfers to or from institutions not designated for the custody and care of youthful offenders. The Population Movement and Control Coordinator shall maintain documentation and substantiation of all such transfers, except those made pursuant to subsection (3)(c).*

Amendment 8—On page 13, line 1, insert:

Section 9. Section 958.14, Florida Statutes, is amended to read:

958.14 Violation of probation or community control program.—A violation or alleged violation of probation or the terms of a community control program shall subject the youthful offender to the provisions of ss. 948.06(1), ~~949.10, 949.11, and 949.12~~; provided however, that no youthful offender shall be committed to the custody of the department for the violation of probation or community control for a period greater than six years, or, the maximum term of the offense of conviction whichever is less, with credit for time served while incarcerated.

(Renumber subsequent sections.)

Amendment 9—On page 13, line 1 through page 15, line 8, strike all of said lines and renumber subsequent sections

Amendment 10—On page 13, between lines 8 and 9, insert:

Section 11. Section 958.16, Florida Statutes, is created to read:

958.16 Recommendations to the Parole and Probation Commission.—Within 30 days after the receipt of a written recommendation from the Youthful Offender Program Office of the department that a youthful offender be reinterviewed to have his presumptive parole release date mitigated, a hearing examiner shall interview the youthful offender utilizing the information and procedures found in s. 947.174(3). The hearing examiner's recommendation, either for maintaining the presumptive parole release date or for mitigation of the date shall be forwarded to the commission which shall vote on the recommendation. The department shall submit a quarterly report to the Senate and House of Representatives Committees on Corrections, Probation and Parole indicating the youthful offenders recommended by the Youthful Offender Program Office for reinterview and the action taken by the commission.

Section 12. Subsection (3) is added to section 947.165, Florida Statutes, 1982 Supplement, to read:

947.165 Objective parole guidelines.—

(3) *The commission shall develop a separate schedule of matrix time frames for youthful offenders according to the provisions of subsection (1); provided that the age of a youthful offender shall not be considered*

a negative factor in arriving at the salient factor score. All persons sentenced according to the provisions of chapter 958 or who are classified by the department as a youthful offender and who receive their initial parole interview after the effective date of this act, shall have their presumptive parole release dates determined according to the youthful offender matrix time frames.

Amendment 11—On page 15, line 9, strike “, 958.10, and 958.14” and insert: and 958.10

Amendment 12—In title, on page 2, strike all of lines 5-11 and insert: required to participate; repealing s. 958.08,

Amendment 13—In title, on page 2, line 16, after “offenders;” insert: creating s. 958.16, Florida Statutes, providing for hearings for mitigation of the presumptive parole release of youthful offenders; providing for reports to the Legislature; adding a subsection to s. 947.165, Florida Statutes, 1982 Supplement, requiring the Parole and Probation Commission to develop a separate parole guideline schedule for youthful offenders;

Amendment 14—In title, on page 2, line 16, strike “repealing” and insert: amending

On motion by Senator Hair, by two-thirds vote CS for SB 88 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—36

Mr. President	Fox	Jennings	Neal
Barron	Frank	Johnston	Plummer
Beard	Girardeau	Kirkpatrick	Rehm
Carlucci	Grant	Langley	Scott
Castor	Grizzle	Malchon	Stuart
Childers, D.	Hair	Maxwell	Thomas
Childers, W. D.	Henderson	McPherson	Thurman
Crawford	Hill	Meek	Vogt
Dunn	Jenne	Myers	Weinstein

Nays—None

Vote after roll call:

Yea—Gersten, Mann

By the Committees on Appropriations; and Corrections, Probation and Parole and Senators Rehm, Castor and Kirkpatrick—

CS for CS for SB 827—A bill to be entitled An act relating to corrections; amending s. 944.19, Florida Statutes; providing for education in the correctional system; creating a Commission on Correctional Education within the Department of Corrections to administer programs and funds; providing for terms, duties, and reimbursement of members; providing for legislative appropriations; providing for policies; providing for the award of gain-time; providing an appropriation; providing an effective date.

—was read the first time by title and CS for SB 827 was laid on the table.

On motion by Senator Rehm, by two-thirds vote CS for CS for SB 827 was read the second time by title.

