Committee:

POLICY AND STEERING COMMITTEE ON WAYS AND MEANS

Senator Alexander, Chair

Meeting Packet

Tuesday, April 20, 2010

2:15—4:15 p.m.

Pat Thomas Committee Room, 412 Knott Building

The Florida Senate

COMMITTEE MEETING NOTICE

POLICY AND STEERING COMMITTEE ON WAYS AND MEANS
Senator Alexander, Chair

MEETING DATE: Tuesday, April 20, 2010
TIME: 2:15—4:15 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

AMENDMENT DEADLINE: The amendment deadline for this meeting, including proposed committee substitutes and delete everything amendments, is Monday, April 19, 2010 at 2:15 p.m. All amendments must be in final form and barcoded when filed.

MEMBERS: Senator Alexander, Chair; Senators Altman, Baker, Bennett, Crist, Diaz de la Portilla, Fasano, Gaetz, Garcia, Gelber, Haridopolos, Hill, Justice, Lawson, Lynn, Negron, Peaden, Rich, Siplin, Sobel, Thrasher, Villalobos, Wilson, and Wise

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CS/CS/SB 212 by Banking and Insurance / Criminal Justice / Oelrich—Claims/Law Enforcement and Correctional Officers [WPSC]

CS/SB 1786 by Higher Education / Oelrich—Postsecondary Education [SPSC]

CS/SB 640 by Regulated Industries / Jones—Pari-mutuel Wagering [CPSC] **(If Received)**

CS/SB 2166 by Community Affairs / Altman—Uniform Traffic Control [WPSC]

SB 340 by Wilson—Ex-offenders/Licensing & Employment [GPSC]

SB 2250 by Alexander—Florida Financial Management Information System [GPSC]

CS/CS/SB 202 by General Government Appropriations / Governmental Oversight and Accountability / Baker—Firefighter Death Benefits [WPSC]

CS/CS/SB 876 by General Government Appropriations / Banking and Insurance / Bennett—Residential Property Insurance [CPSC]

CS/CS/CS/SB 2000 by Transportation and Economic Development Appropriations / Environmental Preservation and Conservation / Commerce / Ring—Seaports [WPSC]

CS/SB 2434 by Health Regulation / Gardiner—Reduction/Simplification/Health Care Provider Reg. [SPSC]

CS/SB 2746 by Education Pre-K - 12 / Gardiner—Education Programs for Children with Disabilities [SPSC]

CS/SB 2450 by Community Affairs / Bennett—Property Tax [WPSC]

With the Chair's approval, DURING regular session file 1 copy with the Secretary of the Senate (Room 303, Capitol) at least 3 days before meeting and PRIOR to regular session at least 7 days before meeting (Rules 2.6 and 2.8). File 1 copy with the Sergeant at Arms.

CS/CS/SB 2322 by Finance and Tax / Community Affairs / Bennett—Energy [WPSC]

CS/SB 146 by Finance and Tax / Rich—Senior Services/Independent Special Districts [WPSC] **(If Received)**

CS/CS/SB 550 by Governmental Oversight and Accountability / Environmental Preservation and Conservation / Constantine—Environmental Protection [EPSC] **(If Received)**

To set the Special Order Calendar

With the Chair's approval, DURING regular session file 1 copy with the Secretary of the Senate (Room 303, Capitol) at least 3 days before meeting and PRIOR to regular session at least 7 days before meeting (Rules 2.6 and 2.8). File 1 copy with the Sergeant at Arms.

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

POLICY AND STEERING COMMITTEE ON WAYS AND MEANS
Senator Alexander, Chair

MEETING DATE: Tuesday, April 20, 2010
TIME: 2:15—4:15 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Alexander, Chair; Senators Altman, Baker, Bennett, Crist, Diaz de la Portilla, Fasano, Gaetz, Garcia, Gelber, Haridopolos, Hill, Justice, Lawson, Lynn, Negron, Peaden, Rich, Siplin, Sobel, Thrasher, Villalobos, Wilson, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	CS/CS/SB 212 Banking and Insurance / Criminal Justice / Oelrich (Similar CS/CS/H 123)	Claims/Law Enforcement and Correctional Officers [WPSC]; Provides for interpretation of provisions relating to workers' compensation benefits for certain services performed by off-duty deputy sheriffs. Provides conditions under which a law enforcement officer, correctional officer, or correctional probation officer who suffers from a specified medical condition and has materially departed from the prescribed treatment for that condition shall lose a specified presumption for workers' compensation claims, etc. CJ 03/04/2010 Fav/CS CA 03/17/2010 Favorable BI 04/13/2010 Fav/CS WPSC 04/20/2010	
	CS/SB 1786 Higher Education / Oelrich (Similar H 7237, Compare CS/S 1344, CS/CS/S 2442)	Postsecondary Education [SPSC]; Requires the Board of Governors of the State University System to adopt regulations rather than rules to implement certain educational benefits. Revises provisions relating to responsibility for the State University System under the State Constitution. Provides the constitutional duties of the Board of Governors and the Legislature. Creates the Higher Education Coordinating Council, etc. HE 04/13/2010 Fav/CS WPSC 04/20/2010 RC	
	CS/SB 640 Regulated Industries / Jones **(If Received)**	Pari-mutuel Wagering [CPSC]; Exempts pari-mutuel wagers at pari-mutuel facilities that do not operate slot machines from the tax on handle. Imposes a surcharge on pari-mutuel licensees that do not operate slot machines if the taxes on slot machine revenue are less than a certain amount. Revises the amounts that greyhound and jai alia permitholders that operate cardrooms must use to supplement greyhound purses or jai alai prize money, etc. RI 04/13/2010 Fav/CS GA 04/19/2010 Fav/1 Amendment RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	CS/SB 2166 Community Affairs / Altman (Similar CS/CS/H 325, Compare H 1235, S 294, S 2712)	Uniform Traffic Control [WPSC]; Preempts to the state the use of cameras to enforce traffic laws. Clarifies the inapplicability of ch. 493, F.S., to laws governing the use of cameras as provided by the act. Authorizes a county or municipality to use traffic infraction detectors. Creates the Mark Wandall Traffic Safety Program. Provides for the placement and installation of detectors on certain roads, etc. TR 03/17/2010 Fav/5 Amendments CA 04/14/2010 Fav/CS WPSC 04/20/2010 If received	
	SB 340 Wilson (Identical H 961, Compare CS/H 541)	Ex-offenders/Licensing & Employment [GPSC]; Cites this act as the "Keep Florida Working Act." Requires state agencies and regulatory boards to prepare reports that identify and evaluate restrictions on licensing and employment for ex-offenders. Prohibits state agencies from denying an application for a license, permit, certificate, or employment based on a person's lack of civil rights. Provides an exception. Requires an employer to review the results of a criminal background investigation, etc. GO 02/02/2010 Favorable CJ 03/04/2010 Favorable JU 04/13/2010 Favorable WPSC 04/20/2010	
	SB 2250 Alexander	Florida Financial Management Information System [GPSC]; Provides that the Financial Management Information Board is responsible for the system. Establishes the Agency for Enterprise Business Services within the DFS. Establishes the Enterprise Financial Business Operations Council to act in an advisory capacity to the agency. Provides for an Enterprise Financial Business Strategic Plan. Repeals a specified provision relating to the DOACS' exemption from using the state online procurement system, etc. GO 03/17/2010 Favorable FT 04/06/2010 Favorable WPSC 04/20/2010	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	CS/CS/SB 202 General Government Appropriations / Governmental Oversight and Accountability / Baker (Similar CS/H 65)	Firefighter Death Benefits [WPSC]; Revises provisions providing death benefits for firefighters. Expands activities entitling firefighters to death benefits to include participation in training exercises and injury by an unlawful and intentional act which results in death. Provides legislative findings that the act fulfils an important state interest. Provides for application. CA 02/16/2010 Favorable GO 03/17/2010 Fav/CS GA 04/06/2010 Fav/CS WPSC 04/20/2010	
	CS/CS/SB 876 General Government Appropriations / Banking and Insurance / Bennett (Compare CS/CS/H 447)	Residential Property Insurance [CPSC]; Authorizes certain insurers to use a rate different from otherwise applicable filed rates. Limits the maximum average statewide increase for certain rate filings. Preserves the authority of the OIR to disapprove rates as inadequate or disapprove a rate filing for using certain rating factors. Provides requirements for the levy of the Citizens policyholder surcharge, etc. BI 03/24/2010 Fav/CS GA 04/13/2010 Fav/CS WPSC 04/20/2010 If received	
	CS/CS/CS/SB 2000 Transportation and Economic Development Appropriations / Environmental Preservation and Conservation / Commerce / Ring (Similar CS/CS/H 963)	Seaports [WPSC]; Provides for port conceptual permits. Provides that approval of certain submerged lands authorization by the Board of Trustees of the Internal Improvement Trust Fund constitutes the delegation of authority to the DEP for final agency action. Requires the DOT to include certain projects' funding allocations in its legislative budget request and to submit specified work program amendments within a certain timeframe, etc. CM 03/10/2010 Fav/CS EP 03/23/2010 Fav/CS TA 04/13/2010 Fav/CS WPSC 04/20/2010 If received	
	CS/SB 2434 Health Regulation / Gardiner (Similar CS/CS/CS/H 1143, Compare CS/CS/H 509, CS/CS/H 911, CS/H 1503, CS/H 7183, CS/S 760, CS/CS/CS/S 958, CS/CS/S 970, CS/CS/S 1412, S 1816, CS/S 1818, CS/CS/CS/S 2138, S 2300)	Reduction/Simplification/Health Care Provider Reg. [SPSC]; Amends a provision relating to the Drug-Free Workplace Act. Deletes an obsolete provision. Revises distribution of funds from civil penalties imposed for traffic infractions by county courts. Limits DOH food service inspections in nursing homes. Requires that certain blood establishments disclose specified information on the Internet. Revises grievance record maintenance and reporting requirements for nursing homes, etc. HR 04/13/2010 Fav/CS WPSC 04/20/2010	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	CS/SB 2746 Education Pre-K - 12 / Gardiner (Compare CS/H 1505)	Education Programs for Children with Disabilities [SPSC]; Amends a provision relating to the John M. McKay Scholarships for Students with Disabilities Program. Authorizes the Commissioner of Education to deny, suspend, or revoke a school's participation in the scholarship program if the owner or operator of the school operates the school in a manner contrary to the health, safety, or welfare of the public. Establishes a prekindergarten option for children with disabilities, etc. ED 04/14/2010 Fav/CS WPSC 04/20/2010 If received	
	CS/SB 2450 Community Affairs / Bennett (Compare H 1279, S 2040)	Property Tax [WPSC]; Creates an exception from the assessment of back taxes on property that was not assessed by a property appraiser. Authorizes any person to report to his or her local property appraiser a possible homestead exemption violation under certain circumstances. Requires that the property appraiser pay a specified reward to the reporting individual after the recovery of any back taxes or penalties by the tax collector, etc. CA 04/14/2010 Fav/CS WPSC 04/20/2010	
	CS/CS/SB 2322 Finance and Tax / Community Affairs / Bennett (Compare H 1471, CS/H 7179, H 7229, S 596, CS/S 1186)	Energy [WPSC]; Provides for supplemental authority to local governments regarding improvements to real property. Authorizes a local government to levy a non-ad valorem assessment to fund a qualifying improvement. Revises legislative intent regarding the state's renewable energy policy. Deletes provisions requiring that the Public Service Commission adopt rules for a renewable portfolio standard, etc. CA 03/17/2010 Fav/CS CU 03/23/2010 Favorable FT 04/06/2010 Fav/CS WPSC 04/20/2010	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	CS/SB 146 Finance and Tax / Rich (Similar H 153) **(If Received)**	Senior Services/Independent Special Districts [WPSC]; Authorizes a county to create an independent special district by ordinance to provide funding for services for seniors. Requires approval by a majority vote of electors to annually levy ad valorem taxes. Creates a governing council for the district. Requires the council to prepare a tentative annual budget and compute a millage rate to fund the district. Provides legislative intent with respect to the use of funds collected by the council, etc. CA 02/02/2010 Fav/1 Amendment CF 03/04/2010 Favorable FT 03/16/2010 Fav/CS HA 04/06/2010 Temporarily Postponed HA 04/19/2010 Temporarily Postponed WPSC 04/20/2010 If received	
	CS/CS/SB 550 Governmental Oversight and Accountability / Environmental Preservation and Conservation / Constantine (Compare H 659, H 753, CS/H 1109, CS/H 1225, CS/H 1407, H 7015, H 7171, H 7191, H 7207, CS/S 142, S 422, S 568, CS/CS/S 570, CS/S 776, S 1226, S 1748, CS/S 2018, S 2202, S 2296, CS/CS/S 2354) **(If Received)**	Environmental Protection [EPSC]; Creates specified provisions relating to water supply policy, planning, production, and funding. Directs the DEP, along with the water management districts, to create a statewide uniform stormwater management rule. Modifies the definition of "pollution" to include excess nutrients. Revises legislative intent relating to the designation of the Florida Keys as an area of critical state concern, etc. EP 03/23/2010 Fav/CS GO 04/06/2010 Fav/CS WPSC 04/20/2010 If received RC	

To set the Special Order Calendar

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS/SB 212

INTRODUCER: Banking and Insurance Committee, Criminal Justice Committee and Senator Oelrich

SUBJECT: Claims/Law Enforcement & Correctional Officers

DATE: April 15, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	Gizzi	Yeatman	CA	**Favorable**
3.	Johnson	Burgess	BI	**Fav/CS**
4.	Frederick	Coburn	WPSC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Current law establishes a presumption for state and local firefighters and law enforcement, and correctional and correctional probation officers regarding determinations of employment related disability. It provides that certain diseases (tuberculosis, heart disease, and hypertension) acquired by such firefighters and officers are presumed to have been suffered in the line of duty. This presumption in law has the effect of shifting from the employee to the employer, the burden of proving by competent evidence that the disabling disease resulted from the person's employment.

The bill provides that a law enforcement officer, correctional officer, or correctional probation officer who suffers from tuberculosis, heart disease, or hypertension and departs from the prescribed course of treatment of his or her physician, and the departure is demonstrated to result in an aggravation of his or her condition, would lose a specified presumption for claims after July 1, 2010. The bill also specifies that only retirement coverage under claims made prior to leaving employment are eligible for a specified presumption. These provisions would not apply to state or local firefighters.

Finally the bill provides a broader interpretation of workers' compensation benefits payable to off-duty deputy sheriffs to include, but not be limited to, providing security, patrol, or traffic direction for a private employer. However, the bill authorizes a sheriff to recover from a private or public employer any increase in the sheriff's workers' compensation expenses that result directly from off-duty employment of a deputy sheriff.

This bill substantially amends the following section of the Florida Statutes: 30.2905 and 112.18.

II. Present Situation:

Florida Retirement System (FRS)
The active membership of the FRS Pension Plan, as of June 30, 2009, is divided into five membership classes: The Regular Class has 582,671 members; the Special Risk Class has 75,640 members, the Special Risk Administrative Support Class has 76 members, the Elected Officers' Class has 2,304 members, and the Senior Management Service Class has 7,725 members.[1]

Special Risk Class
The Special Risk Class of the Florida Retirement System consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S.

The Special Risk Class was created for employees who must, as an essential function of the position, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. As persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their co-workers. A Special Risk Class member qualifies for normal retirement at an earlier age (age 55 vs. age 62) or with fewer years of service (25 years vs. 30 years) than a Regular Class member.

Florida Retirement System Disability Benefits
All FRS members are entitled to disability benefits if they become permanently and totally disabled from performing useful employment.[2] The level of the benefit depends upon whether the injury or illness that caused the disability was employment related and the employee's membership class. Eligibility for disability benefits resulting from a disability that is not employment related is the same for all membership classes: the member must have served at least 8 years before becoming disabled and the minimum benefit is 25 percent of the member's Average Final Compensation (AFC) at the time of disability retirement. However, there is no minimum time in service requirement to receive benefits for a disability that was incurred in the line of duty. The minimum in-line-of-duty disability benefit is 65 percent of the AFC for a Special Risk Class member and 42 percent of the AFC for a member of any other class.

In order to receive disability benefits, the member has the burden of proving that he or she is "totally and permanently disabled" and that the disabling injury or illness prevents him or her

[1] Department of Management Services, *CS/SB 212 Analysis*, March 30, 2010 (on file with the Senate Committee on Banking and Insurance).
[2] Section 121.091(4), F.S.

from "performing useful and efficient service as an officer or employee." Proof of disability must be certified by two Florida-licensed physicians.

Florida Retirement System Death Benefits
Death benefits are available to certain survivors of FRS members. A death benefit equal to at least half of the member's last monthly salary is available for deaths incurred in the line of duty from the first day of employment. Death benefits for non-line-of-duty deaths are determined in a different manner and are dependent upon the length of service.[3]

In Line of Duty Determination
In most cases, in order to receive in-line-of-duty benefits for a disability there must be competent medical evidence documenting that the disability was caused by a job-related illness or accident.[4] However, s. 112.18, F.S., provides a special presumption regarding the disability or death of a firefighter, law enforcement officer, or correctional officer that is caused by tuberculosis, heart disease, or hypertension. In such cases, it is presumed that the cause of the death or disability was accidental and that it was suffered in the line of duty unless the contrary is shown by competent evidence. This presumption is applicable to disability determinations under all public retirement systems, including the FRS and the Workers' Compensation Law.[5]

Under current law, the presumption in s. 112.18, F.S., can only be applied if the firefighter, law enforcement officer, correctional officer, or correctional probation officer passed a physical examination upon entering into service that did not reveal any evidence of tuberculosis, heart disease, or hypertension.[6]

The Department of Management Services applies the "in-line-of-duty" presumption to state correctional probation officers even though they are not specified in s. 112.18, F.S. This is based upon an interpretation that the Legislature intended to include correctional probation officers when the presumption was expanded to include "state law enforcement officers" in 1999.[7] Two other factors support this interpretation: (1) although "correctional probation officer" is not explicitly mentioned, the language in s. 112.18, F.S., creating the presumption specifically refers to the subsection that defines the term, and (2) correctional probation officers are specifically included in s. 943.13(6), F.S., with reference to the lack of eligibility for the presumption, if the

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[3] In addition to death benefits available for members, the survivors of certain members may also be entitled to additional death benefits based upon the member's employment position and the circumstances of his or her death.
[4] *See* s. 121.091 (4)(c)3., F.S. (addressing FRS disability) and ss. 440.09 and 440.15, F.S. (addressing workers' compensation disability).
[5] Sections 185.34 and 175.231, F.S., provide similar presumptions for both municipal police officers' and municipal firefighters' pension plans. Section 112.181, F.S., establishes a similar presumption for firefighters, paramedics, emergency medical technicians, law enforcement officers, and correctional officers who die or become disabled as a result of contracting hepatitis, meningococcal meningitis, or tuberculosis.
[6] This requirement is established in s. 112.18, F.S., for firefighters and law enforcement officers (the Department of Management Services has also interpreted this statute to include correctional officers and state correctional probation officers). This requirement is also found in s. 943.13(6), F.S., which provides that the "in-line-of-duty" presumption located in s. 112.18, F.S., does not apply to law enforcement officers, correctional officers, or correctional probation officers, unless their required physical examination prior to entering service did not reveal any evidence of tuberculosis, heart disease, or hypertension.
[7] Department of Management Services *Senate Bill 212 Analysis*, Feb. 5, 2010 (on file with the Senate Committee on Community Affairs).

required physical examination prior to entering service reveals evidence of tuberculosis, heart disease, or hypertension.