Senators Rehm and Maxwell offered the following amendments which were moved by Senator Rehm and adopted:

Amendment 1—On page 6, lines 20-26, strike “Local community college boards of trustees may establish student fee policies for such inmates pursuant to chapter 240 and rules of the State Board of Education. Such policies may include provisions for participation in student financial aid programs, deferred tuition, or work-study programs provided that” and strike beginning on line 27 with the word “Further” all language through the end of line 30. ~~and insert:~~

Amendment 2—On page 3, lines 20-21, strike “The provisions of chapter 216 to the contrary notwithstanding,

On motion by Senator Rehm, by two-thirds vote CS for CS for SB 827 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—36

Mr. President	Frank	Jennings	Myers
Barron	Girardeau	Johnston	Neal
Beard	Gordon	Langley	Plummer
Carlucci	Grant	Malchon	Rehm
Castor	Grizzle	Mann	Stuart
Childers, D.	Hair	Margolis	Thomas
Childers, W. D.	Henderson	Maxwell	Thurman
Crawford	Hill	McPherson	Vogt
Fox	Jenne	Meek	Weinstein

Nays—None

Vote after roll call:

Yea—Gersten, Kirkpatrick

By the Committees on Appropriations; and Corrections, Probation and Parole and Senators Kirkpatrick and Rehm—

CS for CS for SB 262—A bill to be entitled An act relating to corrections; providing findings of fact; creating chapter 946, Florida Statutes; providing intent; providing definitions; providing for establishment of a nonprofit corporation to operate correctional work programs; providing for leases; providing for reversion to the department of property related to any program of the corporation which terminates; providing that the Florida Fire Insurance Trust Fund shall insure all property leased by the Department of Corrections to the corporation or which may be owned by the corporation which is used for the purpose of operating the correctional work programs; providing exemption from workers' compensation and unemployment compensation laws; requiring reports; providing for audits; specifying powers of corporation; providing for use and sale of products of correctional work programs under the corporation; providing for adoption of rules; providing for disposition of compensation received by inmates; amending s. 287.095(2), Florida Statutes, 1982 Supplement, and s. 945.14(1), Florida Statutes, relating to the sale and purchase of prison work industry goods and services to conform to the act; amending s. 945.16, Florida Statutes, 1982 Supplement, to conform to the act provisions relating to the use of goods and services produced by the department in its correctional work programs; repealing s. 944.514, Florida Statutes, relating to private employment of inmates; repealing ss. 945.13 and 945.135, Florida Statutes, relating to operation of the prison industry program and maintenance of industrial plants; providing an effective date.

—was read the first time by title and CS for SB 262 was laid on the table.

On motions by Senator Rehm, by two-thirds vote CS for CS for SB 262 was read the second time by title, and by two-thirds vote was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—36

Mr. President	Gersten	Kirkpatrick	Neal
Beard	Girardeau	Langley	Plummer
Carlucci	Grant	Malchon	Rehm
Castor	Grizzle	Mann	Scott
Childers, W. D.	Hair	Margolis	Stuart
Crawford	Henderson	Maxwell	Thomas
Dunn	Hill	McPherson	Thurman
Fox	Jennings	Meek	Vogt
Frank	Johnston	Myers	Weinstein

Nays—1

Childers, D.

Vote after roll call:

Yea—Jenne

On motion by Senator Neal, by two-thirds vote CS for CS for HB 1129 was established as a special order for 3:45 p.m. this day.

Senator Rehm moved that CS for CS for HB 1129 be taken up after final action on CS for SB 1148 and CS for SB 1140. The motion was adopted.

On motion by Senator Neal, the rules were waived and time of adjournment was extended until final action on CS for CS for HB 1129.

Senator Johnston presiding

On motion by Senator Castor, the rules were waived and the Senate reverted to—

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable Curtis Peterson, President

I am directed to inform the Senate that the House of Representatives has passed as amended HB 1187 and requests the concurrence of the Senate.

Allen Morris, Clerk

By the Committee on Health & Rehabilitative Services and Representative Woodruff—

HB 1187—A bill to be entitled An act relating to mentally disordered sex offenders; directing the Department of Health and Rehabilitative Services to contract with the Florida Mental Health Institute to perform an assessment of sexual offender treatment programs and their effect and to make recommendations to the Legislature regarding those programs; creating a task force on sexual offenders and their victims; providing for reimbursement for travel expenses of task force members; requiring a report to the Legislature; repealing s. 917.012(2), s. 917.014(2), s. 917.016(2), s. 917.017(2), s. 917.018(2), s. 917.019(2), s. 917.021(2), and s. 945.12(6)(b), Florida Statutes, all relating to the scheduled repeal of those sections on July 1, 1983; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Criminal.

SPECIAL ORDER, continued

On motions by Senator Castor, by two-thirds vote HB 1187, a companion measure, was withdrawn from the Committee on Judiciary-Criminal and substituted for CS for SB 1148. On motion by Senator Castor, by two-thirds vote HB 1187 was read the second time by title.

Senator Castor moved the following amendments which were adopted:

Amendment 1—On page 3, between lines 11 and 12 insert:

Section 3. There is hereby appropriated the sum of \$50,000 from the General Revenue Fund to the Florida Mental Health Institute to conduct the study prescribed by this act.