Workers' Compensation
Any person defined as an employer by ch. 440, F.S., including the state and its subdivisions, is required to provide workers' compensation coverage to its employees.[8] An employer must pay compensation or furnish benefits to an employee who suffers an accidental compensable injury or death arising out of work performed in the course and the scope of employment.[9] Unlike disability retirement under the FRS, an employee can receive compensation payments for partial or temporary disabilities.

III. Effect of Proposed Changes:

Section 1 amends s. 30.2905, F.S., to provide that the term "enforcing the criminal, traffic, or penal laws of this state" would include providing security, patrol, or traffic direction for a private employer. This change will provide a broader interpretation of workers' compensation benefits payable to deputy sheriffs engaging in off-duty security services. The bill authorizes a sheriff to recover from a private or public employer of a deputy sheriff, who is regarded as working off-duty, any increase in the sheriff's workers' compensation expenses that result directly from the off-duty employment.

Section 2 amends s. 112.18, F.S., to provide criteria under which a law enforcement officer, correctional officer, or correctional probation officer, defined under s. 943.10, F.S., who suffers from tuberculosis, heart disease, or hypertension would lose the current presumption that the condition was incurred in the line of duty for purposes of a claim for workers' compensation benefits. Satisfaction of the criteria would result in a presumption that the officer's condition was not incurred in the line of duty. This applies to any workers' compensation claim filed under s. 112.18, F.S., or ch. 440, F.S., occurring on or after July 1, 2010, if:

1. The officer departed in a material fashion from his or her personal physician's prescribed course of treatment. "Prescribed course of treatment" is defined to mean prescribed medical courses of action and prescribed medicines for the specific disease or diseases claimed and as documented in the prescribing physician's medical records;
2. The departure from the prescribed course of treatment is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment; and
3. An officer who has previously been compensated for tuberculosis, heart disease, or hypertension under s. 112.18, F.S., or ch. 440, F.S., and is reporting a new workers' compensation claim, departed in a material fashion from the prescribed course of treatment of an authorized physician for the preexisting workers' compensation claim and the departure is demonstrated to have resulted in a significant aggravation of the condition resulting in disability or increasing the disability or need for medical treatment.

The bill provides for independent medical examinations pursuant to s. 440.13(5), F.S., in situations in which there is a dispute as to the appropriateness of the course of treatment

[8] Sections 440.03 and 440.09, F.S.
[9] Section 440.09 (1), F.S.

prescribed by a physician or an authorized physician for preexisting workers' compensation claims; or if there is a dispute as to whether a material departure from a prescribed course of treatment significantly aggravated the condition or resulted in disability, increasing disability, or need for medical treatment.

There is a significant difference between application of the current presumption and the contrary presumption in the bill. Under the current presumption, the employer can overturn the presumption that a qualifying condition was incurred in the line of duty by presenting competent evidence to the contrary.[10] However, the bill does not include a provision by which the employee can overcome the presumption to the contrary that is established in the bill.

In addition, the bill also provides that the employee loses the current in-line-of-duty presumption if a claim for benefits is not made prior to leaving employment.

This bill takes effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Department of Management Services states that the bill complies with Article X, s. 14 of the State Constitution, and Part VII, of ch. 112, F.S., which require public retirement benefits to be funded on a sound actuarial basis.[11]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[10] Section 112.18 (1)(a), F.S.
[11] Department of Management Services *Senate Bill 212 Analysis*, March 30, 2010 (on file with the Senate Committee on Banking and Insurance).

B. Private Sector Impact:

The bill would have a negative financial impact on public employees whose actions result in loss of the current presumption by either failing to follow a prescribed course of treatment or failing to file a claim before leaving employment.

C. Government Sector Impact:

The National Council on Compensation Insurance (NCCI) estimates that the bill would result in a negligible impact on total statewide workers' compensation system costs.[12] The NCCI estimates that the bill would result in a minimal impact on those classes applicable to law enforcement officers, correctional officers, and correctional probation officers. The NCCI provided the following comments:

- Currently, the medical conditions specified in the bill are presumed to be accidental and to have been suffered in the line of duty for certain first responders unless competent evidence to the contrary can be shown. Under the bill, with the exception of firefighters, the work-related presumption would not apply when the employee "departed in a material fashion from the prescribed course of treatment". It may be difficult and costly to attempt to prove that an employee departed from a prescribed course of treatment. For example it would be difficult to determine if an employee is actually taking prescribed medication or complying with recommended diet and exercise. Further, there is uncertainty as to how the Judges of Compensation Claims (JCC) will view the evidence and determine whether a "material departure" has occurred in order to rule in such cases under ch. 440, F.S.
- The bill also requires that, with the exception of firefighters, a claim be filed prior to leaving employment in order for the presumption of compensability to apply. As a result of this provision, NCCI estimates that if enacted, the bill could result in a minimal amount of savings in those classes applicable to law enforcement officers, correctional officers and correctional probation officers.

The Division of Risk Management within the Department of Financial Services (DFS) indicates that this bill would have a minimal positive impact on state government by reducing program claim costs by an estimated $150,000 per year. DFS estimates that less than five percent of the 832 workers' compensation claims paid since January 1, 2006, as a result of the current presumption would not have been compensable under the provisions of this bill.[13]

VI. Technical Deficiencies:

The bill requires the member to apply for disability prior to terminating employment, otherwise he or she is not eligible for disability benefits under the presumption provisions of this bill. It appears that this requirement is intended to apply only to workers' compensation claims, but it

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[12] The National Council on Compensation Insurance, Inc., *Analysis of Florida House Bill 123,* November 23, 2009 (on file with the Senate Committee on Banking and Insurance).

[13] Department of Financial Services, *Senate Bill 212 Analysis* (Jan. 13, 2010) (on file with the Senate Committee on Community Affairs).

can also be interpreted to apply to FRS disability retirement claims as well. If so interpreted, there is also ambiguity as to whether filing a workers' compensation claim before leaving employment would satisfy this requirement for an FRS disability retirement claim that is filed after leaving employment.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on April 13, 2010:
Provides a broader interpretation of provisions relating to compensability for workers' compensation benefits payable to off-duty deputy sheriffs to include, but not be limited to, providing security, patrol, or traffic direction for a private employer. The CS authorizes a sheriff to recoup from a private or public employer any increase in the sheriff's workers' compensation expenses that result from any such off-duty employment.

CS by Criminal Justice Committee on March 4, 2010:
Clarifies that the new presumption in paragraph (b) 1, lines 41-66, of the bill providing that a condition was not incurred in the line of duty, only applies to workers' compensation claims under ch. 440, F.S.

B. Amendments:

None.

748150

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Bennett) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 38 - 40
4 and insert:
5 2. The term "enforcing the criminal, traffic, or penal laws
6 of this state" shall be interpreted to include, but is not
7 limited to, providing security, patrol, or traffic direction for
8 a private employer.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/SB 1786

INTRODUCER: Higher Education Committee and Senator Oelrich

SUBJECT: Postsecondary Education

DATE: April 15, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	HE	**Fav/CS**
2.	Bryant	Coburn	WPSC	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill clarifies the authority of the Board of Governors (BOG) concerning the operation of the State University System, as well as delegates authority from the Legislature to the BOG concerning certain fees and rulemaking. The bill implements an agreement regarding the governance of the state universities which was signed by legislative leaders, BOG officials and the Governor on March 24, 2010. As part of the agreement, BOG withdrew from the lawsuit, which was filed to determine the scope of the board's constitutional authority over state universities.

This bill amends sections 110.181, 112.19, 112.191, 120.81, 282.0041, 282.703, 282.706, 287.064, 1000.05, 1001.705, 1001.706, 1001.72, 1004.03, 1004.07, 1006.54, 1006.60, 1006.65, 1007.264, 1007.265, 1009.24, 1009.26, 1010.04, 1010.62, 1011.43, 1011.90, 1013.02, 1013.10, 1013.12, 1013.28, 1013.30, 1013.31, 1013.47, and 1013.74, Florida Statutes.

The bill creates section 1004.015, Florida Statutes.

The bill repeals sections 1001.74, 1004.21, 1004.38, 1004.381, 1004.3811, 1004.382, 1004.383, 1004.386, 1004.64, Florida Statutes, and subsection (13) of section 1004.22, Florida Statutes.

II. Present Situation:

The Board of Governors of the State University System and the University Boards of Trustees

In 2002, Florida voters approved the ballot initiative, *Local Trustees and Statewide Governing Board to Manage Florida's University System*[1], which established both the Board of Governors and the university boards of trustees in the State Constitution. Section 7 of Article IX of the State Constitution provides:

- A local board of trustees of 13 members to administer each state university;
- A statewide governing board of 17 members to be responsible for the coordinated and accountable operation of the entire university system; and
- A system structured in such a way as to avoid wasteful duplication of facilities or programs.

Membership of the BOG consists of 14 citizen-appointments by the Governor. Three additional members, specifically identified, are the Commissioner of Education, the chair of the advisory council of faculty senates, or the equivalent, and the Florida student association president. Appointments are subject to Florida Senate confirmation. The Constitution provides for members to serve staggered terms of seven years, as provided by law.

The 2005 Legislature[2] codified the powers and duties of the BOG and the 2007 Legislature[3] extensively revised the statutes clarifying the powers and duties of the BOG and the university boards of trustees. In 2007, a group of Florida citizens and the BOG filed a lawsuit against the President of the Senate and the Speaker of the House of Representatives seeking further clarification of the BOG's constitutional authority over the state university system.[4] On March 22, 2010, the BOG voted to dismiss its claims in the lawsuit, and on March 24, 2010, the Chair of the BOG, the Chancellor of the State University System, legislative leaders and the Governor signed an agreement regarding the shared power of the BOG and the Legislature in governance of the state university system.

State University System Governance Agreement

The agreement acknowledges the Legislature's authority for the state's public education system under s. 1(a), Article IX of the state constitution and the BOG's authority for the state university system under s. 7(c), Article IX of the state constitution. The key elements of the agreement are outlined below:

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[1] Ballot Initiative Number 01-07, Passed November 5, 2002.
[2] ch. 2005-285, L.O.F.
[3] ch. 2007-217, L.O.F.
[4] *Bob Graham et al v. Ken Pruitt, President of the Florida Senate and Marco Rubio, Speaker of the Florida House of Representatives*, Case No. 2007-CA-1818.

Governance

- The BOG has exclusive authority for delegating powers and duties to the university boards of trustees;
- The BOG has exclusive authority for the personnel programs of the state universities, except that the BOG must confirm the presidential selection by a university board of trustees, and the Department of Management Services must maintain control over state university employees for state group insurance and state retirement programs;
- The BOG's current authority for regulation of data and technology will be maintained, and state universities will be exempt from the requirements of ch. 282, F.S., regarding technology;
- The BOG will continue to report on and account for the expenditure of funds as required by the Legislature and will provide data to the Legislature as required by general law and by the Legislature; and
- The BOG's accountability initiative, university work plans, and consolidated annual reporting will continue, and the BOG will collaborate with the Legislature on the use of data from these plans and reports.

Planning and Coordination

- The Chancellor of the State University System, the BOG Chair and the Legislature's presiding officers will hold a higher education strategic planning meeting once each year to discuss significant policy and fiscal matters including budgets, mission alignment, enrollment growth, program expansion, and issues involving entities that have both statewide responsibility and state university system responsibility;
- A Higher Education Coordinating Council will be established to identify unmet needs and to facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers;
- The council will make recommendations to the BOG, the State Board of Education and the Legislature concerning articulation, consistent education policy across all educational delivery systems, access to higher education, and transfer of credit;
- The BOG will provide staff to support the work of the council; and
- The council will consist of the following members:
    - The Chancellor of the State University System of Florida;
    - The Chancellor of the Florida College System;
    - The Commissioner of Education;
    - The President of the Independent Colleges and Universities of Florida;
    - The Executive Director of the Commission for Independent Education; and
    - Two members representing the business community, one appointed by the President of the Senate and one by the Speaker of the House of Representatives.

Rules and Regulations

- The BOG and each university will adopt regulations establishing due process procedures to be accorded to any party whose substantial interests are adversely affected by any final action of the BOG or its constituent universities in the performance of its constitutional duties;
- The BOG's adequate due process procedures adopted by regulation will be published on the BOG and university web sites;

- The BOG will follow the Administrative Procedures Act[5] when adopting rules to implement legislatively delegated authority that arises from the Legislature's general police powers to provide for public health, safety, and welfare or its powers of imminent domain and sovereign immunity, and when the Legislature delegates to the BOG authority for subjects outside the scope of the BOG's constitutional authority; and
- The BOG and the universities will adopt regulations to implement legislative authority in the areas of tuition and fees, management and oversight of state lands, public buildings, and public construction.

Tuition and Fees

- The Legislature will establish tuition and the BOG will establish the tuition differential pursuant to law;
- The BOG may approve flexible policies, including block tuition and the charging of market-rate tuition for non-credit, on-line, and continuing education courses, provided such policies and charges do not increase the state's fiscal liabilities or obligations;
- The Legislature delegates to the BOG the authority for fees established in s. 1009.24 (13)(a)-(r), (14), and (15), F.S.;[6]
- The BOG may further delegate to the university boards of trustees fees that are charged to recover the cost of services, fines, and fees;
- A university board of trustees may request and the BOG may approve a new fee or an increase to an existing fee with an established cap;
- When approving a university request for a new fee, the BOG must consider the purpose to be served, whether there is a student-based need for the fee, whether alternative resources are available to meet the need, whether the financial impact on students is warranted in light of other charges assessed to them, and whether restrictions should be placed on the use of the fee; and
- When approving a fee increase, the BOG must consider the services or operations currently being funded by the fee; whether more efficiency could alleviate the need for the fee increase; the additional or enhanced services to be funded by the fee increase, whether alternative resources are available to meet the need, and whether the increase is warranted in light of other charges assessed to students.

Financial Aid Programs

- The BOG may establish financial aid programs that may be funded with state funds provided by the Legislature, funds from donors, or a combination of funding sources; and
- The BOG will report and account to the Legislature on all such financial aid programs.

The BOG Strategic Plan

The BOG adopted the SUS Strategic Plan 2005-2013 on June, 2005. The Board established system goals for 2012-2013 in the following areas:

[5] ch. 120, F.S.

[6] The delegated fees are for: application, orientation, security access or ID card, registration, late-payment of tuition, health-related charge, materials and supplies, housing rental, collection efforts, loan service, off campus course offerings, library, duplicating and copying, late return of rental equipment, returned checks, traffic and parking, child care, transcripts and diploma replacement, admissions deposits, and paying tuition in installments.

- Goal 1: Access to and production of degrees
- Goal 2: Meeting statewide professional and workforce needs
- Goal 3: Building world-class academic programs and research capacity
- Goal 4: Meeting community needs and fulfilling unique institutional responsibilities

The Strategic Plan includes mission and vision statements for each constituent university.[7] The university strategic plans and factbooks are available on the BOG website.[8]

The BOG has developed a planning and accountability framework to help maximize the SUS's capacity to meet state economic development needs through education and research and development. The multi-year university work plans and annual reports reflect each institution's unique mission and focus on core strengths within the context of SUS goals and regional and statewide needs. The 2009 Annual Report,[9] the first installment in the process, provides an overview of the system's historical performance on a range of measures, with an emphasis on performance during the last five years for which data are available on any given metric. The report highlights SUS-level performance on key measures and outlines the system's progress on indicators related to the BOG Strategic Plan. The report provides detailed data for the individual institutions.

III. Effect of Proposed Changes:

This proposed committee substitute would amend statutes relating to the operation of the state university system. The bill addresses the following areas:

Governance

- Repeals s. 1001.74, F.S., governing the powers and duties of the university boards of trustees;
- Exempts state universities from the requirements of ch. 282, F.S., regarding technology;
- Authorizes a state university to participate in the state-maintained SUNCOM communications system in its discretion;
- Establishes legislative intent to support the BOG's accountability initiative and university work plans;
- Recognizes that the BOG's authority for delegating powers and duties to the university boards of trustees includes the flexibility to align the mission of each university with the unique characteristics of that university;
- Provides that the BOG is responsible for the personnel program for the universities, except for state group insurance and retirement which will be controlled by the Department of Management Services;
- Requires BOG confirmation of the university board of trustees' selection of the university president;
- Provides that the BOG will approve new degree programs and will report annually to the legislature regarding requests for new programs and the BOG's decision regarding the proposals;

[7] http://www.flbog.org/about/_doc/strategicplan/StrategicPlan_05-13.pdf
[8] http://www.flbog.org/resources/factbooks/
[9] http://www.flbog.edu/resources/publications/accountability.php

- Provides that the BOG is responsible for university facilities pursuant to ch. 1013, F.S.

Planning and Coordination

- Establishes a 7-member Higher Education Coordinating Council to:
  - Identify unmet needs;
  - Facilitate solutions to disputes regarding the creation of new degree programs and the establishment of new institutes, campuses, or centers; and
  - Make recommendations to the BOG, the State Board of Education and the Legislature concerning articulation, consistent education policy across all educational delivery systems, access to higher education, and the transfer of credit;
  - Be comprised of the Chancellor of the State University System of Florida, the Chancellor of the Florida College System; the Commissioner of Education; the President of the Independent Colleges and Universities of Florida; the Executive Director of the Commission for Independent Education; and two members representing the business community, one appointed by the President of the Senate and one by the Speaker of the House of Representatives; and
  - Be supported by staff from the BOG.

Rules and Regulations

- Declares that the BOG and the university boards of trustees may implement their constitutional power through regulations;
- Makes the BOG subject to the Administrative Procedures Act when it is acting pursuant to statutory authority but authorizes the BOG to adopt regulations instead of rules when it is expressly authorized or required by law to do so;
- Requires that if the BOG delegates a statutory power or duty to a university board of trustees, the authority to adopt rules or regulations is included in the delegation;
- Declares that a university board of trustees that is subject to the requirements of the Administrative Procedures Act when implementing legislatively delegated authority may adopt regulations rather than rules;
- Directs the Department of State to remove from the Florida Administrative Code the BOG rules that have been superseded by BOG regulations; and
- Requires that the BOG's procedure for regulations authorized or required by law must provide for:
  - Notice to the public;
  - Opportunity for public comment;
  - A process for challenging a statement of general applicability that has not been properly adopted as a regulation, an unlawful regulation and an emergency regulation; and
  - Publication of the regulation development procedure on the BOG's and the universities' websites.

Tuition and Fees

- Authorizes the BOG to approve flexible policies for tuition and fees as long as the policies are in alignment with the university's mission and do not increase the state's

liability or obligation for the Bright Futures Scholarship program or the Florida prepaid tuition program;
- Requires fees for services to be based on reasonable costs of services;
- Authorizes the BOG to establish a new fee that is not specifically authorized by law and limits the aggregate sum of new fees to no more than 10 percent of tuition;
- Authorizes the BOG to approve a university board of trustees' proposal to increase the current cap for certain existing fees;[10]
- Authorizes the BOG to approve a university board of trustees' proposal to implement block tuition, block tuition differential, or market-rate tuition for graduate-level online courses or graduate-level continuing education courses;
- Requires the BOG, when approving a new fee, to consider the purpose to be served, whether there is a student-based need for the fee, whether the financial impact on students is warranted in light of other charges assessed to them, whether restrictions should be placed on the use of the fee and whether there are outcome measures to indicate if the purpose for which the fee was established is accomplished;
- Requires the BOG, when reviewing a proposal to increase the cap on a fee, to consider the services or operations currently being funded by the fee, the additional or enhanced services to be funded by the fee increase, whether alternative resources are available to meet the need, and whether the increase is warranted in light of other charges assessed to students;
- Requires the BOG to submit an annual report to the President of the Senate, the Speaker of the House of Representatives, and the Governor summarizing the tuition and fee proposals received by the board during the preceding year and the actions taken by the board in response to such proposals;
- Prohibits the transfer of any revenues from a new fee to an auxiliary enterprise or a direct support organization;
- Requires a university where the BOG has approved the establishment of a new fee to establish a fee committee to recommend to the university board of trustees and the university president how the fee will be spent; and
- Limits an increase to an existing fee or a new fee to a maximum of once each fiscal year and requires the fee increase to be implemented beginning with the fall term.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[10] The BOG could approve an increase in the current cap for the fees for: application, orientation, security access, or ID cards, special types of registration, late payment of tuition, transcripts and diploma replacement, and a nonrefundable admissions deposit.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If new fees and fee increases were approved by the BOG, students would incur a higher cost for enrollment at a state university.

C. Government Sector Impact:

The BOG will incur the cost of providing staff support to the Higher Education Coordinating Council.

If new fees or fees increases were approved by the BOG, state universities would receive additional revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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267666

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Lynn) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete line 459
4 and insert:
5 protect the public interest in the emergency. Judicial review
6 shall be sought in the appellate district in which the
7 headquarters of the Board of Governors is located or in which
8 the main campus of the state university is located, as
9 applicable. The regulation
10
11 ========== T I T L E A M E N D M E N T ==========
12 And the title is amended as follows:

267666

13 Delete line 39
14 and insert:
15 regulation development procedure; providing
16 requirements for judicial review of certain
17 challenges; revising the Board

2

659082

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Lynn) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 573 - 576
4 and insert:
5 university. The Board of Governors shall confirm the
6 presidential selection by a university board of trustees as a
7 means of acknowledging that system cooperation is expected
8 ~~except the president~~.

3

495112

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Lynn) recommended the following:

1 **Senate Amendment**
2
3 Delete line 1223
4 and insert:
5 implement flexible tuition policies, such as undergraduate or
6 graduate block tuition,

4

436238

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Lynn) recommended the following:

1 **Senate Amendment**
2
3 Between lines 1276 and 1277
4 insert:
5 4. How the proposed tuition flexibility policy will be
6 implemented to honor the advance payment contracts of students
7 who are beneficiaries of prepaid tuition contracts under s.
8 1009.98.

5

936900

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Lynn) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 1289 - 1312
4 and insert:
5 (g) The aggregate sum of any fees established pursuant to
6 subparagraph (a)1. which a student is required to pay to
7 register for a course shall not exceed 10 percent of tuition.
8 (h) Any fee established pursuant to subparagraph (a)1.
9 shall not be included in any award under the Florida Bright
10 Futures Scholarship Program established pursuant to ss. 1009.53-
11 1009.538.
12 (i) The revenues generated by a fee established pursuant to

936900

13 subparagraph (a)1. may not be transferred to an auxiliary
14 enterprise or a direct-support organization and may not be used
15 for the purpose of paying or securing debt.
16 (j) If the Board of Governors approves a university
17 proposal to establish a fee pursuant to subparagraph (a)1., a
18 fee committee shall be established at the university to make
19 recommendations to the university president and the university
20 board of trustees regarding how the revenue from the fee is to
21 be spent and any subsequent changes to the fee. At least one-
22 half of the committee must be students appointed by the student
23 body president. The remainder of the committee shall be
24 appointed by the university president. A chair, appointed
25 jointly by the university president and the student body
26 president, shall vote only in the case of a tie.
27 (k) An increase to an existing fee or a fee established
28 pursuant to subparagraph (a)1. may occur no more than once each

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/SB 640

INTRODUCER: Regulated Industries Committee and Senator Jones

SUBJECT: Pari-mutuel Wagering

DATE: April 19, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	**Fav/CS**
2.	Frederick	DeLoach	GA	**Fav/1 amendment**
3.	Frederick	Coburn	WPSC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill reduces the number of live games required to constitute a full schedule of live racing or games for specified jai alai frontons. The bill requires a harness horse facility to enter into an agreement governing purses with the Florida Standardbred Breeders and Owners Association before a slot license can be issued or renewed.

The bill also eliminates the tax on handle and cardroom tax payable by non-slot pari-mutuel facilities. If the tax amount paid from slot machine revenues is below the slot machine revenue paid in 2008-2009 threshold plus the amount of taxes that was eliminated in the given year for the tax on handle and cardroom tax, the non-slot pari-mutuels will have to pay a surcharge. The bill requires non-slot pari-mutuel facilities to pay six percent of the gross cardroom receipts for purses and awards instead of four percent.

The Revenue Estimating Conference met on April 16, 2010, and estimated that the bill will have a negative total fiscal impact of $18 million, as follows.

- $12 million decrease to the General Revenue Fund.

- $5 million decrease to the Pari-Mutuel Wagering Trust Fund within the Department of Business and Professional Regulation (department). These funds are utilized to provide for the regulatory operations of the Division of Pari-Mutuel Wagering (division).
- $1 million decrease in cardroom revenues distributed to local governments.
- The bill provides an effective date of July 1, 2010.

This bill amends the following sections of the Florida Statutes: 550.002, 550.0951, 551.104, and 849.086.

II. Present Situation:

Pari-mutuel Wagering

Pari-mutuel wagering is a:

> system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.[1]

The regulation of the pari-mutuel industry is governed by ch. 550, F.S., and is administered by the Division of Pari-mutuel Wagering within the Department of Business and Professional Regulation.

Types of Pari-mutuels

The pari-mutuel industry in Florida is made up of greyhound racing, different types of horseracing, and jai alai.[2] There are twenty-seven pari-mutuel facilities currently in operation. The industry consists of sixteen greyhound tracks, six jai alai frontons, three thoroughbred tracks, one harness track, and one quarter horse track. Twenty-three of the facilities have cardrooms[3] and five facilities have slot machines.[4]

Jai Alai

Jai alai is a game originating from the Basque region in Spain,[5] that is played in a fronton,[6] and in which a ball is hurled through a three-walled court and points are assessed based on legal throws and catches. The ball is caught and thrown with a "cesta," a long, curved wicker scoop

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[1] Section 550.002(22), F.S.
[2] "Jai alai" or "pelota" means a ball game of Spanish origin played on a court with three walls. *See*, s. 550.002(18), F.S.
[3] *See* http://www.myflorida.com/dbpr/pmw/track.html (Last visited March 5, 2010).
[4] Gulfstream Park, Mardi Gras Racetrack and Gaming Center, Flagler Dog Track and Magic City Casino, Calder/Tropical, and The Isle Casino and Racing at Pompano Park have slot machine gaming. *See* http://www.myflorida.com/dbpr/pmw/track.html (Last visited March 5, 2010).
[5] "The game is called "pelota vasca" in Spain but the Western Hemisphere name of jai alai, which is Basque for "merry festival", was given when it was introduced in Cuba. This was due to the fact that this game was played at festivals or fiestas in Spain's Pyrenees Mountains for hundreds of years. The game was then played in the open air with the walls of churches being used to bounce the ball on." *See,* http://www.jai-alai.info/ and http://www.fla-gaming.com/history.htm (Last visited March 8, 2010).
[6] "A building or enclosure that contains a playing court with three walls designed and constructed for playing the sport of jai alai or pelota." *See*, s.550.002(10), F.S.

strapped to one arm. "Jai-alai came to Cuba from Spain in 1898, and was successfully introduced as a professional game at the Miami Fronton in 1926[7]." Jai alai was first permitted in Florida in 1935 and it is the only state where the game is currently played. Though the birthplace of jai alai is the Basque Country of Spain, there are more jai-alai frontons in Florida than any place in the world.[8]

Harness Racing

Harness racing uses standardbred horses, which are a ". . .pacing or trotting horse ... that has been registered as a standardbred by the United States Trotting Association" (USTA) or by a foreign registry whose stud book is recognized by the USTA.[9] Currently, only the Pompano Park facility in Florida has a permit for harness racing.

Full Schedule of Live Racing

Section 550.002(11), F.S., defines what constitutes a full schedule of live racing. Depending upon the permit type, there may be a different requirement for a full schedule of live racing. Typically, a full schedule of live racing or games requires the conduct of a combination of evening or matinee "performances," which is defined to mean "a series of events, races, or games performed consecutively under a single admission charge." [10] A live performance must consist of no fewer than eight races or games conducted live for each of a minimum of three performances each week at the permit holder's facility.[11]

FULL SCHEDULE OF LIVE RACING OR GAMES	
Type of Facility	**Full Schedule Means:**
Greyhound Racing	100 live evening or matinee performances
Jai Alai	100 live evening or matinee performances
Harness Racing	100 live regular wagering performances
Thoroughbred Racing	40 live regular wagering performances
Quarter horse Racing	40 live regular wagering performances

Generally a jai alai fronton must conduct 100 performances to constitute a full schedule of games. However, two exceptions exist: (1) For a jai alai permit holder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its facility has been less than $4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of at least 40 live evening or matinee performances constitutes a full schedule of live games; and (2) If the fronton operates slot machines in its facility, then the conduct of at least 150 performances constitutes a full schedule. Hamilton Jai Alai and Poker does not qualify for the reduced racing schedule of 40 performances.

[7] *See* http://www.fla-gaming.com/history.htm (Last visited March 8, 2010).
[8] *Id.*
[9] Section 550.002(33), F.S.
[10] Section 550.002(25), F.S.
[11] Section 550.002(11), F.S.

Slot Machines

During the 2004 General Election, the electors approved Amendment 4 to the State Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County:

- Gulfstream Park Racing Association, a thoroughbred permit holder;
- The Isle Casino and Racing at Pompano Park, a harness racing permit holder;
- Dania Jai Alai, a jai alai permit holder; and,
- Mardi Gras Race Track and Gaming Center, a greyhound permit holder.

Legislation was passed during the 2005 Special Session B, HB 1B, ch. 2005-362, L.O.F., that implemented Amendment 4. The division is charged with regulating the operation of slot machines in the affected counties. Of the four eligible in Broward County, all are operating slot machines except Dania Jai Alai.

On January 29, 2008, another referendum was held in which slot machines in Miami-Dade County were approved. Under the provisions of Amendment 4, three pari-mutuel facilities are now eligible to conduct slot machine gaming in Miami-Dade County:

- Miami Jai-Alai, a jai-alai permit holder;
- Flagler Greyhound Track, a greyhound permit holder; and,
- Calder Race Course, a thoroughbred permit holder.

Of the three eligible in Miami-Dade County, Calder and Flagler are operating slot machines.

Cardrooms

Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. A cardroom may be operated only at the location specified on the cardroom license issued by the division and such location may only be where the permit holder is authorized to conduct pari-mutuel wagering activities subject to its pari-mutuel permit. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e., where the facility has no stake in the outcome. Such activity is regulated by the department and must be approved by ordinance of the county commission where the pari-mutuel facility is located.

In order to renew a cardroom operator license, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permit holder during either the state fiscal year in which its

initial cardroom license was issued or the state fiscal year immediately prior to the application. If the application is for a harness permit holder, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to the application. If more than one permit holder is operating at a facility, each permit holder must have applied for a license to conduct a full schedule of live racing.[12] Chapter 2009-170, L.O.F., changed the above requirement to mandate the performance of at least 90 percent of the total number of live races in the initial issuance year or the year prior if the cardroom operator ran a full schedule of live racing in that prior year. That change is not in current law but is before the 2010 Legislature.[13]

Taxes

The division collects taxes on both pari-mutuel wagering activities and on monthly gross receipts from licensed cardrooms.[14] Specifically, each cardroom operator pays a tax to the state of 10 percent of the cardroom operation's monthly cross receipts.[15] The amount of tax payable on pari-mutuel wagering activities depends on the location of the track, type of pari-mutuel wagering license, and specific type of wagering conducted. In addition to the tax on handle[16], pari-mutuel facilities are also subject to daily license fees, admission taxes, and taxes on breaks.[17] To further complicate the equation, some facilities are eligible for credits and tax exemptions.

III. Effect of Proposed Changes:

The bill amends the definition of full schedule of live racing or games for jai alai frontons who have conducted at least 100 performances per year and who have a handle less than $4 million per year. Instead of requiring 100 performances for 10 years after December 31, 1992, the bill reduces that requirement to 100 performances for 3 consecutive years plus the handle requirements in order for a jai alai fronton to qualify for the reduced schedule of 40 performances instead of 100 performances.

According to the division, Hamilton Jai Alai and Poker would qualify for the reduction in performances. However, if ch. 2009-170, L.O.F., becomes law, Hamilton has to conduct 90 percent of its games based upon the 100 live performance standard to continue to operate a licensed cardroom.

The bill requires a harness horse facility to enter into an agreement governing purses with the Florida Standardbred Breeders and Owners Association before a slot license can be issued or renewed.

The bill eliminates the tax on handle and cardroom tax payable by non-slot pari-mutuel facilities. If the tax amount paid from slot machine revenues is below the slot machine revenue paid in

[12] Section 849.086(5)(b), F.S.
[13] *See,* Senate Bill 622.
[14] *See,* ss. 550.0951 and 849.086(13)(a), F.S.
[15] Section 849.086(13)(a), F.S.
[16] Handle means the aggregate contributions to a pari-mutuel pool. Section 550.002(13), F.S.
[17] Breaks means the portion of a pari-mutuel pool which is computed by rounding down to the nearest multiple of 10 cents and is not distributed to the contributors or withheld by the permit holder as takeout. Section 550.002(1), F.S.

2008-2009 threshold plus the amount of taxes that were eliminated in the given year for the tax on handle and cardroom tax, the non-slot pari-mutuels will have to pay a surcharge. The surcharge cannot be greater than $15 million and will be divided among the non-slot facilities, with each facility paying it's pro rata share. The bill provides that the division is authorized to collect a fee for each pari-mutuel permit holder that does not operate slot machines to cover the cost of regulation if the taxes and fees collected do not cover that cost.[18]

The bill also requires non-slot pari-mutuel facilities to pay six percent of the gross cardroom receipts for purses and awards instead of four percent.

The bill shall take effect on July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill reduces handle and cardroom taxes for all pari-mutuels that do not operate slot machines.

B. Private Sector Impact:

The pari-mutuels that do not operate slot machines would receive a tax reduction of approximately $18 million.

C. Government Sector Impact:

The Revenue Estimating Conference (REC) met on April 16, 2010, and adopted the estimate below for the impact on the provisions in the bill.

	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
General Revenue	(12.0)	(12.0)	(11.7)	(11.6)	(11.5)

[18] The division estimates that the cost of regulation is between $10 and $11 million per year.

State Trust	(5.0)	0	0	0	0
Total State Impact	(17.0)	(12.0)	(11.7)	(11.6)	(11.5)
Total Local Impact	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)
Total Impact	**(18.0)**	**(13.0)**	**(12.7)**	**(12.6)**	**(12.5)**

The division's annual operating cost is $11 million. Based on the REC results, the potential deficit in the division's Pari-mutuel Wagering Trust Fund is $5 million.

According to the division, the provision in the bill which establishes rule authority for a regulatory fee to make up the shortfall is problematic due to the lengthy rule making process, as well as potential administrative challenges. This could create a revenue stream that is unreliable to meet the regulatory costs of the division.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on April 13, 2010:
The committee substitute replaces the legislative intent to revise the laws relating to pari-mutuel wagering. (Refer to Effect of Proposed Changes section of this analysis.)

B. Amendments:

Barcode 126638 by General Government Appropriations on April 19, 2010:
This amendment deletes lines 85-306 of the CS, relating to the tax exemption for the non-slot pari-mutuel facilities. The amendment exempts the non-slot machine pari-mutuel facilities from the payment of the 10 percent cardroom tax. All facilities will continue to pay the tax on handle from pari-mutuel wagering activities. The amendment reduces the fiscal impact of the bill from $18 million to $8.4 million. The fiscal impact is the result of a $7.6 million loss from the cardroom tax at the non-slot pari-mutuel facilities and a reduction of $800,000 from the distribution to local governments that have non-slot facilities with cardrooms.