(Renumber subsequent sections.)

Amendment 2—In title, on page 1, line 17, after the semicolon (;) insert: providing an appropriation

On motion by Senator Castor, by two-thirds vote HB 1187 as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—35

Mr. President	Frank	Jennings	Myers
Barron	Gersten	Johnston	Neal
Beard	Girardeau	Kirkpatrick	Rehm
Carlucci	Gordon	Langley	Scott
Castor	Grant	Malchon	Stuart
Childers, D.	Grizzle	Mann	Thurman
Childers, W. D.	Hair	Margolis	Vogt
Dunn	Henderson	Maxwell	Weinstein
Fox	Jenne	Meek	

Nays—1

Crawford

CS for SB 1148 was laid on the table.

SB 1140—A bill to be entitled An act relating to sentencing and appeals sentences; amending s. 921.001(3),(5)-(8), Florida Statutes, 1982 Supplement; establishing criteria for the Sentencing Commission; requiring the commission and the office of the State Courts Administrator to conduct certain research relating to sentencing; providing conditions for release of certain persons sentenced under certain guidelines; amending s. 924.06(1), Florida Statutes; establishing certain sentences as grounds for appeal; amending s. 924.07, Florida Statutes; establishing certain sentences as grounds for appeal; providing an effective date.

—was read the second time by title.

Senator Crawford moved the following amendments which were adopted:

Amendment 1—On page 1, lines 19-31, and on page 2, lines 1-9, strike all of said lines and insert:

Section 1. Paragraph (a) of subsection (3) of section 775.082, Florida Statutes, is amended to read:

775.082 Penalties.—

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a) For a life felony, committed prior to October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30, and for a life felony committed on or after October 1, 1983, by a term of imprisonment for life or for a term of imprisonment not exceeding 40 years;

Section 2. Subsections (1), (3), (4), (5), (6), (7) and (8) of section 921.001, Florida Statutes, 1982 Supplement are amended to read:

921.001 Sentencing Commission.—

(1) *The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law, and as such is a matter properly addressed by the Legislature. The Legislature of the State of Florida, in the exercise of its authority to establish sentencing criteria and to provide for the imposition of criminal penalties, has determined that it is in the best interest of the state to develop, implement, and revise a uniform sentencing policy in cooperation with the Supreme Court of Florida. In furtherance of this cooperative effort, there is created a Sentencing Commission which shall be responsible for the initial development of a statewide system of sentencing guidelines. After final development implementation of a sentencing guidelines system by the Supreme Court, the commission shall evaluate these guidelines periodically and recommend effect such changes on a continuing basis as are necessary to ensure certainty of punishment as well as fairness to offenders and to citizens of the state.*

(3) *Following initial development of statewide sentencing guidelines by the court, the commission shall meet annually or at the call of the chairman to review sentencing practices and recommend modifications to the guidelines. In establishing or modifying the sentencing guidelines, the commission shall take into consideration current sentence and release practices and correctional resources, including the capacities of local and state correctional facilities in addition to other relevant factors. In order to develop a system of sentencing guidelines which is representative of current sentencing decisions within the state, the commission shall identify, not only the offense and offender-related characteristics exerting the greatest influence on sentencing decisions, but also the relative importance assigned to each characteristic by the trial judge. For this purpose, the commission is authorized to collect and evaluate data on sentencing practices in the state from each of the judicial circuits.*

(4) *Upon recommendation of a plan by the commission, the Supreme Court shall be authorized to develop by September 1, 1983, implement, and revise, as appropriate, statewide sentencing guidelines to provide trial court judges with factors to consider and utilize in determining the presumptively appropriate sentences in criminal cases. The statewide sentencing guidelines shall be implemented by October 1, 1983, unless the Legislature affirmatively delays the implementation of such guidelines prior to October 1, 1983, and shall be applied to all felonies, except capital felonies, committed on or after October 1, 1983, and to all felonies, except capital felonies and life felonies committed prior to October 1, 1983, for which sentencing occurs subsequent to such date where the defendant affirmatively selects to be sentenced pursuant to the provisions of this act. The commission shall, no later than 45 days prior to the convening of the Legislature in regular session each year, make a recommendation to the members of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives on the need for changes in the guidelines. Upon receipt of such recommendation, the Supreme Court may within 60 days revise the statewide sentencing guidelines to conform them with all or part of the commission recommendation. However, such revision shall become effective only upon the subsequent adoption by the Legislature of legislation implementing the guidelines as then revised.*