The amendment also directs all of the cardroom gross receipts to the Pari-mutuel Wagering Trust Fund. (WITH TITLE AMENDMENT)

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 267 and 268
4 insert:
5 Section 4. Subsection (9) of section 550.105, Florida
6 Statutes, is amended to read:
7 550.105 Occupational licenses of racetrack employees; fees;
8 denial, suspension, and revocation of license; penalties and
9 fines.—
10 (9) The tax imposed by this section is in lieu of all license,
11 excise, or occupational taxes to the state or any county,
12 municipality, or other political subdivision, except that, if a

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13 race meeting or game is held or conducted in a municipality, the
14 municipality may assess and collect an additional tax against
15 any person conducting live racing or games within its corporate
16 limits, which tax may not exceed $150 per day for horseracing,
17 ~~or $50 per day for~~ dogracing, ~~or~~ jai alai, simulcasts,
18 intertrack wagering, or cardrooms. Except as provided in this
19 chapter, a municipality may not assess or collect any additional
20 excise or revenue tax against any person conducting race
21 meetings within the corporate limits of the municipality or
22 against any patron of any such person.
23
24 ========== T I T L E A M E N D M E N T ==========
25 And the title is amended as follows:
26 Delete line 21
27 and insert:
28 renewal; amending s. 550.105, F.S.; authorizing a
29 municipality to impose a tax on simulcasts, intertrack
30 wagering, and cardrooms; increasing the tax that a
31 municipality may levy for dogracing and cardrooms;
32 amending s. 849.086, F.S.; exempting a pari-

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450770

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 306 and 307
insert:

(h) One-quarter of the moneys deposited into the Pari-mutuel Wagering Trust Fund pursuant to paragraph (g) shall, by October 1 of each year, be distributed to the municipality in which ~~local government that approved~~ the cardroom is operating and to the county if the card room is located within an unincorporated area of the county ~~under subsection (16); however, if two or more pari-mutuel racetracks are located within the same incorporated municipality, the cardroom funds~~

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13 ~~shall be distributed to the municipality~~. If a pari-mutuel
14 facility is situated in such a manner that it is located in more
15 than one county, the site of the cardroom facility shall
16 determine the location for purposes of disbursement of tax
17 revenues under this paragraph. The division shall, by September
18 1 of each year, determine: the amount of taxes deposited into
19 the Pari-mutuel Wagering Trust Fund pursuant to this section
20 from each cardroom licensee; the location by municipality and
21 county of each cardroom; whether the cardroom is located in the
22 unincorporated area of the county or within an incorporated
23 municipality; and, the total amount to be distributed to each
24 eligible county and municipality.
25
26 ====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
27 And the directory clause is amended as follows:
28 Delete line 268
29 and insert:
30 Section 4. Paragraphs (a), (d), and (h) of subsection (13)
31 of
32
33 ================ T I T L E A M E N D M E N T ================
34 And the title is amended as follows:
35 Delete line 27
36 and insert:
37 purses or jai alai prize money; revising the
38 distribution of certain moneys deposited into the
39 Pari-mutuel Wagering Trust Fund; providing an
40 effective

126638

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/19/2010	.	
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TRAVELING AMENDMENT

The Committee on General Government Appropriations (Dean) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 85 - 306
4 and insert:
5 Section 2. Paragraphs (a) and (c) of subsection (10) of
6 section 551.104, Florida Statutes, as amended by section 20 of
7 chapter 2009-170, Laws of Florida, are amended to read:
8 551.104 License to conduct slot machine gaming.—
9 (10)(a)1. No slot machine license or renewal thereof shall
10 be issued to an applicant holding a permit under chapter 550 to
11 conduct pari-mutuel wagering meets of thoroughbred racing unless
12 the applicant has on file with the division a binding written

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13 agreement between the applicant and the Florida Horsemen's
14 Benevolent and Protective Association, Inc., governing the
15 payment of purses on live thoroughbred races conducted at the
16 licensee's pari-mutuel facility. In addition, no slot machine
17 license or renewal thereof shall be issued to such an applicant
18 unless the applicant has on file with the division a binding
19 written agreement between the applicant and the Florida
20 Thoroughbred Breeders' Association, Inc., governing the payment
21 of breeders', stallion, and special racing awards on live
22 thoroughbred races conducted at the licensee's pari-mutuel
23 facility. The agreement governing purses and the agreement
24 governing awards may direct the payment of such purses and
25 awards from revenues generated by any wagering or gaming the
26 applicant is authorized to conduct under Florida law. All purses
27 and awards shall be subject to the terms of chapter 550. All
28 sums for breeders', stallion, and special racing awards shall be
29 remitted monthly to the Florida Thoroughbred Breeders'
30 Association, Inc., for the payment of awards subject to the
31 administrative fee authorized in s. 550.2625(3).
32 2. No slot machine license or renewal thereof shall be
33 issued to an applicant holding a permit under chapter 550 to
34 conduct pari-mutuel wagering meets of quarter horse racing
35 unless the applicant has on file with the division a binding
36 written agreement between the applicant and the Florida Quarter
37 Horse Racing Association or the association representing a
38 majority of the horse owners and trainers at the applicant's
39 eligible facility, governing the payment of purses on live
40 quarter horse races conducted at the licensee's pari-mutuel
41 facility. The agreement governing purses may direct the payment

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42 of such purses from revenues generated by any wagering or gaming
43 the applicant is authorized to conduct under Florida law. All
44 purses shall be subject to the terms of chapter 550.
45 3. No slot machine license or renewal thereof shall be
46 issued to an applicant holding a permit under chapter 550 to
47 conduct pari-mutuel wagering meets of standardbred horse racing
48 unless the applicant has on file with the division a binding
49 written agreement between the applicant and the Florida
50 Standardbred Breeders and Owners Association governing the
51 payment of purses on live standardbred horse races conducted at
52 the licensee's pari-mutuel facility. The agreement governing
53 purses may direct the payment of such purses from revenues
54 generated by any wagering or gaming that the applicant is
55 authorized to conduct under Florida law. All purses shall be
56 subject to the terms of chapter 550.
57 (b) The division shall suspend a slot machine license if
58 one or more of the agreements required under paragraph (a) are
59 terminated or otherwise cease to operate or if the division
60 determines that the licensee is materially failing to comply
61 with the terms of such an agreement. Any such suspension shall
62 take place in accordance with chapter 120.
63 (c)1. If an agreement required under paragraph (a) cannot
64 be reached prior to the initial issuance of the slot machine
65 license, either party may request arbitration or, in the case of
66 a renewal, if an agreement required under paragraph (a) is not
67 in place 120 days prior to the scheduled expiration date of the
68 slot machine license, the applicant shall immediately ask the
69 American Arbitration Association to furnish a list of 11
70 arbitrators, each of whom shall have at least 5 years of

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71 commercial arbitration experience and no financial interest in
72 or prior relationship with any of the parties or their
73 affiliated or related entities or principals. Each required
74 party to the agreement shall select a single arbitrator from the
75 list provided by the American Arbitration Association within 10
76 days of receipt, and the individuals so selected shall choose
77 one additional arbitrator from the list within the next 10 days.
78 2. If an agreement required under paragraph (a) is not in
79 place 60 days after the request under subparagraph 1. in the
80 case of an initial slot machine license or, in the case of a
81 renewal, 60 days prior to the scheduled expiration date of the
82 slot machine license, the matter shall be immediately submitted
83 to mandatory binding arbitration to resolve the disagreement
84 between the parties. The three arbitrators selected pursuant to
85 subparagraph 1. shall constitute the panel that shall arbitrate
86 the dispute between the parties pursuant to the American
87 Arbitration Association Commercial Arbitration Rules and chapter
88 682.
89 3. At the conclusion of the proceedings, which shall be no
90 later than 90 days after the request under subparagraph 1. in
91 the case of an initial slot machine license or, in the case of a
92 renewal, 30 days prior to the scheduled expiration date of the
93 slot machine license, the arbitration panel shall present to the
94 parties a proposed agreement that the majority of the panel
95 believes equitably balances the rights, interests, obligations,
96 and reasonable expectations of the parties. The parties shall
97 immediately enter into such agreement, which shall satisfy the
98 requirements of paragraph (a) and permit issuance of the pending
99 annual slot machine license or renewal. The agreement produced

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100 by the arbitration panel under this subparagraph shall be
101 effective until the last day of the license or renewal period or
102 until the parties enter into a different agreement. Each party
103 shall pay its respective costs of arbitration and shall pay one-
104 half of the costs of the arbitration panel, unless the parties
105 otherwise agree. If the agreement produced by the arbitration
106 panel under this subparagraph remains in place 120 days prior to
107 the scheduled issuance of the next annual license renewal, then
108 the arbitration process established in this paragraph will begin
109 again.
110 4. In the event that ~~neither of~~ the agreements required
111 under paragraph (a) ~~subparagraph (a)1. or the agreement required~~
112 ~~under subparagraph (a)2.~~ are not in place by the deadlines
113 established in this paragraph, arbitration regarding each
114 agreement will proceed independently, with separate lists of
115 arbitrators, arbitration panels, arbitration proceedings, and
116 resulting agreements.
117 5. With respect to the agreements required under paragraph
118 (a) governing the payment of purses, the arbitration and
119 resulting agreement called for under this paragraph shall be
120 limited to the payment of purses from slot machine revenues
121 only.
122 (d) If any provision of this subsection or its application
123 to any person or circumstance is held invalid, the invalidity
124 does not affect other provisions or applications of this
125 subsection or chapter which can be given effect without the
126 invalid provision or application, and to this end the provisions
127 of this subsection are severable.
128 Section 3. Paragraphs (a), (c) and (d)of subsection (13) of

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129 section 849.086, Florida Statutes, as amended by section 24 of
130 chapter 2009-170, Laws of Florida, are amended to read:
131 849.086 Cardrooms authorized.—
132 (13) TAXES AND OTHER PAYMENTS.—
133 (a) Each cardroom operator shall pay a tax to the state of
134 10 percent of the cardroom operation's monthly gross receipts.
135 However, a pari-mutuel facility that does not operate slot
136 machines is exempt from the tax under this paragraph.
137 (c) Payment of the admission tax and gross receipts tax
138 imposed by this section shall be paid to the division. The
139 division shall deposit these sums with the Chief Financial
140 Officer, ~~one-half being~~ credited to the Pari-mutuel Wagering
141 Trust Fund ~~and one-half being credited to the General Revenue~~
142 ~~Fund~~. The cardroom licensee shall remit to the division payment
143 for the admission tax, the gross receipts tax, and the licensee
144 fees. Such payments shall be remitted to the division on the
145 fifth day of each calendar month for taxes and fees imposed for
146 the preceding month's cardroom activities. Licensees shall file
147 a report under oath by the fifth day of each calendar month for
148 all taxes remitted during the preceding calendar month. Such
149 report shall, under oath, indicate the total of all admissions,
150 the cardroom activities for the preceding calendar month, and
151 such other information as may be prescribed by the division.
152 (d)1. Each greyhound and jai alai permitholder that
153 operates a cardroom facility and slot machines shall use at
154 least 4 percent of such permitholder's cardroom monthly gross
155 receipts to supplement greyhound purses or jai alai prize money,
156 respectively, during the permitholder's next ensuing pari-mutuel
157 meet. Each greyhound and jai alai permitholder that operates a

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158 cardroom facility but does not operate slot machines shall use
159 at least 6 percent of such permitholder's cardroom monthly gross
160 receipts to supplement greyhound purses or jai alai prize money,
161 respectively, during the permitholder's next ensuing pari-mutuel
162 meet.
163 2. Each thoroughbred and harness horse racing permitholder
164 that operates a cardroom facility shall use at least 50 percent
165 of such permitholder's cardroom monthly net proceeds as follows:
166 47 percent to supplement purses and 3 percent to supplement
167 breeders' awards during the permitholder's next ensuing racing
168 meet.
169 3. No cardroom license or renewal thereof shall be issued
170 to an applicant holding a permit under chapter 550 to conduct
171 pari-mutuel wagering meets of quarter horse racing unless the
172 applicant has on file with the division a binding written
173 agreement between the applicant and the Florida Quarter Horse
174 Racing Association or the association representing a majority of
175 the horse owners and trainers at the applicant's eligible
176 facility, governing the payment of purses on live quarter horse
177 races conducted at the licensee's pari-mutuel facility. The
178 agreement governing purses may direct the payment of such purses
179 from revenues generated by any wagering or gaming the applicant
180 is authorized to conduct under Florida law. All purses shall be
181 subject to the terms of chapter 550.
182
183
184 ========== T I T L E A M E N D M E N T ==========
185 And the title is amended as follows:
186 Delete lines 6 - 27

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187 and insert:
188 their pari-mutuel facilities; amending s. 551.104,
189 F.S.; revising slot machine license requirements;
190 requiring a written agreement as a condition of
191 license issuance or renewal; amending s. 849.086,
192 F.S.; exempting a pari-mutuel facility that operates a
193 cardroom but does not operate slot machines from the
194 tax on the gross receipts of the cardroom operations;
195 providing for the deposit of taxes into the Pari-
196 mutuel Wagering Trust Fund; revising the amounts that
197 greyhound and jai alai permitholders that operate
198 cardrooms must use to supplement greyhound purses or
199 jai alai prize money; revising the amounts that are
200 distributed to local governments that approve
201 cardrooms; providing an effective

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/SB 2166

INTRODUCER: Community Affairs Committee and Senator Altman

SUBJECT: Uniform Traffic Control

DATE: April 16, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	**Fav/5 amendments**
2.	Gizzi	Yeatman	CA	**Fav/CS**
3.	Carey	Coburn	WPSC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates the "Mark Wandall Traffic Safety Act" and the "Mark Wandall Safety Program." The bill preempts the regulation and use of all traffic camera enforcement systems to the state and creates s. 316.0083, F.S., establishing requirements for the use of traffic infraction detectors by the Department of Highway Safety and Motor Vehicles (the Department), counties and municipalities in enforcement of the requirements of s. 316.074(1) or s. 316.075(1)(c)1., F.S., which requires vehicles to stop before entering an intersection when so directed by a traffic signal. The bill authorizes the Department, counties and municipalities to use traffic infraction enforcement officers. The penalty for failing to stop at a steady red light, as determined through the use of a traffic infraction detector, is a fine of $158.

The bill provides a transitional implementation period (until July 1, 2011) for those counties and municipalities currently engaged in the use of traffic detectors or who enter into an agreement to acquire such equipment on or before July 1, 2011. A severability clause is also provided.

The bill provides that each county or municipality that operates a traffic infraction detector must submit an annual report to the Department which details the results of the detectors and the procedures for enforcement. The Department must submit a summary report to the Governor and

Legislature on or before December 31, 2012, which includes a review of the information submitted by the counties and municipalities and any recommendations or necessary legislation.

To the extent the Department and local governments choose to permit the use of traffic infraction detectors, there will be a fiscal impact for the cost of the installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement with any private vendor providing the equipment. There may be an increase in fine revenue for the local governments choosing to permit the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior.

This bill substantially amends ss. 316.003, 316.008, 316.0745, 316.640, 316.650, 318.14, 318.18, 322.27, and 395.4036 of the Florida Statutes.

This bill creates ss. 316.0076, 316.0083, 316.07456, 316.0776, 321.50 and a new unnumbered section of the Florida Statutes.

II. Present Situation:

Intersection Safety

According to the Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), more than 45 percent of all traffic crashes occur at intersections or are intersection-related. In 2005, nearly 9,200 people died and approximately one million people were injured in intersection-related crashes. NHTSA's Fatality Analysis Reporting System showed crashes caused by red light running resulted in an estimated 805 fatalities in 2005.[1] According to the Department in 2008 there were 76 fatalities related to motor vehicle drivers who disregarded a traffic signal in Florida.[2] This represents approximately 3 percent of all fatal accidents in 2008, the sixth-highest cause of traffic fatalities.[3] Two sections of Florida Statutes address red light running:

- Section 316.074(1), F.S., requires drivers to obey the instructions of any applicable official traffic control device, when properly installed, unless otherwise directed by a police officer.
- Section 316.075 (1)(c)1., F.S., requires vehicles facing a steady red light signal to stop before entering the intersection and to remain standing until a green indication is shown. Exceptions are made to provide for a right turn on red after stopping, and in certain one-way traffic intersections, a left turn on red after stopping.

Violation of either section for a driver failing to stop at a traffic signal when so required constitutes a noncriminal traffic infraction, punishable under ch. 318, F.S., as a moving violation and a $125 fine, $60 of which is distributed as provided in s. 318.21, F.S., and the remaining $65 remitted to the Department of Revenue for deposit into the Administrative Trust Fund of the Department of Health under s. 318.18(15), F.S. A violation of either section also results in the assessment of 4 points against a driver's license under s. 322.27(3), F.S.

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[1] *See* http://safety.fhwa.dot.gov/intersections/inter_facts.htm

[2] *Florida Traffic Crash Statistics Report 2008*, Department of Highway Safety and Motor Vehicles, June 30, 2009.

[3] Careless driving represented 20 percent of 2008 traffic fatalities; DUI, 17 percent; excessive speed, 6 percent; driving left-of-center, 6 percent; and failure to yield right of way, 6 percent.

A number of factors contribute to red light running-related crashes. According to the FHWA's Red Light Camera Systems Operational Guidelines (January 2005),[4] while deficiencies in the design and configuration of signalized intersections may contribute to red light violations, driver behavior is the most significant contributing factor to the occurrence of red light running. According to the FHWA guidelines, the solution to the red light running problem and resulting crashes may require one or a combination of the following:

- *Intersection engineering improvements*, including modifying traffic signal timing, improving signing and marking, improving sight lines, modifying grades and/or grade separation, adjusting the prevailing speeds, changes in surface treatments, altering lane configuration, and replacing the traffic signal with some other form of traffic control device or intersection type.
- *Education* to assist motorists and the general public in understanding the safety issues inherent to red light running.
- *Traditional enforcement by law enforcement officers* that specifically target red light running violators can be a cost effective deterrent in reducing red light violations at problem intersections.
- *"Red light" camera systems* can be a cost effective tool to reduce red light violations and should be part of a comprehensive intersection safety program, which considers all countermeasures to reduce fatal and injury crashes at intersections.

Traffic Infraction Detectors

Traffic infraction detectors, or "red light cameras," are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A Red Light Camera System is a system for detecting and recording traffic violations occurring when a motor vehicle fails to obey a traffic control device. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. Typically, two photos are taken: one photo of the front of the vehicle as it enters the intersection, and one photo of the rear of the vehicle when the vehicle is in the intersection during the stop phase. Most red light camera systems also record digital video data of the event, bracketing the alleged violation with several seconds of video to show any extenuating circumstances, e.g., a police officer directing traffic or the presence of emergency vehicles. Cameras record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle speed. When used as photo enforcement of traffic laws, traffic infraction enforcement officials remotely review the evidence, and, when warranted, issue a citation which is mailed to the registered owner of the vehicle. Approximately 439 communities in 25 states across the country currently participate in a red light camera program.[5] In addition, red light cameras are used in at least 21 foreign countries.[6]

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[4] *See* http://safety.fhwa.dot.gov/intersection/redlight/fhwasa05002/fhwasa05002.pdf

[5] Insurance Institute for Highway Safety website (http://www.iihs.org/laws/auto_enforce_list.aspx) (last visited March 14, 2010).

[6] Insurance Institute for Highway Safety website (http://www.iihs.org/research/qanda/rlr.html) (last visited March 14, 2010).

Numerous studies examining red light camera systems' impact on safety have shown mixed results. An Insurance Institute for Highway Safety review of international red light camera studies concluded cameras reduce red light violations by 40-50 percent and reduce injury crashes by 25-30 percent.[7] A 2005 publication by the FHWA exemplifies the findings. The comprehensive report, *Safety Evaluation of Red-Light Cameras* (FHWA-HRT-05-048),[8] included data from seven jurisdictions (Baltimore, MD; Charlotte, NC; El Cajon, CA; Howard County and Montgomery County, MD; and San Diego and San Francisco, CA) and 132 intersections. The study showed red light cameras led to a decrease in the types of crashes most likely to cause death and injury while property-damage-only crashes increased. Specifically, the report showed:

- a 25 percent decrease in total right-angle crashes;
- a 16 percent reduction in injury right-angle crashes;
- a 15 percent increase in total rear-end crashes; and
- a 24 percent increase in injury rear-end crashes.

An overall economic analysis from the study showed red light camera systems provide a modest aggregate crash-cost benefit. According to the study, the greatest economic benefits provided by red light cameras would be at intersections with:

- relatively few rear end crashes and many right-angle ones;
- a higher traffic volume, especially when entering from the major road;
- shorter signal cycle lengths and intergreen periods (yellow clearance + all red); and
- one or more left turn protected phases.[9]

The study also found high public awareness, such as the presence of warning signs at both red light camera-enforced intersections and city limits of jurisdictions using red light camera systems, will enhance the benefits of the detectors.

Other studies, including a 7-jurisdiction study conducted by the Virginia Department of Transportation[10] and a USDOT-funded study by the Urban Transit Institute at North Carolina A&T University[11], have reached conflicting results regarding crash reduction. The results of these studies are best summarized by this excerpt from the North Carolina study:

> The results do not support the conventional wisdom expressed in recent literature and popular press that red light cameras reduce accidents.... Our findings are more pessimistic, finding no change in angle accidents and large increases in rear-end crashes and many other types of crashes relative to other intersections. We did find a decrease in accidents involving a vehicle turning left and a vehicle on the same roadway, which

[7] *Id.*, citing Retting, R.A. et al., *Effects of red light cameras on violations and crashes: a review of the international literature,* Traffic Injury Prevention 4:17-23, 2003.
[8] *See* http://www.tfhrc.gov/safety/pubs/05048/
[9] The study suggested the presence of protected left turn phases may be a proxy for high numbers of left turning vehicles.
[10] Available online here: http://www.thenewspaper.com/rlc/docs/05-vdot.pdf
[11] Available online here: http://www.thenewspaper.com/rlc/docs/burkeyobeng.pdf

> may have been included as an angle accident in some other studies. However, given that these left turn accidents occur only one third as often as angle accidents, and the fact that we find no benefit from decreasing severity of accidents suggests that there has been no demonstrable benefit from the RLC [red light camera] program in terms of safety. In many ways, the evidence points toward the installation of RLCs as a detriment to safety.