Amendment 2—On page 2, line 17, and on page 4, lines 11 and 30, between "the" and "guidelines" insert: *range recommended by the*

Amendment 3—On page 3, lines 20 and 21, strike "and sentenced pursuant to sentencing guidelines adopted under this section shall only be released." and after "1983," or any other person sentenced pursuant to sentencing guidelines adopted under this section shall only be released from incarceration;

Amendment 4—In title, on page 1, lines 1-15, strike the entire title and insert: A bill to be entitled An act relating to sentencing; amending s. 775.082(3)(a), Florida Statutes, redefining the penalty to be imposed for a life felony committed on or after October 1, 1983; amending s. 921.001, Florida Statutes, 1982 Supplement, providing legislative authority for development by the Supreme Court of statewide sentencing guidelines; directing the Sentencing Commission to continually evaluate sentencing practices under sentencing guidelines; directing the Supreme Court to develop sentencing guidelines by September 1, 1983; providing for legislative implementation of guidelines; directing the Sentencing Commission to make annual recommendations concerning revision of sentencing guidelines; providing for adoption of revisions by the Supreme Court; providing for implementation of revisions by the Legislature; providing for appellate review of sentences imposed outside the sentencing guidelines; requiring explanations of sentences imposed outside the guidelines; directing the Sentencing Commission to consider impact of sentencing guidelines on correctional facilities; providing for interagency cooperation in determining impacts; prohibiting release of persons on parole if incarcerated pursuant to a sentence imposed pursuant to this act; amending ss. 924.06(1) and 924.07, Florida Statutes, providing for appellate review of sentences imposed outside the guidelines; providing an effective date.

On motion by Senator Crawford, by two-thirds vote SB 1140 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—33

Barron	Girardeau	Langley	Scott
Beard	Gordon	Malchon	Stuart
Castor	Grant	Mann	Thomas
Childers, W. D.	Grizzle	Margolis	Thurman
Crawford	Hair	Maxwell	Vogt
Dunn	Henderson	McPherson	Weinstein
Fox	Hill	Meek	
Frank	Jennings	Myers	
Gersten	Kirkpatrick	Rehm	

Nays—3

Carlucci Childers, D. Neal

Vote after roll call:

Yea—Mr. President

On motion by Senator Crawford, the rules were waived and SB 1140 after being engrossed was ordered immediately certified to the House.

On motion by Senator D. Childers, the rules were waived and the Committee on Health and Rehabilitative Services was granted permission to consider SB 302 on May 30.

On motion by Senator Barron, the rules were waived and the Committee on Finance, Taxation and Claims was granted permission to meet May 30 from 12:00 noon until 2:00 p.m. to consider Senate Bills 327, 446, 716, 865, 926, 1093, 1111, 1112 and HB 1309.

On motions by Senator Barron, the rules were waived and by two-thirds vote SB 38 was withdrawn from the Committee on Economic, Community and Consumer Affairs; SB 311 was withdrawn from the Committee on Personnel, Retirement and Collective Bargaining; CS for SB 364 was withdrawn from the Committee on Economic, Community and Consumer Affairs; SB 406 was withdrawn from the Committee on Commerce, SB 635 was withdrawn from the Committee on Personnel, Retirement and Collective Bargaining; CS for HB 1182 was withdrawn from the Committee on Commerce, SB 658 was withdrawn from the Committee on Health and Rehabilitative Services, SB 735 and SB 745 were withdrawn from the Committee on Economic, Community and Consumer Affairs; HB 825 was withdrawn from the Committees on Education and Governmental Operations and SB 296 was withdrawn from the Committee on Judiciary-Civil.

On motion by Senator Barron, the rules were waived and the following bills were added to the beginning of the special order calendar for Friday, May 27: CS for SB 1017, CS for SB 562, CS for SB 314, CS for SB 296, CS for SB 161, CS for SB 561, CS for HB 1182 and all bills remaining on the special order calendar this day.

On motion by Senator Castor, the rules were waived and HB 1187 was ordered immediately certified to the House.

On motions by Senator Rehm, the rules were waived and CS for SB 91, HB 1012, CS for SB 88, SB 827, and CS for CS for SB 262 were ordered immediately certified to the House.