Critics on each side of the debate raise concerns about the scientific methodology of opposing studies and potential bias of researchers. Criticisms have focused on issues such as sample size, control of variables (weather, similarity of intersections, etc), and other possible control methods (e.g., failure to analyze intersections before and after detectors are placed).

Currently there are no recognized independent standards or certifications for the red light camera industry. The FHWA and NHTSA have developed guidelines for the use of state and local agencies on the implementation and operation of red light camera systems. These guidelines were most-recently updated in January 2005.[12] Although not a regulatory requirement, the guidance is intended to provide critical information for state and local agencies on relevant aspects of red light camera systems in order to promote consistency and proper implementation and operation. The guidelines present research that suggests engineering improvements, safety education and increased enforcement by law enforcement officers can significantly reduce red light violations.

Examples of engineering improvements include:

- Improving signal head visibility. Signal head visibility can be improved by increasing the size of the traffic signal lamps from 8 to 12 inches. The addition of backplates can also make signals more visible.
- All-red interval. An all-red clearance interval, where the traffic signals on all sides are red for a period of time, provides additional time for motorists already in the intersection to proceed through the intersection on the red indication while holding cross traffic on the cross street approaches. The red clearance interval is not intended to reduce the incidence of red light running; rather it is a safety measure.
- Appropriate yellow times. The likelihood of a motorist running a red light increases as the yellow interval is shortened. Lengthening the yellow interval, within appropriate guidelines, has been shown to significantly reduce the number of inadvertent red light violations.
- Traffic signal coordination. A coordinated traffic signal operation where motorists are able to move smoothly in platoons from intersection to intersection reduces the risk of red light violations and collisions.

Statutory authority for photo enforcement of required highway toll payment was provided by the Legislature in 1993. Section 316.1001(2)(d), F.S., provides for the admissibility of photographic evidence in enforcing toll payment violations. For example, toll facility operators use a digital

[12] U.S. Department of Transportation, *Red Light Camera Systems Operational Guidelines*, Publication No. FHWA-SA-05-002, January 2005.

camera to capture an image of the vehicle's license plate as the vehicle travels through the tolling zone. If the system receives payment from a SunPass, the image is deleted. If no payment is received, the image is processed for video tolling or is considered a toll violation and a Uniform Traffic Citation is issued by first class or registered mail. If the vehicle was not in the care and control of the registered owner at the time of the violation, the owner is afforded the opportunity to establish this as fact and identify the driver via an affidavit.

In response to the city of Pembroke Pines' inquiry regarding the use of unmanned cameras to enforce violations of traffic signals, the Attorney General issued an advisory legal opinion on July 12, 2005.[13] The opinion concluded it was within the local government's scope of authority "to enact an ordinance authorizing the city:

- to monitor violations of traffic signals within the city and to use unmanned cameras to monitor intersections and record traffic violations;
- to monitor violations of traffic signals within the city and to use unmanned cameras to record the license tag numbers of cars involved in such violations; and
- to advise a car owner that his or her license tag number has been recorded in a violation of the traffic laws."

The problem identified by a 1997 Attorney General opinion[14] was whether unmanned electronic traffic infraction detectors may independently be used as the basis for issuing citations for violations of traffic laws. Current statute requires that citations be issued when an officer "observes the commission of a traffic infraction."[15] The 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record violations of s. 316.075, F.S., but "a photographic record of a vehicle violating traffic control laws may not be used as the basis for issuing a citation for such violations." The 2005 opinion reached the same conclusion, stating, "legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices" as collected from a photographic record from unmanned cameras monitoring intersections.

Several local governments in Florida have participated in the use of red light cameras enforcement of red light violations. Due to the Attorney General's advisory opinions, the majority of local governments have used the cameras in pilot projects solely for data collection purposes or as a warning system to motorists, by sending a letter and attaching no penalty. Sarasota County, Manatee County, Palm Beach County, Polk County, and the cities of Orlando and Melbourne are examples of local governments that have at one time participated in a red light camera pilot project. The Palm Beach County Commission reported that their two-month pilot project using traffic cameras at a test intersection in Palm Beach County showed alarming results. One fifth of those who ran a red light did so two seconds after the light had changed. On average, fifty cars a day ran the light at the test site during the first month of the pilot project. During the second month of the project, following publicity about the program, that number dropped to less than twenty.[16]

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[13] Attorney General Opinion 05-41, dated July 12, 2005.
[14] Attorney General Opinion 97-06, dated January 24, 1997.
[15] S. 316.640(5)(a), F.S.
[16] Palm Beach County Board of County Commissioners, "FY 2007 State Legislative Program", available online here: http://www.pbcgov.com/legislativeaffairs/pdf/LegProg.pdf

The city of Gulf Breeze passed a local ordinance in 2005 allowing use of red light cameras. A violation by any motor vehicle running a red light is recorded by a traffic enforcement photographic system is a civil code violation[17] and a $100 civil fee is assessed against the motor vehicle owner. The Gulf Breeze City Council adopted the ordinance despite the opinion issued by the Attorney General. The Gulf Breeze Police Chief said after the signs went up, violations dropped from 150 a month to 95 in a little over a year.[18] According to the police chief, the vendor paid for the initial cost of setting up the program. In return, the vendor is paid a percentage of the $100 fine.

From 2008 to the present, over 30 municipalities have joined Gulf Breeze in enacting red light camera ordinances and placing cameras at intersections. The ordinances are broadly similar, and vary only in the amount of the fine (from $50 to $150, with some jurisdictions enacting multiple-offense increases up to $500), the nature of required signage (none, at the entrance to the city, or at the intersection), whether or not to engage in education before "going live," variations on the notice requirements sent to the motor vehicle owner, and variations on the process whereby a motor vehicle owner may challenge the violation.

Trauma Centers

A verified trauma center (center) is a hospital with an established trauma program which includes health care practitioners who specialize in the treatment of emergent conditions and facilities appropriate to treat those patients.[19] Part II of Chapter 395, F.S., provides for a tiered system of center verification within the 19 trauma service areas established in s. 395.402, F.S. The Florida Department of Health (DOH) selects hospitals for center designation through an application process. Standards for designation are based on national guidelines established by the American College of Surgeons.[20] Standards for designation as a pediatric center are developed in conjunction with Children's Medical Services.[21] Florida's centers treat over 40,000 patients annually.[22]

There are three types of centers:

- Level I centers which have formal trauma care research and education programs; provide support to Level II and pediatric centers and general hospitals; and participate in an inclusive system of trauma care.[23]
- Level II centers which serve as a resource for general hospitals and participate in an inclusive system of trauma care.[24]

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[17] Section 18-113, Code of Ordnances, City of Gulf Breeze, Florida.
[18] Ginny Laroe, "Police Research Traffic Cameras," *Sarasota Herald Tribune*, March 26, 2007.
[19] Florida Department of Health, *The Costs of Trauma Center Readiness*, July 17, 2002 (on file with the Transportation Committee).
[20] s. 395.401(2), F.S. Section 395.4025, F.S., delineates the DOH verified trauma center designation process. Detailed DOH standards for designation are found in *Trauma Center Standards, Department of Health, Pamphlet 150-9, January 2008*, see http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TraumaCntrStandards-DOHPamphlet150-9Jan2008.pdf (last visited March 14, 2010).
[21] *Id.*
[22] Florida Department of Health, Division of Emergency Medical Operations, Office of Trauma, see http://www.doh.state.fl.us/DEMO/Trauma/index.html (last visited March 14, 2010).
[23] s. 395.4001(6), F.S.

- Pediatric centers must be in substantial compliance with DOH rules relating to pediatric trauma center operation.[25]

There are a total of 21 verified centers in Florida: 7 Level I; 8 Level II, 4 Level II and Pediatric, and 2 Pediatric only centers.[26] A center may have more than one designation, for example, St. Mary's Medical Center in West Palm Beach carries both a Level II and a Pediatric center designation. Additionally, one provisional center exists in Ft. Pierce, Florida.

Centers are partially funded by traffic infraction fines deposited into the Administrative Trust Fund (Trust Fund) within the DOH. Currently, as provided in s. 318.18(15), F.S., the Department of Revenue (DOR) deposits $65 of the $125 traffic citation fine for failure to stop at a traffic signal, assessed by law enforcement officers, into the DOH Administrative Trust fund for distribution to trauma centers. DOH distributes these funds on a quarterly basis to Centers based on a distribution methodology as provided in s. 395.4036, F.S. The distribution methodology requires:

- Twenty percent to Centers that have a local funding contribution as of December 31. Distribution is based on a Center's trauma caseload for the most recent calendar year for which data is available.[27]
- Forty percent to Centers based on a Center's trauma caseload for the most recent calendar year for which data is available. The determination of caseload volume for distribution of funds is based on DOH's Trauma Registry data.[28]
- Forty percent to Centers based on the severity of a Center's caseload. Severity determination is made by DOH according to the International Classification Injury Severity Scores.[29]

Verified trauma centers are either subject to audit under s. 215.97, F.S., the Florida Single Audit Act, or, if not subject to audit requirements, must annually attest to DOH that proceeds from distributions under 395.4036, F.S., were used in compliance with that section.[30] Currently, traffic fine revenues do not directly fund any other type of health care facility or entity.

III. Effect of Proposed Changes:

This bill creates the "Mark Wandall Traffic Safety Act" and the "Mark Wandall Traffic Safety Program," and provides a definition of the term "traffic infraction detector" which would encompass a typical red light camera. The bill creates s. 316.0083, F.S., authorizing the use of cameras to enforce the requirements of s. 316.074(1) and s. 316.075(1)(c)1., F.S., for failing to stop at a traffic signal when so directed.

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[24] s. 395.4001(7), F.S.
[25] s. 395.4001(9), F.S.
[26] Florida Department of Health, Division of Emergency Medical Operations, Office of Trauma, see http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TextEquivforTraumaCentersMap.doc (last visited March 14, 2010).
[27] s. 395.4036(1)(a)1, F.S.
[28] s. 395.4036(1)(a)2, F.S.
[29] s. 395.4036(1)(a)3, F.S. The International Classification Injury Severity Score (ICISS) is a mathematical ratio used to predict and score patient survival from severe injuries. Rule 64J-2.019, F.A.C., provides for classifications of trauma patients based on the ICISS scoring system.
[30] s. 395.4036(3), F.S.

Authorization
The bill preempts the regulation and use of all traffic camera enforcement systems to the state; however, ch. 493, F.S., does not apply to the regulation of the use of cameras for enforcing provisions of ch. 316, F.S. In addition, the bill authorizes the Department to use traffic infraction detectors on state roads as defined in ch. 316, F.S. In addition, the bill authorizes counties and municipalities to use traffic infraction detectors on highways, streets or roads within their jurisdiction, and on state roads when permitted by the Department of Transportation.

The bill allows the Department, counties, and municipalities to authorize traffic infraction enforcement officers to issue uniform traffic citations for violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal when so directed and when identified by traffic infraction detectors. Traffic infraction enforcement officers must meet training and qualifications standards established by statute. In addition, traffic infraction enforcement officers of the counties or municipalities must be physically located in the county or adjacent county in which infractions that he or she enforces occur, or in the jurisdiction of the circuit court where the violation occurred when enforced by the department. The report of an officer and images provided by a traffic infraction detector are admissible in court and provide a rebuttable presumption the vehicle was used in a violation.

Fines
The bill provides a distinction between violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal when enforced by a law enforcement officer and violations of those sections when enforced by a traffic infraction enforcement officer using evidence obtained from a red light camera.

- The bill provides fines assessed for violations enforced by law enforcement officers are disbursed as follows:
  - The fine is increased from $125 to $158; however, there is no change to the assessment of points against a driver's license when a violation is enforced by a law enforcement officer.
    - $60 to be distributed as provided in s. 318.21, F.S.;
    - $30 to the General Revenue Fund;
    - $68 to Department of Revenue (DOR) for deposit into the Department of Health (DOH) Administrative Trust Fund for distribution, with the following further direction as provided in s. 395.4036(1), F.S., as to its distribution:
      - Eighteen percent distributed to verified trauma centers that have a local funding contribution as of December 31. Distribution of funds is based on trauma caseload volume for the most recent calendar year available;
      - Thirty-nine percent distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. Determination of caseload volume for distribution of funds is based on the DOH's Trauma Registry date;
      - Thirty-nine percent distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year

available. The determination of severity for distribution shall be based on DOH's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by DOH by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by DOH by rule.;

- Two-percent distributed to public hospitals that qualify for disproportionate share dollars and that are not verified trauma centers but are located in trauma service areas that do not have a verified trauma center based on their proportionate number of emergency room visits on an annual basis; and
- Two-percent distributed to provide an enhanced Medicaid payment to nursing homes that serve residents who require ventilator care and who are Medicaid recipients.;

- The bill provides fines assessed for violations enforced by traffic infraction enforcement officers are disbursed as follows:
  - $158 when enforced by the Department's traffic infraction enforcement officers.
    - $80 to the General Revenue Fund;
    - $45 distributed to the county for violation in unincorporated areas of the county or to the municipality for violations in incorporated areas of the municipality;
    - $20 to DOR for deposit into the DOH Administrative Trust Fund; however, the following further direction as to its distribution appears to have been inadvertently omitted from the amended distribution of fines in s. 395.4036(1), F.S.:
      - Eighteen percent distributed to verified trauma centers that have a local funding contribution as of December 31. Distribution of funds is based on trauma caseload volume for the most recent calendar year available;
      - Thirty-nine percent distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. Determination of caseload volume for distribution of funds is based on the DOH's Trauma Registry date;
      - Thirty-nine percent distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution shall be based on DOH's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by DOH by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by DOH by rule.;

        - Two-percent distributed to public hospitals that qualify for disproportionate share dollars and that are not verified trauma centers but are located in trauma service areas that do not have a verified trauma center based on their proportionate number of emergency room visits on an annual basis; and
        - Two-percent distributed to provide an enhanced Medicaid payment to nursing homes that serve residents who require ventilator care and who are Medicaid recipients.;
    - $5 to DOR for deposit into the Brain and Spinal Cord Injury Trust Fund; and
    - $8 for deposit into the Grants and Donations Trust Fund of the Agency for Health Care Administration.

- $158 when enforced by a county or municipality's traffic infraction enforcement officers.
    - $80 distributed to the county or municipality;
    - $45 to the General Revenue Fund; and
    - $20 to the DOR for deposit into the DOH Administrative Trust Fund, with the following further direction as provided in s. 395.4036(1), F.S., as to its distribution:
        - Eighteen percent distributed to verified trauma centers that have a local funding contribution as of December 31. Distribution of funds is based on trauma caseload volume for the most recent calendar year available;
        - Thirty-nine percent distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. Determination of caseload volume for distribution of funds is based on the DOH's Trauma Registry date;
        - Thirty-nine percent distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution shall be based on DOH's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by DOH by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by DOH by rule.;
        - Two-percent distributed to public hospitals that qualify for disproportionate share dollars and that are not verified trauma centers but are located in trauma service areas that do not have a verified trauma center based on their proportionate number of emergency room visits on an annual basis; and
        - Two-percent distributed to provide an enhanced Medicaid payment to nursing homes that serve residents who require ventilator care and who are Medicaid recipients.

- $5 to DOR for deposit into the Brain and Spinal Cord Injury Trust Fund; and
- $8 for deposit into the Grants and Donations Trust Fund of the Agency for Health Care Administration

In addition, the bill provides violations enforced by traffic infraction enforcement officers may not result in points assessed against the operator's driver's license.

Procedure for Noticing, Issuing and Contesting of Tickets
A notice of the violation must be sent to the registered owner of the motor vehicle within 30 days of the violation. The violator has 30 days to pay the fine in order to avoid court costs, fees, and the issuance of the traffic citation. If a person fails to pay within 30 days then a traffic citation must be sent by certified mail. Delivery of the citation constitutes notification. In addition, to the citation, notification must be sent to the registered owner specifying remedies available under s. 318.18(15), F.S. The notification must include a notice the owner has the right to review the photographic or electronic images or the streaming video evidence and must state the time and place where the evidence may be examined and observed.

The owner is responsible for payment of the fine unless the owner can establish the vehicle:

- Passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Passed through the intersection at the direction of a law enforcement officer;
- Passed through the intersection due to a medical emergency as evidenced by a separate affidavit from a licensed health care practitioner;
- Was, at the time of the violation, in the care, custody, or control of another person;
- Passed through the intersection because stopping at the red light would place the vehicle or vehicle passengers in imminent danger, as determined by a judge or presiding officer, or as evidenced in the streaming video or photographic images; or
- Received a Uniform Traffic Citation (UTC) for the alleged violation issued by a law enforcement officer.

The owner of the vehicle must, within 30 days of receipt of the traffic citation, furnish an affidavit to the appropriate governmental entity that provides detailed information supporting an exemption as provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued. Submission of a false affidavit is a second degree misdemeanor.

Upon receipt of an affidavit, the person designated as having care, custody, and control of the motor vehicle at the time of the violation may be issued a citation for a violation of s. 316.074(1), F.S., or s. 316.075(1)(c)1., F.S., when the driver failed to stop at a traffic signal. The affidavit is admissible in a proceeding for the purpose of providing proof the person identified in the affidavit was in actual care, custody, or control of the motor vehicle. The owner of a leased or rental vehicle for which a citation is issued for a violation of s. 316.074(1), F.S., or s. 316.075(1)(c)1., F.S., when the driver failed to stop at a traffic signal is not responsible for paying the citation and is not required to submit an affidavit if the motor vehicle involved in the violation is registered in the name of the lessee of such motor vehicle.

The bill requires a traffic infraction enforcement officer to provide by electronic transmission a replica of the citation data (when issued under s. 316.0083, F.S.) to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 business days after the issuance date of the citation to the violator.

Oversight and Accountability
The bill authorizes the placement and installation of traffic infraction detectors on the highways, county roads, and municipal streets under specifications developed by FDOT. If the state, a county, or a municipality installs a traffic infraction detector at an intersection, the respective governmental entity must notify the public a traffic infraction device may be in use at that intersection. Such signage must meet the specifications for uniform signals and devices adopted by FDOT pursuant to s. 316.0745, F.S., and must include notice if right on red vioaltion are being enforced. The CS notes that a citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where it is permissible to do so.

Any traffic infraction detector installed on the highways, roads, and streets must meet requirements established by the FDOT and must be tested at regular intervals according to specifications prescribed by FDOT by December 31, 2010. The bill provides a transitional implementation period for those counties and municipalities instituting a traffic infraction detector program on or before July 1, 2011, or entered into an agreement to acquire such equipment on or before July 1, 2011. These counties and municipalities are not required to meet the specifications provided by the bill until July 1, 2011.

Each county or municipality that operates a traffic infraction detector is required to submit an annual report to the Department. The Department must submit an annual summary report to the Governor and Legislature which must contain:

- a review of the information received from the counties and municipalities;
- a description of the enhancement of the traffic safety and enforcement programs; and
- recommendations, including any necessary legislation.

The first report must be submitted on or before December 31, 2011.