The Senate resumed consideration of—

CS for CS for HB 1129—A bill to be entitled An act relating to water resources; providing a short title; amending s. 373.026, Florida Statutes, expanding duties of the Department of Environmental Regulation with respect to collecting and monitoring data relating to water resources; creating s. 487.043, Florida Statutes, providing for the testing of restricted-use pesticides; providing duties of the Department of Agriculture and Consumer Services and the Department of Environmental Regulation; creating s. 403.063, Florida Statutes, requiring the department to establish a groundwater quality monitoring network and providing criteria therefor; requiring regional and local governments to sample and test groundwater as directed by the department; amending s. 403.855, Florida Statutes, expanding duties of the department relating to imminent hazards in water supplies; provides the department with the authority to inspect package sewage treatment facilities; allows the department to delegate this responsibility to local governments under certain circumstances; amending s. 373.206, Florida Statutes, expanding the authority of the department to plug hazardous artesian wells; creating s. 373.207, Florida Statutes, requiring water management districts to adopt plans for plugging abandoned artesian wells; providing for review of plans by the department; providing for certain liens; creating the Local Government Hazardous Waste Management Program within the Department of Environmental Regulation; providing for a state needs assessment; providing legislative intent with respect to local hazardous waste management programs; requiring counties to conduct a hazardous waste assessment under rules established by the department; providing for technical assistance from the program; providing a schedule for completion; providing for annual updating of the assessment; providing that all local government laws, ordinances, or regulations be consistent with state rules; requiring counties to notify small quantity generators of their responsibilities annually; requiring such generators to disclose certain information to the county; providing for verification of such generators' management practices; providing for penalties; requiring counties to furnish information on the assessment and the notification program to the department; creating the Local Government Hazardous Waste Management Trust Fund; providing an appropriation to the fund to subsidize preparation of the assessment; creating s. 376.115, Florida Statutes, creating the Water Quality Assurance Trust Fund; levying an excise tax on persons registered for the operation of pollutant terminal facilities and persons handling such pollutants; providing a definition; providing for the collection and administration of the tax; providing for the suspension of the tax under certain circumstances; repealing ss. 208.001, 208.002, 208.003, 208.004, and 208.005, Florida Statutes, abolishing the tax on the generation of hazardous wastes; creating ss. 208.201, 208.202, 208.203, 208.204, 208.205, and 208.206, Florida Statutes; providing definitions; imposing a tax on the sale of chemicals by wholesale dealers or manufacturers; providing liability of certain consumers; requiring taxpayer registration with the Department of Revenue; providing for annual determination of the tax rate; providing exemptions; providing for application of administrative and penalty provisions of chapter 212, Florida Statutes; providing for administration, records, and audits; providing for deposit of tax revenues in the Hazardous Waste Management Trust Fund; adding a subsection to s. 215.22, Florida Statutes, including Hazardous Waste Management Trust Fund revenues within those funds a portion of which may be placed in general revenue; adding a subsection to s. 403.061, Florida Statutes, 1982 Supplement, authorizing the Department of Environmental Regulation to establish rules for the management of underground storage tanks; amending s. 403.703(18), Florida Statutes, redefining the "closure" of a resource recovery and management facility; amending s. 403.704(16), Florida Statutes, changing procedures for the review of rules of the department stricter than those of the United States Environmental Protection Agency relating to resource recovery and management; changing authority of the department to adopt hazardous waste rules for solid wastes; amending s. 403.7045(1)(c), Florida Statutes, 1982 Supplement,

correcting a cross-reference to federal law; amending s. 403.707(1) and (2), Florida Statutes, 1982 Supplement; requiring resource recovery and management facilities and sites which are closed to be permitted; changing exceptions from certain permit requirements; amending s. 403.722(9) and (10), Florida Statutes, 1982 Supplement; revising time periods with respect to issuance of permits for hazardous waste facilities; authorizing the department to request additional information from an applicant; amending s. 403.723, Florida Statutes; providing for petition to the Governor and Cabinet when a local government denies a request for variance from local ordinances, regulations, or plans or takes no action on a variance request; requiring recommendation of such variance by the State Hazardous Waste Facility Siting Commission; providing commission procedures and time limitations; requiring a public hearing; providing criteria to be considered by the commission; providing for a hearing by the Governor and Cabinet; providing criteria to be considered; amends s. 403.725(1) and (3), relating to the use of funds in the Hazardous Waste Management Trust Fund; amending s. 403.727(3) and (4), Florida Statutes, 1982 Supplement, and adding a new subsection (4) thereto, increasing penalties for violations of provisions relating to hazardous wastes; imposing liability upon specified persons for costs and damages caused by the release or threatened release of hazardous substances; restricting the ability of government entities to interpose a defense to such liability; amending s. 403.729, Florida Statutes; providing for a State Hazardous Waste Facility Siting Commission within the Florida Land and Water Adjudicatory Commission in lieu of the State Hazardous Waste Policy Advisory Council; providing for membership thereof; providing for temporary members; creating s. 501.082, Florida Statutes; requiring specified governmental agencies and institutions of the State University System to notify the department regarding hazardous materials and management practices; requiring written plans for management and spill control; providing for siting of a multipurpose hazardous waste facility by the state; providing for adoption of siting criteria by the department; providing for adoption of a site designation by the commission; directing the commission to contract for construction and operation of the facility; requiring permitting of the facility; granting eminent domain powers to the Governor and Cabinet; authorizing the issuance of state bonds; prohibiting hazardous waste landfills and the issuance of permits therefor; providing for emergency temporary permits; providing immunity from liability for persons who assist in cleaning up any discharge of hazardous materials; providing exceptions; creating s. 403.1655, Florida Statutes, creating the Environmental Short-Term Emergency Trust Fund to fund pollution abatement procedures; adding a paragraph to s. 376.11(5), Florida Statutes, transferring certain funds from the Florida Coastal Protection Trust Fund to such trust fund; amending s. 381.272, Florida Statutes, 1982 Supplement, providing for the regulation of onsite, rather than individual, sewage disposal systems; changing the types of subdivisions which may use certain systems; restricting the location of such systems; providing for equal application of restrictions and rules; changing the circumstances in which variances may be granted and the procedures therefor; authorizing temporary permits for experimental systems; deleting provisions relating to organic waste composting systems; creating s. 381.273, Florida Statutes, authorizing the Department of Health and Rehabilitative Services to collect fees for regulating such systems and for certain research; increasing fees to fund the accelerated soil survey program in the Department of Agriculture and Consumer Services; prohibits use of certain chemicals in the treatment of onsite sewage disposal systems; providing effective dates.

—which was taken up with pending Amendment 9.

Senators McPherson and Neal offered the following amendment to Amendment 9 which was moved by Senator McPherson and adopted:

Amendment 9H—On page 71, lines 8, 9 and 10 hyphen through "only contains contiguous areas of standing or flowing water following the occurrence of rainfall or flooding" and insert:

- (a) Has a top width to depth ratio of the cross-section equal to or greater than 6:1, or side slopes equal to or greater than 3 feet horizontal to 1 foot vertical; and,
- (b) Contains contiguous areas of standing or flowing water only following a rainfall event; and,
- (c) Is planted with or has stabilized vegetation suitable for soil stabilization, stormwater treatment, and nutrient uptake; and,
- (d) Is designed to take into account the soil erodibility, soil percolation, slope, slope length, and drainage area so as to prevent erosion and reduce pollutant concentration of any discharge

Senator Dunn moved the following amendment to Amendment 9 which failed:

Amendment 9I—On page 62, lines 2-31 and on page 63, lines 1-27, strike all of said lines

Senator McPherson moved the following amendment to Amendment 9 which failed:

Amendment 9J—On page 6, lines 5-12, strike after the period (.) on line 5 through the period (.) on line 12

Senator Scott moved the following amendment to Amendment 9:

Amendment 9K—On page 6, lines 11 and 12, strike after "State" and are not in conflict with federal standards."

Senators Mann, Vogt and Henderson offered the following substitute amendment to Amendment 9 which was moved by Senator Neal and adopted:

Amendment 9L—On page 6, line 12, after "standards." insert: Any city or county may adopt a standard or rule as stringent as they wish only in respect to protecting the environment.

Senator Vogt moved the following amendment to Amendment 9 which was adopted:

Amendment 9M—On page 83, between lines 14 and 15, insert:

Section 9. Subsection (6) of section 373.303, Florida Statutes, is amended to read:

373.303 Definitions.—As used in this part:

(6) "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, acquisition, development, or artificial recharge or groundwater, but such term does not include ~~sand-point wells as herein defined,~~ or any well for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying, for inserting media to dispose of oil brines or to repressure oil-bearing or natural gas-bearing formation, or for storing petroleum, natural gas, or other products, or for temporary dewatering of subsurface formations for mining, quarrying, or construction purposes

Section 2. Subsection (9) of section 373.303, Florida Statutes, is hereby repealed.

(Renumber subsequent sections.)

Senator Kirkpatrick moved the following amendment to Amendment 9 which was adopted:

Amendment 9N— On page 12, line 15, after the word "registrant," insert: excluding municipalities, counties, the state and its political subdivisions

Senator Neal moved the following amendment to Amendment 9 which was adopted:

Amendment 9O—On page 26, lines 25, 28 and 31, strike "\$35" and insert: \$30

Senator Frank moved the following amendment to Amendment 9 which was adopted:

Amendment 9P—On page 6, line 18, strike period and insert: after fee and a bond sufficient to assure adequate resources to correct any environmental or water deterioration.

Amendment 9 as amended was adopted.