The bill provides a severability clause and is effective upon becoming law.

Prohibition
The CS prohibits a manufacturer or vendor from receiving a fee or remuneration based upon the number of citations issued due to a traffic infraction detector enforcement system. The CS also prohibits a violation of this act from being used as a basis to set auto-insurance rates.

Other Potential Implications:

Approximately 33 counties and municipalities currently operate red light camera systems in the state of Florida that will be affected by this.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases the fine from $125 to $158 for a violation of s. 316.074(1), F.S., and s. 316.075(1)(c)1., F.S.

To the extent local governments choose to permit the use of traffic infraction detectors there may be a fiscal impact to the private sector. Traffic infraction detectors will increase the scope of a local government's enforcement of red light violations; therefore, increasing the possibility of a motor vehicle owner receiving a citation for a red light violation. The fine for the violation, as determined by a traffic infraction detector, is $158.

There are a number of providers of traffic infraction detectors in Florida. These providers and others may realize a significant positive fiscal impact, depending on how each provider structures its services and negotiates with a given county or municipality.[31] The fine for a violation of current municipal traffic infraction detector ordinances in Florida ranges from $50 to $150. The amount of the fine received by the vendor varies based on negotiations between the vendor and the local government. Two important factors in the negotiation are whether the vendor will bear the up-front installation costs of the equipment, and the eventual ownership of the equipment. In the case where the vendor bears the costs of the initial installation, that vendor may receive a large percentage of the fine during the early years of the contract, in order to recoup its initial outlay. The local

[31] A 2002 audit by the California State Auditor noted that "[t]he fees and fee structures that local governments pay their vendors differ significantly." The audit indicated that some cities paid anywhere from $25 to $106 per citation to the vendor, with larger cities like San Francisco and Los Angeles paying additional flat fees to cover certain costs. The audit suggested that "[t]hese variances may be due to the relative size differences among the programs and each local government's negotiating ability." *Red Light Camera Programs: Although They Have Contributed to a Reduction in Accidents, Operational Weaknesses Exist at the Local Level*, Report No. 2001-125, California State Auditor, Bureau of State Audits, July 2002.

government may receive a larger share in later years, and will also ultimately own the equipment outright. Other jurisdictions may elect to negotiate a different arrangement whereby the vendor retains ownership of the equipment, and receives a fixed percentage of the fine over the course of the contract. A third arrangement involves a relatively large flat-fee monthly payment to the vendor, and a larger percentage of the fine retained by the local government.

C. Government Sector Impact:

To the extent the Department and local governments choose to permit the use of traffic infraction detectors there may be a fiscal impact to the Department and local governments for the cost of the acquisition, installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement between the Department, local government and any private vendor providing the equipment and service. The price of a traffic infraction detector ranges from $50,000 to $100,000 each. There may also be installation, maintenance and monitoring fees, based on the negotiated agreement.

There may be an increase in fine revenue for the local governments that choose to enact ordinances permitting the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior. There may be a decrease in fine revenues to local governments who are now collecting fines from traffic infraction detector ordinances adopted prior to the provisions of this CS becoming effective.

In 2008, there were 343,211 citations issued statewide by law enforcement officers for violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal when so directed. Due to the technological advantage of red light camera systems in enforcing red light running violations, estimating the margin of additional violations with any degree of accuracy is difficult. Further complicating any estimation, it is not clear how effective red light camera systems would be in modifying driver behavior, but some reduction in the initial number of violations should be expected subsequent to the implementation of a red light camera system.

The General Revenue Fund will receive $30 for each citation for a violation of s. 316.074(1), F.S., or s. 316.075(1)(c)1. F.S., enforced by a law enforcement officer.

The General Revenue Fund will receive $80 for each citation enforced by the Department's traffic infraction enforcement officer.

The General Revenue Fund will receive $45 for each citation enforced by a county or municipality's traffic infraction enforcement officer.

The Brain and Spinal Cord Injury Trust Fund will receive $5 for each citation enforced by the Department, a county, or a municipality's traffic infraction enforcement officer.

The Grants and Donations Trust Fund of the Agency for Health Care Administration will receive $8 for each citation enforced by the Department, a county, or a municipality's traffic infraction enforcement officer.

The Department of Health Administrative Trust Fund will receive $20 from each citation enforced by the department, a county or municipality's traffic infraction enforcement officer. Specifically, the fines are to be distributed as follows:

- 18 percent to verified trauma centers that have a local funding contribution ;
- 39 percent to verified trauma centers based on trauma caseload volume;
- 39 percent to verified trauma centers based on severity of trauma patients;
- 2 percent to public hospitals that qualify for disproportionate share dollars and that are not verified trauma centers but are located in trauma service areas that do not have a verified trauma center based on their proportionate number of emergency room visits on an annual basis; and
- 2 percent to provide an enhanced Medicaid payment to nursing homes that serve residents who require ventilator care and who are Medicaid recipients.

The bill provides that $80 of the revenue generated by the citations enforced by a county or municipality's traffic infraction enforcement officer is retained by the local jurisdiction. As a result, there may be an increase in fine revenue for any local governments that choose to permit the use of traffic infraction detectors. The amount of revenue is indeterminate, as the number of violations to be issued is unknown and depends on driver awareness and future behavior.

In addition, $45 of the revenue generated by the citations enforced by the department's traffic infraction enforcement officer is distributed to the respective local jurisdiction in which the infraction occurred.

The bill requires the Department to collect reports from municipalities and to prepare an annual report for the Legislature. The bill also requires the FDOT to prepare standards for traffic infraction detectors.

Local court systems may see a caseload increase, in the event that vehicle operators choose to contest citations as permitted under the CS. There may be an indeterminate cost to the local court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 14, 2010:

- Provides this act may be cited as the "Mark Wandall Traffic Safety Act."
- Amends the definition of "traffic infraction detector."
- Authorizes the Department to use traffic infraction detectors on state roads as defined in ch. 316, F.S., when permitted by FDOT.
- Authorizes counties and municipalities to use traffic infraction detectors on highways, streets or roads within their jurisdiction, and on state roads when permitted by FDOT.
- Provides a notification process prior to the issuance of a traffic citation within 60 days. Specifically, notice must be sent to the registered owner of the motor vehicle within 30 days of the violation. The violator has 30 days to pay the fine in order to avoid court costs, fees, and the issuance of the traffic citation. If a person fails to pay within 30 days then a traffic citation must be sent by certified mail. States that the *delivery* of a traffic citation constitutes notification.
- Provides an owner is responsible for payment of the fine unless the owner can establish the vehicle passed through the intersection because stopping at the red light would place the vehicle or vehicle passengers in imminent danger, as determined by a judge or presiding officer, or as evidenced in the streaming video or photographic images.
- Prohibits a manufacturer or vendor from receiving a fee or remuneration based upon the number of citations issued due to a traffic infraction detector enforcement system.
- Specifies that if a vehicle involved in a violation is owned by a leasing or rental business, the citation must be mailed to the person to whom the vehicle was leased or rented at the time of the violation.
- Requires the FDOT to establish the specifications for traffic infraction detectors on or before December 31, 2010.
- Specifies that the $45 dollars generated from penalties enforced by the department's traffic infraction enforcement officer shall be distributed to the county for violation in unincorporated area of the county, or to the municipality for violations in incorporated areas of the municipality.
- States that a citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where it is permissible to do so.

B. Amendments:

Barcode 436478 by Transportation on March 17, 2010:
Increases from 7 days to 10 days after the date of the violation that the citation must be mailed.

Barcode 904148 by Transportation on March 17, 2010:
Clarifies the due date of the annual report a county or municipality operating a traffic infraction detector must submit to the Department. Specifically, the report must be submitted by October 1 of each year.

Barcode 177538 by Transportation on March 17, 2010:

- Requires a traffic engineer to review and certify all other applicable safety-related engineering measures have been considered before installing a traffic infraction detector at an intersection.
- Clarifies that if the state, a county, or a municipality begins a traffic infraction detector program, the respective entity, at least 30 days prior to commencing such program, must conduct a public awareness campaign.
- Clarifies language for those counties and municipalities currently engaged in the use of traffic detectors or who enter into an agreement to acquire such equipment on or before July 1, 2011. Specifically, an affected county or municipality is not required to meet FDOT specifications until July 1, 2011, or 180 days after the issuance of FDOT's specifications, whichever occurs last.

Barcode 957138 by Transportation on March 17, 2010:
Prohibits a manufacturer or vendor from receiving a fee or remuneration based upon the number of citations issued due to a traffic infraction detector enforcement system.

Barcode 918732 by Transportation on March 17, 2010:
Corrects a technical deficiency to provide for the disbursement of $20 of the fine when enforced by the Department's traffic infraction enforcement officers that is deposited into the DOH Administrative Trust Fund.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

349734

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 157 - 171
4 and insert:
5
6 (b)1.a. Within 30 days after a violation, notification must
7 be sent to the registered owner of the motor vehicle involved in
8 the violation specifying the remedies available under 318.14,
9 and specifying that the violator must pay the penalty of $158 to
10 the department, county, or municipality, or furnish an affidavit
11 in accordance with paragraph (d) of this subsection, within 30
12 days following the date of the notification in order to avoid

349734

13 court fees, costs, and the issuance of a traffic citation. The
14 notification shall be sent by first-class mail.
15 b. Included with the notification to the registered owner
16 of the motor vehicle involved in the infraction must be a notice
17 that the owner has the right to review the photographic or
18 electronic images and the streaming video evidence that
19 constitutes a rebuttable presumption against the owner of the
20 vehicle. The notice must state the time and place and internet
21 location where the evidence may be examined and observed.

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434840

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Amendment**
2
3 Delete line 243
4 and insert:
5
6 the violation, provided that this information is provided to the
7 department, county, or municipality within 14 days of receipt of
8 the notification of the violation by the leasing or rental
9 business.

3

465550

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Amendment**
2
3 Delete line 252
4 and insert:
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6 vehicle. The notice must state the time and place and internet
7 location where the

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404340

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 271 - 275
4 and insert:
5 alleged violation of s. 316.074(1) or s. 316.075(1)(c)1.;
6 f. Stopping at the red light would place the vehicle or
7 vehicle passengers in imminent danger, as determined by a judge
8 or presiding officer, or as evidenced in the streaming video or
9 photographic images of the violation; or
10 g. The vehicle was, at the time of the violation, an
11 authorized emergency vehicle acting in response to an emergency
12 call.

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222394

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 337 - 346
4 and insert:
5
6 (b) On or before December 31, 2012, and annually
7 thereafter, through December 31, 2017, the department shall
8 provide a summary report to the Governor, the President of the
9 Senate, and the Speaker of the House of Representatives
10 regarding the use and operation of traffic infraction detectors
11 under this section, along with the department's recommendations
12 and any necessary legislation. The summary report must include a

222394

13 review of the information submitted to the department by the
14 counties and municipalities and must describe the enhancement of
15 the traffic safety and enforcement programs.
16 (c) Subsection (4) is repealed effective January 1, 2018.
17
18 ========== T I T L E A M E N D M E N T ==========
19 And the title is amended as follows:
20
21 Delete line 38
22 and insert:
23
24 to the Governor and Legislature; providing that the
25 required reports be terminated after a specified date;
26 amending s. 316.0745,

6

802862

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 421 - 461
4 and insert:
5
6 3. For the purpose of enforcing s. 316.0083, the department
7 may designate employees as traffic infraction enforcement
8 officers. A traffic infraction enforcement officer must
9 successfully complete instruction in traffic enforcement
10 procedures and court presentation through the Selective Traffic
11 Enforcement Program as approved by the Division of Criminal
12 Justice Standards and Training of the Department of Law

802862

13 Enforcement, or through a similar program, but the traffic
14 infraction enforcement officer need not otherwise meet the
15 uniform minimum standards established by the Criminal Justice
16 Standards and Training Commission for law enforcement officers
17 or auxiliary law enforcement officers under s. 943.13. This
18 subparagraph does not authorize the carrying of firearms or
19 other weapons by a traffic infraction enforcement officer and
20 does not authorize a traffic infraction enforcement officer to
21 make arrests. The department's traffic infraction enforcement
22 officers must be physically located in the jurisdiction of the
23 circuit court in which the violation occurred.
24 (5)(a) Any sheriff's department or police department of a
25 municipality may employ, as a traffic infraction enforcement
26 officer, any individual who successfully completes instruction
27 in traffic enforcement procedures and court presentation through
28 the Selective Traffic Enforcement Program as approved by the
29 Division of Criminal Justice Standards and Training of the
30 Department of Law Enforcement, or through a similar program, but
31 who does not necessarily otherwise meet the uniform minimum
32 standards established by the Criminal Justice Standards and
33 Training Commission for law enforcement officers or auxiliary
34 law enforcement officers under s. 943.13. Any such traffic
35 infraction enforcement officer who observes the commission of a
36 traffic infraction or, in the case of a parking infraction, who
37 observes an illegally parked vehicle may issue a traffic
38 citation for the infraction when, based upon personal
39 investigation, he or she has reasonable and probable grounds to
40 believe that an offense has been committed which constitutes a
41 noncriminal traffic infraction as defined in s. 318.14. In

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42 addition, any such traffic enforcement officer may issue a
43 traffic citation under s. 316.0083.
44 (b) For purposes of enforcing s. 316.0083, any sheriff's
45 department or police department of a municipality may designate
46 employees as traffic

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: SB 340

INTRODUCER: Senator Wilson and others

SUBJECT: Ex-Offenders/Licensing and Employment

DATE: April 19, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	**Favorable**
2.	Clodfelter	Cannon	CJ	**Favorable**
3.	Daniell	Maclure	JU	**Favorable**
4.	Frederick	Coburn	WPSC	**Pre-meeting**
5.				
6.				

I. Summary:

The bill makes changes to Florida's laws relating to the restoration of civil rights, restrictions on the employment of ex-offenders, negligent hiring, and sealing and expunging criminal records. Specifically, the bill:

- Provides that restoration of civil rights cannot be required as a condition of eligibility for public employment or to obtain a license, permit, or certificate.
- Requires state agencies and regulatory boards to submit to the Governor and certain legislative officers a report that outlines current disqualifying policies on the employment or licensure of ex-offenders and possible alternatives that are compatible with protecting public safety.
- Requires an employer to review and consider the results of a criminal history background investigation and take certain steps consistent with the findings of the investigation in order to satisfy a statutory presumption against civil liability for negligent hiring.
- Provides that an ex-offender may lawfully deny or fail to acknowledge any arrests or subsequent dispositions covered by a sealed or expunged record and that a person cannot be liable for perjury for doing so on an employment application.
- Permits the subject of an expunged record to receive the contents of that record without a court order.
- Allows for a second sealing of a criminal record.

This bill substantially amends the following sections of the Florida Statutes: 112.011, 768.096, 943.0585, and 943.059.

II. Present Situation:

Restoration of Civil Rights

Section 112.011(1)(a), F.S., provides that a criminal conviction does not automatically disqualify a person from eligibility for public employment. However, a person who has been convicted of a felony or first-degree misdemeanor may be denied employment if the crime is directly related to the position sought. This section does not refer to restoration of civil rights.

Section 112.011(1)(b), F.S., relates to the impact of a prior criminal conviction on obtaining a license, permit, or certificate from a public agency to engage in an occupation, trade, vocation, profession, or business. If a person has had his or her civil rights restored, the status of having a prior conviction is not necessarily a disqualification. However, the conviction may be disqualifying if the specific crime for which the person was convicted was a felony or first-degree misdemeanor that is directly related to the position for which the license, permit, or certificate is required. In addition, some licensing boards have interpreted this statute to imply a requirement for restoration of civil rights.[1]

Counties and municipalities that are hiring for positions deemed to be critical to security or public safety, law enforcement agencies, and correctional agencies are exempted from the provisions of s. 112.011(1), F.S.[2] Fire departments are also prohibited from hiring firefighters with a prior felony conviction sooner than four years after expiration of the sentence unless the applicant has been pardoned or had his or her civil rights restored.

According to a report prepared by the Public Safety Unit of the Office of Policy and Budget within the Executive Office of the Governor (EOG), the overwhelming majority of licenses that were denied in the two years prior to the report were due to statutory restrictions relating to criminal convictions and not for a requirement for civil rights restoration.[3] More than 4,000 licenses were denied during the prior year, but only 14 were denied due to a lack of restoration of civil rights. These denials were by the Department of Health's (DOH) Board of Nursing (12 denials)[4] and the Department of Business and Professional Regulation's (DBPR) Construction Industry Licensing Board (two denials).[5] There is no way to estimate how many persons were deterred from applying for licensing because of an actual or perceived requirement for civil rights restoration.

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[1] In the space of two months, three District Courts of Appeal overturned licensing board decisions to deny licenses based upon interpreting s. 112.011(1)(b), F.S., to require restoration of civil rights. *See Yeoman v. Construction Industry Licensing Bd.*, 919 So. 2d 542 (Fla. 1st DCA 2005); *Scherer v. Dep't of Business and Professional Regulation*, 919 So. 2d 662 (Fla. 5th DCA 2006); *Vetter v. Dep't of Business and Professional Regulation, Electrical Contractors' Licensing Bd.*, 920 So. 2d 44 (Fla. 2d DCA 2005).

[2] Section 112.011(2), F.S.

[3] Public Safety Unit, Office of Policy and Budget, Executive Office of the Governor, *Report on the Survey of License and Employment Restrictions in State Agencies* (Oct. 2007).

[4] The Board of Nursing removed its discretionary requirement of civil rights restoration in November 2007.

[5] Section 489.115(6), F.S., was amended by Senate Bill 404 in 2007 to provide that the Construction Industry Licensing Board cannot deny a contractor's license based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights. If the applicant was convicted of a felony, licensure denial may be based upon the severity of the crime, the relationship of the crime to contracting, or the potential for public harm. The Board is also required to consider the length of time since the commission of the crime and the rehabilitation of the applicant.

The EOG's review found that the DOH and the Department of Highway Safety and Motor Vehicles restrict some licenses based upon a requirement for restoration of civil rights.[6] Outside of the Governor's agencies, the Department of Agriculture and Consumer Services and the Department of Financial Services have both statutorily mandated and non-mandated requirements for restoration of civil rights.

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction. Other civil rights that are lost in accordance with statute include the right to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses.[7]

The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members pursuant to Article IV, Section 8(a), of the Florida Constitution. In April 2007, the Governor and Cabinet changed the Rules of Executive Clemency so that more convicted felons who have completed their sentences are eligible for restoration of civil rights. Between July 1, 2007, and September 30, 2008, 123,232 felons had their rights restored.[8] This contrasts with 11,002 restorations during Fiscal Year 2005-2006, the last full fiscal year before the clemency rules were amended.[9] Many offenses for which restoration of rights was either excluded or delayed for a period of years are now eligible for restoration after verification that all qualifying conditions have been met.

Eligibility for restoration of civil rights requires that the felon have completed all sentences, that all conditions of supervision have been satisfied or expired, and that there is no outstanding victim restitution. Thereafter, felons fall into one of three categories based upon the Clemency Board's assessment of the seriousness of the offense:

- Immediately eligible for automatic approval of restoration;
- Immediately eligible for restoration without a hearing; or
- Eligible for restoration without a hearing after 15 years.