The Committee on Agriculture recommended the following amendment which was moved by Senator Neal:

Amendment 10—In title, on page 1, line 1, strike everything before the enacting clause and insert: A bill to be entitled An act relating to water resources; designating existing sections of chapter 376, Florida Statutes, as part I; amending s. 376.011, Florida Statutes; creating s. 376.051, Florida Statutes; requiring the Department of Natural Resources to adopt certain rules; creating s. 376.30, 376.32, 376.35, 376.40, 376.45, 376.50, 376.55, 376.60, 376.65, 376.70, 376.75, 376.80, 376.85, and 376.90, Florida Statutes, and designating these sections as part II of chapter 376, Florida Statutes; providing legislative intent; providing defi-

initions; prohibiting pollution of state lands and water; providing powers and duties of the Department of Environmental Regulation; requiring registration certificates for certain refined petroleum facilities; providing for enforcement by the Department of Environmental Regulation; providing for certain registration fees; authorizing the department to develop a regulatory program; providing procedure for removal of prohibited discharges; creating the Florida Groundwater Refined Petroleum Protection Trust Fund; designating the sources of moneys for the fund; levying an excise tax on refined petroleum products; designating how the fund shall be used; providing for excise tax collection by the Department of Revenue; providing for liabilities and defenses of facilities; providing for damages under certain circumstances; providing for financial responsibility of facilities; providing for enforcement and penalties for violation of the act; providing for county and municipal ordinances; providing a limitation; providing for an individual cause of action for damages; amending s. 376.11, Florida Statutes; changing the maximum balance of the Florida Coastal Protection Trust Fund; appropriating moneys from the Florida Coastal Protection Trust Fund to the Florida Groundwater Refined Petroleum Protection Trust Fund; amending s. 208.001, Florida Statutes; increasing the excise tax on the privilege of generating hazardous wastes; removing obsolete language; creating s. 208.006, Florida Statutes; imposing a 3 percent tax on commercial hazardous waste facilities; providing for uses of tax revenues; creating s. 220.184, Florida Statutes; providing a tax credit under certain circumstances; amending s. 376.11(3), Florida Statutes; providing for deposit into a certain fund of interest on certain investments; requiring the Governor and Cabinet to approve certain lists of spoil sites; amending s. 403.702(2)(c), Florida Statutes; providing legislative intent; amending s. 403.703(18), Florida Statutes; providing a definition; adding s. 403.704(21)-(25), Florida Statutes; providing additional powers and duties of the Department of Environmental Regulation; amending s. 403.7045(1)(c), Florida Statutes, 1982 Supplement; correcting a reference to federal law; amending s. 403.713, Florida Statutes; providing for uninterrupted transport of solid waste within certain areas; amending s. 403.722(9), (10), Florida Statutes, 1982 Supplement; specifying certain requirements in certain permitting processes; creating s. 403.7225, Florida Statutes; providing for the preparation of local hazardous waste management plans; providing duties of the counties, regional planning councils, and the department relative to such plans; amending s. 403.723, Florida Statutes; requiring counties to complete a hazardous waste needs assessment and to choose a site for a hazardous waste storage facility; providing duties of the Governor and Cabinet; adding s. 403.724(7), Florida Statutes; providing for relief from liability for certain hazardous wastes under certain circumstances; amending s. 403.725(1), (3), (5), Florida Statutes, 1982 Supplement; providing for certain uses of revenues in the Hazardous Waste Management Trust Fund; creating s. 403.7255, Florida Statutes, creating the Hazardous Waste Site Restoration Fund; providing for deposit of moneys into the fund; providing for uses of moneys in the fund; prohibiting certain uses of such moneys; amending s. 403.727(4)(b), Florida Statutes, 1982 Supplement; providing penalties; limiting certain defenses; repealing s. 403.729, Florida Statutes; relating to the State Hazardous Waste Policy Advisory Council; providing appropriations; amending s. 373.026(2), (5), Florida Statutes; authorizing the Department of Environmental Regulation to collect certain water resource information; directing local governments, water management districts, and state agencies to cooperate with the department; directing the department to publish each year a compilation of certain information; requiring the department to develop a statewide ground water investigation plan; authorizing the department to identify areas of the state where contamination is a threat to water resources; amending ss. 403.1821-403.1824, 403.1826, 403.1829, Florida Statutes; providing a short title; providing definitions; specifying eligible uses of the State Water Pollution Trust Fund; providing for the Department of Environmental Regulation to make rules with respect to project priorities and certain other matters; providing for restrictions on the use of grant money; providing guidelines for local governmental contributions to projects; requiring projects to be self-sufficient with respect to operation, maintenance, and replacement costs; amending s. 403.1832, Florida Statutes; designating the department as the state agency to contract with the federal government on certain activities; amending s. 403.804(3), Florida Statutes; providing duties of the Environmental Regulation Commission; creating ss. 403.1836-403.1839, Florida Statutes; creating the Small Community Sewer Construction Assistance Trust Fund in the department; providing for grants from the fund; providing duties of the department regarding such grants; providing an appropriation; repealing ss. 403.1827, 403.1828, 403.1830, 403.1831, 403.1833, Florida Statutes, relating to administering federal grants for water pollution control and sewage treatment; amending s. 381.272, Florida Statutes, 1982 Supplement; providing

additional criteria and changing existing criteria for issuing permits to install onsite sewage disposal systems in residential subdivisions; providing legislative intent; creating s. 381.273, Florida Statutes; providing for certain funding or certain research; providing for collection of certain fees; providing an appropriation; amending ss. 127.01(1) and 166.401, Florida Statutes, requiring counties or municipalities which seek to exercise the power of eminent domain outside of their territorial boundaries for the purpose of water supply to apply for a consumptive use permit from the water management district exercising authority over the area to be condemned; providing for access to such property; prohibiting taking without a consumptive use permit; creating s. 487.0615, Florida Statutes; establishing the Pesticide Review Council; providing for membership; providing powers and responsibilities; providing for rulemaking petition; providing reimbursement for travel; providing for future repeal and review; creating an agriculture policy for the state; adding s. 570.44(4), Florida Statutes; adding a fourth bureau to the Division of Inspection and providing for certain positions; amending s. 403.802, Florida Statutes; providing legislative policy; amending s. 403.803, Florida Statutes; providing definitions; amending s. 403.805, Florida Statutes; authorizing the Secretary of the Department of Environmental Regulation to delegate certain powers and duties to the water management districts; amending s. 403.807, Florida Statutes; providing powers and duties of the Division of Environmental Programs of the department; amending s. 403.808, Florida Statutes; providing duties of the Division of Environmental Permitting of the department; amending s. 403.809, Florida Statutes; providing for boundaries and management personnel of environmental districts; amending s. 403.812, Florida Statutes; providing for delegating certain departmental powers and duties to the water management districts; providing limitations on such powers and duties; amending s. 403.813(1), Florida Statutes, 1982 Supplement; providing criteria for certain projects for which a permit is required; amending s. 373.016(2), Florida Statutes; providing legislative policy; amending s. 373.026(7), Florida Statutes; providing for powers and duties of the department; amending s. 373.106, Florida Statutes; granting the water management districts exclusive authority to issue certain permits; amending s. 373.114, Florida Statutes; providing for review by the department of certain water management district rules; providing procedures for such review; amending s. 373.116(1), Florida Statutes; providing for filing certain permit applications with the districts; amending s. 373.308(1), (2), Florida Statutes; requiring the department to authorize water management districts to exercise certain powers; amending s. 373.323, Florida Statutes; providing for water well contractor's licenses to be issued by the water management districts; amending s. 373.333, Florida Statutes; providing for enforcement; amending s. 373.413, Florida Statutes; providing that the water management districts have exclusive authority to issue permits for certain water works projects; providing an effective date.

Senator Vogt moved the following amendment to Amendment 10 which was adopted:

Amendment 10A—On page 7, line 27, after "districts" insert: amending s. 373.303(6), Florida Statutes; repealing s. 373.303(9), Florida Statutes; eliminating the exemption of sand-point wells from well regulations;

Amendment 10 as amended was adopted.

On motion by Senator Neal, by two-thirds vote CS for CS for HB 1129 as amended was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38

Barron	Gersten	Johnston	Neal
Beard	Girardeau	Kirkpatrick	Rehm
Carlucci	Gordon	Langley	Scott
Castor	Grant	Malchon	Stuart
Childers, D.	Grizzle	Mann	Thomas
Childers, W. D.	Hair	Margolis	Thurman
Crawford	Henderson	Maxwell	Vogt
Dunn	Hill	McPherson	Weinstein
Fox	Jenne	Meek	
Frank	Jennings	Myers	

Nays—None

Vote after roll call:

Yea—Mr. President

On motion by Senator Neal, the rules were waived and CS for CS for HB 1129 was ordered immediately certified to the House.

The President presiding

ENROLLING REPORTS

Senate Bills 190, 220, 564 and 585 have been enrolled, signed by the required Constitutional Officers and presented to the Governor on May 26, 1983.

Joe Brown, Secretary

CORRECTION AND APPROVAL OF JOURNAL

The Journal of May 25 was corrected and approved.

CO-INTRODUCER

Senator Gersten withdrew as co-introducer of SB 786.

On motion by Senator Barron, the Senate adjourned at 6:20 p.m. to reconvene at 9:00 a.m., Friday, May 27.