The Florida Parole Commission acts as the agent of the Clemency Board in verifying eligibility, and has prioritized processing of the automatic approval cases for which it conducts a less extensive review. A more extensive investigation is conducted for those who are immediately

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[6] It appears that there are also statutorily mandated requirements for civil rights restoration related to the Department of Revenue (s. 206.026, F.S. – terminal supplier, importer, exporter, blender, carrier, terminal operator, or wholesaler fueler license); and the DBPR (s. 447.04, F.S. – labor union business agent license; s. 550.1815, F.S. – horseracing, dogracing, or jai alai fronton permit).

[7] Section 944.292, F.S., provides: "[u]pon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution."

[8] Florida Parole Commission, *Annual Report 2007-2008*, 21 (Dec. 31, 2008), *available at* https://fpc.state.fl.us/PDFs/FPCannualreport200708.pdf (last visited Apr. 10, 2010).

[9] Comm. on Criminal Justice, The Florida Senate, *Rules for Restoration of Civil Rights for Felons and Impacts on Obtaining Occupational Licenses and Other Opportunities*, 6 (Interim Report 2008-114) (Dec. 2007), *available at* http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-114cj.pdf (last visited Apr. 10, 2010).

eligible for restoration without a hearing. Due to the large number of persons who are eligible for automatic approval, persons who are immediately eligible for restoration without a hearing may face a delay of several years before their rights are restored.

The Florida Department of Law Enforcement's criminal history database includes records of approximately 800,000 persons who have been convicted of a felony in Florida. This is not an accurate reflection of the number of Florida residents who have lost their civil rights, because it includes persons who have died or left the state and does not include persons who were convicted in other jurisdictions. However, it illustrates the magnitude of the population that is affected by loss of civil rights.

There were 101,437 inmates in the custody of the Florida Department of Corrections as of December 31, 2009. Almost 90 percent of these inmates will be released one day. During the 2007-2008 fiscal year, 36,723 inmates were released from prison,[10] and the current recommitment rate indicates that almost 33 percent of them will be recommitted within three years.[11]

The federal Second Chance Act of 2007 (act) is designed to help inmates safely and successfully transition back into the community. Among its many initiatives, the act authorizes the U.S. Justice Department's National Institute of Justice and the Bureau of Justice Statistics to conduct reentry-related research. The National Institute of Justice has found that one year after release, up to 60 percent of former inmates are not employed. The act also establishes a national resource center to collect and disseminate best practices and provide training on and support for reentry efforts. It also provides an initiative to provide specific information on health, employment, personal finance, release requirements, and community resources to each inmate released.

Restrictions on the Employment of Ex-Offenders

State agencies restrict occupational licenses and employment to ex-offenders based upon statute, administrative rule, or agency policy. The nature and variety of occupational licenses and employment with state agencies dictates that different standards will apply to different types of employees and licensees.

Restrictions based on agency policy that are not adopted as rules could be problematic. Chapter 120, F.S., specifies that a "rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.[12] Rulemaking is not a matter of agency discretion – each agency statement defined as a rule must be adopted through the rulemaking procedure provided in ch. 120, F.S., as soon as feasible and practicable.[13]

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[10] Florida Department of Corrections Annual Report FY 2007-2008, p. 66. The number reported in the text of this analysis does not include inmates released by reason of death.
[11] Transcript of remarks by Secretary Walter A. McNeil at the Restoration of Rights Summit in Tallahassee, Florida, June 17, 2008, viewed on September 24, 2008 at http://free-rein.us/McNeil_Restoration_of_Rights_Summit_speech_06_18_08.pdf.
[12] Section 120.52(15), F.S.
[13] Section 120.54(1)(a), F.S.

Agencies should not impose employment or licensing restrictions on applicants that are not based on statute or rules adopted pursuant to statutory authority.

The Governor's Ex-Offender Task Force (Task Force) was established in 2005 to "help improve the effectiveness of the State of Florida in facilitating the re-entry of ex-offenders into their communities so as to reduce the incidence of recidivism."[14] The Task Force estimated that almost 40 percent of the 7.6 million jobs in Florida are subject to criminal background checks or restrictions based on criminal history. The restrictions include requiring restoration of civil rights, disqualification based on commission of specific crimes, or requiring the passing of a background check under ch. 435, F.S. Less defined restrictions require assessment of whether the applicant has good moral character or has committed an act or crime of moral turpitude. The Task Force found that convicted felons face significant barriers to employment because of these restrictions.

After the Task Force found that many state laws and policies imposed restrictions on the employment of ex-offenders, and that no comprehensive review of those restrictions had been undertaken, executive agencies were instructed to produce for the Task Force a report detailing all employment restrictions and disqualifications based on criminal records.[15] The Task Force released its Final Report to the Governor in November 2006, and recommended that employment restrictions be studied, specifically the "feasibility of a single background check act that would streamline, organize, and cohere employment restrictions based on the nature of the job."[16]

In October 2007, the Governor's Office made a presentation to the Senate Criminal Justice Committee addressing licensing and employment restrictions, based on surveys of non-Cabinet agencies. Nine agencies reported licensing restrictions, citing criminal history or restoration of civil rights as the legal basis for the restrictions. The presentation noted that pursuant to s. 112.011, F.S., an agency *may* deny employment by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and *directly related* to the position of employment sought.

Pursuant to s. 112.011(1)(a), F.S., a person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime, except for those drug offenses specified in s. 775.16, F.S. However, a person may be denied employment by those entities by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought. Specific restrictions for licenses and employment are found throughout the Florida Statutes, as detailed in the Governor's Survey of License and Employment Restrictions in State Agencies, presented to the Senate Criminal Justice Committee in October 2007.

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[14] Executive Order No. 05-28.
[15] Executive Order No. 06-89.
[16] Governor's Ex-Offender Task Force, *Final Report to Governor Jeb Bush,* 27 (Nov. 2006), *available at* http://www.aecf.org/upload/PublicationFiles/Final%20Report%20of%20Florida%20Ex-Offender%20Task%20Force.pdf (last visited Apr. 10, 2010).

Liability for Negligent Hiring

In civil actions premised upon the death or injury of a third person as a result of intentional conduct of an employee, the employer is presumed not to have been negligent in hiring the employee if, prior to hiring, the employer conducted a background check on the employee which revealed no information that would cause an employer to conclude that the employee was unfit for work.[17] The background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE or department).[18]
- Reasonable efforts to contact references and former employers.
- A job application form that includes questions requesting detailed information regarding previous criminal convictions.
- A written authorization allowing a check of the applicant's driver's license record if relevant to the work to be performed.
- An interview of the prospective employee.[19]

If the employer elects not to conduct an investigation prior to hiring, there is no presumption that the employer failed to use reasonable care in hiring an employee.[20]

Sealing and Expunction of Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The department can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the FDLE.[21] Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The department, on the other hand, is required to retain expunged records. When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first-degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.[22]

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[17] Section 768.096(1), F.S.
[18] The employer must request and obtain from FDLE a check of the information as reported in the Florida Crime Information Center system as of the date of the request. Section 768.096(2), F.S.
[19] Section 768.096(1)(a)-(e).
[20] Section 768.096(3), F.S.
[21] Section 943.0585(4), F.S.
[22] Section 943.0585(4)(c), F.S.

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,[23] petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.[24]

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction.[25] It is then up to the court to decide whether the sealing or expunction is appropriate.

A criminal history record may be expunged by a court if the petitioner has obtained a certificate of eligibility and swears that he or she:

- Has not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses.
- Has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have sealed or expunged.
- Has not obtained a prior sealing or expunction.
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court.[26]

In addition, the record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.[27] The same criteria apply for sealing a criminal history record under s. 943.059, F.S. Any person knowingly providing false information on the sworn statement commits a felony of the third degree.[28]

The Legislature also prohibits criminal history records relating to certain offenses in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication was withheld, from being sealed or expunged.[29]

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[23] These types of employment include: law enforcement, the Florida Bar, working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities, or a Florida seaport.
[24] Section 943.0585(4)(a), F.S.
[25] Section 943.0585(2), F.S.
[26] Section 943.0585(1)(b), F.S.
[27] Section 943.0585(2)(h), F.S.
[28] Section 943.0585(1), F.S.
[29] These offenses include the following: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child; lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

III. Effect of Proposed Changes:

Section 2: Restrictions on the Employment of Ex-Offenders

Each state agency, including professional and occupational regulatory boards, will submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2010, and every eight years thereafter. This report will include policies imposed by the agency or board that disqualify a person who has been convicted of a crime from employment or licensure. The report will also contain a review of these restrictions and their availability to prospective employees. The report will take into account these disqualifications and consider less restrictive ways to protect public safety while offering employment opportunities for ex-offenders. If any restriction is based on language referring to "good moral character" or "moral turpitude," the report may propose restrictions that more precisely describe the basis for employment decision making.

Section 3: Restoration of Civil Rights

Section 112.011(1)(b), F.S., is rewritten to exclude any reference to restoration of civil rights. The bill amends the original language to allow a government entity to deny an application for a license, permit, or certificate to engage in an occupation, trade, vocation, profession, or business if the applicant was convicted of a felony or first-degree misdemeanor relevant to the standards normally associated with, or determined by the regulatory authority to be necessary for the protection of the public or other parties for which the license, permit, or certificate is required.

Paragraph (c) is added to expressly preclude disqualification of a person from receiving a license, permit, or certificate or from obtaining public employment on the grounds that his or her civil rights have not been restored. This applies notwithstanding any provision in another section of Florida Statutes, though it does not apply to applications for a license to carry a concealed weapon. However, the exemptions within the section of law for county and municipal positions, which are deemed to be critical to security or public safety, law enforcement agencies, correctional agencies, and fire departments are retained.

The effect of these revisions to s. 112.011(1), F.S., is that the restoration of civil rights will no longer be used as a measure of fitness for public employment and licensure. This recognizes that restoration of civil rights is dependent upon completion of sentence, not upon a demonstration of rehabilitation or suitability for employment. Public safety may be increased by precluding consideration of restoration of civil rights as a validation that a person is fit for employment regardless of the specifics of his or her criminal background.

In addition, otherwise qualified persons will not be precluded from employment if they have a prior conviction for a crime that is not related to the position or permit which they seek. These increased employment opportunities should have some impact in reducing recidivism, thus reducing the direct costs of crime as well as costs of re-incarceration. With the link between civil rights restoration and ex-offender employment eligibility separated, regulatory agencies and licensing boards may be more likely to establish criteria significant to their specific trades that can more effectively satisfy public safety concerns.

Section 4: Employer Presumption Against Negligent Hiring

The bill amends s. 768.096, F.S., to revise an existing statutory presumption against a civil claim of negligent hiring. Current law allows an employer to receive the presumption by satisfying any one of the items in the statutory list. The bill replaces the conjunction "or" with "and" in the list of items that must be included in the employee background investigation. As a result, an employer must complete each item in the list in order to satisfy the negligent hiring presumption.

The bill also revises the criminal background investigation required as one of the elements of the presumption. The bill provides that the employer must review and consider the results of the criminal background investigation and if the prospective employee has engaged in past criminal conduct, the employer must: (1) make sure the employee is not assigned to particular work that will place the employee in a position in which conduct that is similar to the employee's past criminal conduct is facilitated; and (2) determine whether other information revealed by the investigation demonstrated the unsuitability of the employee for the particular work or the context of the employment in general.

Sections 5 and 6: Sealing and Expunction of Criminal History Records

The bill makes the following changes to the statutes governing the sealing and expunction of criminal records:

- Requires the clerk of court to place on his or her website information on the availability of criminal history record sealing and expunction, including a link to the Florida Department of Law Enforcement's website for sealing and expunction applications and information.
- Clarifies how a potential applicant can answer a "conviction" question on a job or licensing application concerning sealed or expunged records by specifying that a person may lawfully deny or fail to acknowledge the arrests and subsequent dispositions covered by the sealed or expunged record.
- Clarifies that no person can be liable for perjury when denying or failing to acknowledge the arrests and subsequent dispositions, including when asked on an employment application.
- Permits the contents of an expunged record to be disclosed to the subject of the record without requiring him or her to obtain a court order.
- Allows for a second sealing of a criminal record if the subject of the record has been crime-free for five years (meaning no subsequent arrests have occurred since the date of the court order for the initial criminal history record expunction or sealing). The current requirements and other provisions in the sealing and expunction statutes would continue to apply when seeking a second sealing under the bill.

Section 7: Effective Date

The bill provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Florida Department of Law Enforcement estimates that $573,675 in annual revenue will be generated from the certificate of eligibility fees. This is based on an estimated 7,649 new applications the department anticipates it will receive ($75 per application x 7,649 additional applications each year).[30]

B. Private Sector Impact:

The bill may have a positive fiscal impact by providing more job opportunities for convicted felons. That could reduce recidivism, thus reducing the direct costs of crime as well as costs of re-incarceration.

C. Government Sector Impact:

While the Florida Department of Law Enforcement anticipates that additional resources will eventually be required to handle the increasing workload generated by the provision in the bill which allows persons to apply for a second criminal history records sealing, it indicates that any workload increases for the Fiscal Year 2010-2011 can be absorbed within existing resources.

VI. Technical Deficiencies:

The bill allows for a second sealing of a criminal record if the subject of the record has been crime-free for five years. The bill adds this exception several places in s. 943.059, F.S. (see lines 537, 580, and 613); however, the exception is not added to substantially similar sections of law

[30] Florida Dep't of Law Enforcement, *Senate Bill 340 Relating to Ex-offenders/Licensing and Employment/Sealed Records*, 2 (Jan. 21, 2010) (on file with the Senate Committee on Judiciary).

within s. 943.0585, F.S. (see lines 245, 319, and 366). It is unclear if the exception needs to be added to s. 943.0585, F.S., which relates to court-ordered expunction of criminal history records.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: SB 2250

INTRODUCER: Senator Alexander

SUBJECT: FL Financial Management Information System

DATE: April 19, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Wilson	GO	**Favorable**
2.	Fournier	McKee	FT	**Favorable**
3.	Hawkins	Coburn	WPSC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

The bill establishes a new governance model for next generation changes to the financial infrastructure for State of Florida agencies affecting the principal subsystems of accounting (FLAIR); cash management (CMS); personnel (*PeopleFirst*); procurement (*MyFlorida Marketplace*); appropriations (LAS/PBS); and revenue collection (SUNTAX). An Agency for Enterprise Business Services is constituted as a separate, independent entity within the Department of Financial Services.

This bill substantially amends the following sections of the Florida Statutes: ss. 215.90; 215.91; 215.92; 215.93; 215.94; 215.95; 17.11; 216.102; 216.141; and 216.237.

The bill creates the following sections of the Florida Statutes: ss. 215.922; 215.93; 215.924; and 215.961.

The bill repeals the following sections of the Florida Statutes: ss. 215.96 and 570.07(41).

II. Present Situation:

The Florida Financial Management Information System (FFMIS) Act

The Florida Financial Management Information System (FFMIS) Act, authorized in ss. 215.90 through 215.96, F.S., was established to plan, implement and manage a unified information system which provides fiscal, management, and accounting information. The FFMIS Act established the Florida Management Information Board (FMIB) and the FFMIS Coordinating Council (Council). The FMIB is comprised of the Governor and Cabinet, and has overall

responsibility for managing and overseeing the development of Florida Financial Management Information System pursuant to s. 215.95, F.S., including establishing financial management policies and procedures for executive branch agencies. The Council is comprised of the members of the Cabinet, the secretary of the Department of Management Services, and the director of the Governor's Office of Policy and Budget. Among other duties, the Council is to approve all FFMIS subsystem designs and modifications prior to implementation and to make recommendations to the FMIB on policy alternatives to ensure coordination between the subsystems as defined in ss. 215.93 and 215.96, F. S.

There are five FFMIS subsystems which must be designed, implemented, and operated pursuant to the act. Each has a statutorily-identified functional owner as well as additional statutory requirements as follows:

- Planning and Budgeting (LAS/PBS) – The Executive Office of the Governor is the functional owner. The system must also be designed, implemented, and operated pursuant to ch. 216, F.S.
- Florida Accounting Information Resource (FLAIR) – The Department of Financial Services is the functional owner. The system must also be designed, implemented and operated pursuant to ss. 17.03, 215.86, 216.141, and 216.151, F.S.
- Cash Management System (CMS) – The Chief Financial Officer is the functional owner.
- Purchasing (*MyFloridaMarketplace)* – The Department of Management Services is the functional owner.
- Personnel Information (*PeopleFirst*) – The Department of Management Services is the functional owner. The system must also be designed, implemented, and operated pursuant to s. 110.116, F. S.

The FFMIS Act identifies each subsystem's general functional requirements, but allows each functional owner to establish additional functions unless they are specifically prohibited by the FFMIS Act. Functional owners may not establish or maintain additional subsystems which duplicate any of the FFMIS subsystems.

The FMIB approved a strategic plan in March 14, 2000, that authorized the replacement of the FFMIS subsystems with an enterprise-wide financial management system that integrates financial information and standardizes policies and information. This system has never been implemented. The FMIB has not made any decisions relating to policy or the FFMIS subsystems since February 2001 when it modified the strategic plan to allow the use of outsourcing as a means to replace or enhance the functionality of the FFMIS subsystems. No subsystem designs or modifications have been brought to the FMIB for review or approval since that time. As a result, the overall governance and management of each FFMIS subsystem has been "unofficially delegated" to each functional owner and each functional owner has autonomously pursued an independent path for development and enhancement of its subsystem. The FMIB has been inactive since February 2005.

Pursuant to s. 215.95(2)(a), F.S., the FMIB is required to adopt rules, policies and procedures; however, no rules have been promulgated and no documentation was found to indicate FMIB

issued or adopted any fiscal management policies and procedures or standardized business practices as authorized by the Act.[1]

Factors Contributing to the Ineffectiveness of the FFMIS Act

The ineffectiveness of the FFMIS Act has lead to an uncoordinated approach to making decisions for the FFMIS and its subsystems. A review of the statutes relating to FFMIS and FFMIS subsystems identified conflicts, inconsistencies, or deficiencies which have contributed to the ineffective governance structure that currently exists.[2] The following is a list of factors identified in this review:

- The FFMIS statute does not clearly define the goal of the Florida Financial Management Information System as being an enterprise system as identified in the 2001 FFMIS Strategic Plan.
- The FFMIS statute does not provide authority to the FMIB to define, control or limit the business services to be provided by the Florida Financial Management Information System and its subsystems. Leaving the functionality for each subsystem undefined makes it difficult to develop requirements and difficult to estimate the cost of system replacement.
- The Financial Management Information Board has failed to enforce compliance with FFMIS Act provisions, indicating a lack of executive ownership, sponsorship and responsibility. Section 215.95(2)(b), F.S., authorizes FMIB to issue orders to executive branch agencies to enforce implementation of and compliance with provisions relating to FFMIS.
- Each subsystem owner independently requests and controls funding for issues relating to its subsystem's modification or replacement.
- The FMIB and the FFMIS Coordinating Council are not currently staffed to perform the functions required by the FFMIS Act.

FFMIS Subsystem Contracts

In the near future the state faces significant decisions relating to FFMIS subsystems including whether to:

- Renew, modify or replace the contract for the state's purchasing subsystem. The contract for *MyFloridaMarketplace* began in November, 2002, and was scheduled to expire in November, 2010. This contract committed $115 million. In July, 2009, the contract was renewed and extended through December, 2012.
- Renew, modify or replace the contract for the state's personnel information subsystem. The contract for *PeopleFirst*, which began August, 2002, was scheduled to expire in August, 2011. The contract committed $350 million. In 2010, the contract was renewed and extended through August, 2016.
- Replace the current accounting subsystem. Project Aspire was intended to replace the accounting and cash management subsystems, but was suspended. The total project cost including interest payments from Fiscal Year 2002-2003 through Fiscal Year 2010-11 is estimated to be $96.5 million.

[1] Chapter 43, F.A.C., contained rules promulgated by the Fiscal Accounting Information Board, the predecessor of the FMIB. Both rules were repealed December 12, 1996, prior to the creation of the current entities by Chapter 97-286, L.O.F.
[2] Issue Brief 2009-321, by the Fiscal Policy and Calendar Committee.

The Financial and Cash Management Task Force

In 2008, the Financial and Cash Management Task Force (Task Force) was established in s. 17.0315, F.S., and directed to create a strategic business plan for a successor financial and cash management system. The business plan must address the interoperability of the successor system with existing systems. The Task Force submitted its strategic business plan and recommended legislation on January 30, 2009.

III. Effect of Proposed Changes:

Section 1. This amends the existing short title in s. 215.90, F.S., to label the subsequent sections of the bill as the Florida Financial Management Information System Act (FFMIS).

Section 2. Section 215.91, F.S., is amended to transfer from the existing multi-agency FFMIS participants to a successor single entity, the Agency for Enterprise Business Services (AEBS), all of the authority for the decisions on the development of succeeding business information systems.

Section 3. Section 215.92, F.S., is amended to provide new definitions of terms that will govern the operation of the successor systems. These terms identify the scope as being across state agencies with a reach that extends to the subsystem level in terms of design, execution, modification, enhancement and replacement. State agencies affected will be those subject to ch. 216, F.S.

Section 4. New section 215.922, F.S., creates the Agency for Enterprise Business Services (AEBS) within the Department of Financial Services. The agency head is the Governor and Cabinet in their collegial capacity as the Financial Management Information Board. The AEBS is administratively housed within the department and the principal official is an executive director who shall be subject to Senate confirmation.

Section 5. New section 215.923, F.S., creates an advisory body, the Enterprise Business Services Council, as a successor to the duties now provided by the existing FFMIS Coordinating Council. The council membership will be composed of the functional owners of each of the FFMIS subsystems as well as undesignated appointees by the cabinet officers and the executive director of AEIT.

Section 6. New s. 215.924, F.S., provides the AEBS with the statutory mission to develop and annually update a multi-year Enterprise Financial Business Strategic Plan to be submitted to the Governor and the legislature. The plan must:

- Describe the services to be provided along with all of the system and subsystem components;
- Provide an estimate of the total financial and human capital costs of each subsystem;
- Identify all of the critical interconnectivity required for there to be coordinated and standardized information exchanges among the systems;
- Provide project management and governance for enhancement or replacement projects with cumulative funding costs in excess of $10 million.

- Recommend improvements to processes reporting and data security and integrity which enhance management, accountability, and eliminate redundancy among the subsystems.

Section 7. Section 215.93, F.S., is amended to specify the purposes of the successor FFMIS, as amended by this bill. The state accounting system, FLAIR, is renamed the Financial Management Subsystem and the separate System for UNified TAXation, SUNTAX, now administered by the Department of Revenue, will be incorporated into the new FFMIS. Each state agency must submit to the council a business case analysis for modification or replacement of any subsystem for which it is responsible.

Section 8. A new s. 215.94, F.S., is created to specify the duties of each state agency responsible for a FFMIS subsystem. This section makes nomenclature changes consistent with the revised duties and responsible parties and identifies the Department of Revenue as the functional owners of the SUNTAX subsystem. The new FFMIS must provide for a data-gathering and distribution facility for the collection and storage of statewide financial information to assist decision-makers in carrying out their responsibilities.

Section 9. Section 215.95, F.S., is amended to provide the Governor and Cabinet, in their collegial capacity as the Administration Commission[3] and the FFMIB, as the approval body for the FFMIS strategic and operational plans, the approval of project milestones, and the resolution of agency disputes.

Section 10. This repeals s. 215.96, F.S., which assigns duties to the existing FFMIS Coordinating Council.

Section 11. New s. 215.961, F.S., is created to require state agencies to follow the policies developed by the AEBS for the successor financial management system and to establish July 1, 2014, as the nominal date for the transition to enterprise business services. Services migration plans from state agencies to the AEBS are due by July 1, 2012, with a list of services provided due the previous year.

Each state agency and the Judicial Branch are made responsible for the accuracy of the information entered into the FFMIS.

Section 12. This repeals ss. 570.07(41), F.S., which exempts the Department of Agriculture and Consumer Services (DACS) from the requirement of participating in *MyFloridaMarketplace*, a FFMIS compatible procurement system. The DACS system is independent of this system and is internally managed by the agency.

Sections 13-16. These sections, respectively, amend ss. 17.11, 216.102, 216.141, and 216.237, F.S., to make nomenclature changes in statutes relating to the duties of the Chief Financial Officer and the planning and budgeting statutes consistent with the bill. Among these is the redesignation of FLAIR as the Financial Management Subsystem.

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[3] The Administration Commission, composed of the Governor and Cabinet, is a statutory entity created in s. 14.202, F.S. There are sixty-one references to its duties in the Florida Statutes. Generally, it is a decision-making body in disputed agency actions and approves agency rules that affect multiple governmental units.

Section 17. This section recognizes funding provided by ch. 2008-152, Laws of Florida, the General Appropriations Act, in three specific line item appropriations for initial stages of FFMIS development. Specifically, these line items are:

2449 State Financial Information and State Agency Accounting
2451 Expenses
2452 Operating Capital Outlay
2459 Special Categories

Section 18. The effective date is July 1, 2010.

Other Potential Implications:

The AEBS is given specific rulemaking authority for the execution of its new statutory responsibilities. Currently, ch. 120, F. S., the Administrative Procedures Act, exempts agency budgets, information technology memoranda issued by the Governor, and agency claims submitted for payments to the Chief Financial Officer from the definition of a rule.[4] Each of these processes implicates a portion of FFMIS. Close coordination will be required to make certain that the rule promulgation and adoption process is not impaired as a result of these different statutory standards exercised by common FFMIS participants.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[4] Section 120.52(16)(b)1., 2., 4., F.S.

C. Government Sector Impact:

Section 17 obligates a 2008 appropriation made in ch. 2008-152, Laws of Florida, the General Appropriations Act, for a similar purpose. The amounts are three positions with a salary rate of $185,569 and $300,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The state agencies affected will be those governed by ch. 216, F.S., and more particularly, those whose operations are defined in paragraph (qq) of subsection (1), as follows:

> *(qq) "State agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of this chapter and chapter 215, "state agency" or "agency" includes, but is not limited to, state attorneys , public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Florida Clerks of Court Operations Corporation, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms "state agency" or "agency" shall include the judicial branch.*

Chapter 20, F.S., provides standard nomenclature for the structural components of state agencies. A "department" is the basic building block of government activity and is the structure through which authority is exercised and to which money and positions are appropriated. Its principal subcomponent is a "division." Units below that level may be created by departments; above that level they are created by statute. Since the governmental reorganization of 1969, a variety of structures have entered into the ch. 20, F.S., taxonomy. The most common of these are "offices" or "agencies" which are hybrids of departments and divisions but operating below the departmental level. Some of these were created to execute a matrix form of operations in which considerable autonomy was delegated to division-like units outside of the headquarters location. Chief among these has been the Department of Children and Family Services; the Department of Corrections; the Department of Financial Services; the Department of Revenue; and the Department of Transportation.

Article IV of the State Constitution limits executive departments to twenty-five in number, excluding those authorized or created in that document. Using that benchmark, the following count is obtained:

- Constitutionally created or authorized (5): State Board of Administration, Department of Veterans' Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and, Parole Commission.

- Authorized by statute (21): Department of State; Department of Legal Affairs; Department of Financial Services; Department of Agriculture and Consumer Services; Department of Education; Department of Business and Professional Regulation, Department of Community Affairs; Department of Children & Family Services; Florida Department of Law Enforcement; Department of Revenue; Department Management Services; Department of Transportation; Department of Highway Safety and Motor Vehicles; Department of Environmental Protection; Department of Military Affairs; Department of Citrus; Department of Corrections; Department of Juvenile Justice; Department of the Lottery; Agency for Health Care Administration; Department of Health.

- Functional equivalent to department (1): Executive Office of the Governor.

- Department-like but statutorily proclaimed as subordinate (3): Agency for Persons With Disabilities; Agency for Workforce Innovation (DMS); Agency for Enterprise Information Technology (EOG).

- Total influenced by constitutional limitation: 22.

Unaffected by the limitation are a number of divisions with powers independent of the nominal department head. Examples of these are the Division of Emergency Management (DCA); the Division of Bond Finance (SBA), and the Division of Administrative Hearings (DMS). The Public Service Commission is excluded from the limitation since it is, by statute, a legislative branch agency.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS/SB 202

INTRODUCER: General Government Appropriations Committee, Governmental Oversight and Accountability Committee, and Senator Baker

SUBJECT: Firefighter Death Benefits

DATE: April 15, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Favorable**
2.	Naf	Wilson	GO	**Fav/CS**
3.	McVaney	DeLoach	GA	**Fav/CS**
4.	McVaney	Coburn	WPSC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill expands circumstances in which a firefighter's employer must pay an additional accidental death benefit to the firefighter's beneficiary to include payment when a firefighter's death is due to participation in a training exercise. This bill also expands circumstances in which a firefighter's employer must pay an additional death benefit by requiring payment when a firefighter is injured by an unlawful and intentional act of another person in the performance of his or her duties and dies as a result of such injury. Both benefit payments are adjusted based on the Consumer Price Index.

This bill applies retroactively to November 1, 2003.

This bill substantially amends section 112.191, Florida Statutes.

II. Present Situation:

Firefighter Death Benefits

Section 112.191(2)(a), F.S., requires a firefighter's employer or employer's insurer to pay a firefighter's beneficiary a $50,000 death benefit payment, adjusted for inflation, if that firefighter is accidentally killed while *engaging in the performance of his or her firefighter duties*, or if that firefighter receives an accidental injury in the line of duty and the injury results in the death of the firefighter.

In addition to the accidental death benefit payment required under s. 112.191(2)(a), s. 112.191(2)(b), F.S., requires a firefighter's employer or employer's insurer to pay a firefighter's beneficiary an additional $50,000 payment, adjusted for inflation, if that firefighter is accidentally killed in the line of duty *while responding to an emergency involving the protection of life and property.*

If a firefighter is *unlawfully and intentionally* killed, or dies as a result of a fire caused by an act of arson, s. 112.191(2)(c), F.S., requires the firefighter's employer or employer's insurer to pay the firefighter's beneficiary a death benefit payment of $150,000, adjusted for inflation.

The amounts of benefit payments under s. 112.191(2)(a)-(c), F.S., are statutorily-established and are adjusted each year based on the Consumer Price Index for all urban consumers, which is published by the U.S. Department of Labor.[1] The Division of State Fire Marshal within the Department of Financial Services adjusts the statutory amount by July 1 of each year using the most recent month for which data are available at the time of the adjustment.[2] The current death benefit amount for firefighters is:

- $59,879 for an accidental death or injury that results in death under s. 112.191(2)(a), F.S.
- $59,879 in addition to the payment made under s. 112.191(2)(a), F.S., for an accidental death that occurs while the firefighter was responding to an emergency involving the protection of life and property under s.112.191(2)(b), F.S.
- $166,779.27 if the firefighter is unlawfully or intentionally killed or dies as a result of a fire caused by an act of arson under s.112.191(2)(c), F.S.

Firefighter employers[3] are required to maintain an ability to pay the benefits provided in s. 112.191, F.S., and at the request of the Division of State Fire Marshal, may be required to provide evidence of their ability to pay.[4]

The benefits outlined in s. 112.191, F.S., are in addition to any benefits a firefighter may be entitled to under a worker's compensation or pension plan.[5]

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[1] Section 119.191(2)(i), F.S.
[2] Section 112.191(2) (i), F.S., *See also* Rule 69A-64.005, F.A.C.
[3] Section 112.191(1)(a), F.S., defines "employer" to mean a "state board, commission, department, division, bureau or agency, or a county, municipality, or other political subdivision of the state".
[4] Rule 69A-64.003, F.A.C., *See also* s. 112.191(4)(a), F.S.
[5] Section 112.191(2)(e), F.S. *See also* Division of State Fire Marshal website. *State of Florida Line-of-Duty Death Resources* available at http://www.myfloridacfo.com/SFM/LODDResource.htm (last visited on February 1, 2010).

Current definition of "line of duty"

Under Rule 69A-64.002, F.A.C., the terms "line of duty" or "engaging in the performance of his or her firefighter duties" means:

- Engaging in any activity which is within the firefighter's job or position description or scope of employment, regardless of whether the firefighter was actually "on duty" at his or her place of employment or not.
- Responding to any emergency or reasonably believing that he or she is responding to an emergency.
- Fighting a fire or engaging in any emergency life- or property-saving activity.
- Returning from responding to any emergency or from having reasonably believed that he or she was responding to an emergency.

III. Effect of Proposed Changes:

The bill expands the purposes for which an additional accidental death benefit of $50,000, adjusted for inflation, is payable by requiring payment of the benefit when a firefighter's death occurs due to participation in a training exercise.

The bill also expands the purposes for which a death benefit of $150,000, adjusted for inflation, is payable by requiring payment of the benefit when a firefighter is injured by an unlawful and intentional act of another person while engaged in the performance of his or her firefighter duties and dies as a result of such injury.

The bill provides that the Legislature finds that this act fulfills an important state interest.

The bill specifies that the act will take effect upon becoming a law and that it will apply to firefighter deaths occurring on or after November 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires cities and counties to expend funds to pay these new death benefits, the provisions of Section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must apply:

a. Funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated to the cities and counties;
b. Counties and cities are authorized to enact a funding source not available for such local governments on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
c. The law applies to all persons similarly situated, including state government; or

d. The law is approved by two-thirds of the membership of each house of the legislature.

Section 18(d) of Article VII of the State Constitution exempts laws that have insignificant fiscal impact on cities and counties from the requirements of subsection (a). The impacts on cities and counties is unknown at this time.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Retroactive operation of a law is typically disfavored by courts. Generally, "statutes are prospective and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction."[6] In this instance, the Legislature has clearly stated in the effective date that the bill is intended to be applicable retroactively.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional death benefits are payable to the beneficiaries of firefighters who are killed during a training exercise or as a result of an injury during the performance of his or her duties. [These benefits include accidental death and dismemberment payments as well as the payment of specified health insurance premiums.]

C. Government Sector Impact:

The Department of Management Services has determined that this bill will not have a fiscal impact on the Department.[7] However, the impacts to local governments are not known at this time.

VI. Technical Deficiencies:

None.

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[6] Norman J. Singer and J.D. Shamble Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR., s. 41:4 (6th ed. 2009).

[7] Department of Management Services, *Senate Bill 202 Fiscal Analysis* (Feb. 5, 2010) (on file with the Senate Committee on Community Affairs).

VII. Related Issues:

The Division of State Fire Marshal may need to amend Rule 69A-64.002, F.A.C., to provide a definition for "training" as it pertains to section 112.191, F.S.

The retroactivity clause is located in the effective date section of the bill, which will not be codified into statutory law. To prevent confusion, it may be preferable to relocate the retroactivity clause to the substantive provisions of the bill.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by General Government Appropriations on April 6, 2010:

This committee substitute clarifies the intent of the bill in that it addresses an issue of important state interest. It also clarifies that the bill applies retroactively to firefighter deaths occurring on or after November 1, 2003.

CS by Governmental Oversight and Accountability on March 17, 2010:

The committee substitute:

- Clarifies that the injury causing death which entitles the firefighter's beneficiary to the $150,000 adjusted death benefit payment must be caused by an unlawful and intentional act of another person.
- Changes the effective date of the bill to provide that the act will take effect upon becoming a law and will apply to firefighter deaths occurring on or after November 1, 2007.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS/SB 876

INTRODUCER: General Government Appropriations Committee, Banking and Insurance Committee, and Senators Bennett, Dockery, and Hill

SUBJECT: Residential Property Insurance

DATE: April 16, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Burgess	BI	**Fav/CS**
2.	Frederick	DeLoach	GA	**Fav/CS**
3.	Frederick	Coburn	WPSC	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill permits certain insurers meeting specified criteria to offer a residential property insurance policy[1] at a rate in excess of the otherwise applicable filed rate.[2] The bill establishes maximum limits on the amount an insurer may increase its rates over a period of years. The initial rate increase is limited to a ten percent statewide average rate increase over the most recently filed and approved rate. Subsequent rates are limited to a ten percent statewide average rate increase in any one year over the rates in effect at the time of the filing. Additionally, these rate filings cannot exceed a percentage rate increase that is more than two times the statewide average for any policyholder.

The bill requires that the rates be accompanied by an actuary's certification that the filing was prepared in accordance with current actuarial standards established by the Actuarial Standards

[1] Includes personal lines residential and commercial lines residential policies.

[2] In order to qualify to use a rate different than the filed rate, an insurer must hold a certificate of authority to write property insurance in Florida and must not purchase coverage in the Florida Hurricane Catastrophe Fund for the temporary increase in coverage limit options. Residential property insurance policies that exclude windstorm coverage or are depopulated from Citizens Property Insurance Corporation cannot have rates different than the insurer's filed rates.

Board and that the rates submitted are within a range consistent with applicable actuarial principles. The bill requires that, when the percentage limitations do not allow for a rate within a range consistent with applicable actuarial principles, the certification state that the rate is below the range.

The bill limits the authority of the Office of Insurance Regulation (office or OIR) to disapprove such a rate to two issues: whether the rate is inadequate or whether the rate filing charges the insured or applicant a higher premium solely because of the insured's or applicant's race, color, creed, marital status, sex, or national origin. Upon a finding that an insurer has used any such factor in charging a higher premium, the office may require the insurer to make a new filing for a new rate that does not use such factor. The office cannot disapprove a rate filing because it is excessive or unfairly discriminatory on the basis of other factors.

The bill requires policyholder notification and acknowledgement before an insurer can charge a rate different than its otherwise applicable filed rate. For comparison purposes, policyholders must be given an estimate for the premium charged by Citizens Property Insurance Corporation (Citizens or corporation) when offered a policy with a rate different than an insurer's filed rate. Insurers must give policyholders 180 days' notice of nonrenewal if the company nonrenews a policy that charges a rate different than its filed rates.

The bill requires that policyholders insured by Citizens and applicants for such coverage receive notification and acknowledge potential surcharges and assessments by Citizens. The bill also clarifies that a Citizens policyholder surcharge is payable upon renewal, cancellation, termination, or issuance of a new policy by Citizens within the first 12 months after the date of the levy or the period of time necessary to fully collect the policyholder surcharge amount.

The bill substantially amends sections 627.062 and 627.351, Florida Statutes.

The bill creates section 627.7031, Florida Statutes.

II. Present Situation:

"Property insurance"[3] includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows.

- Personal lines residential coverage: homeowners', mobile home owners', dwelling, tenants', condominium unit owners', cooperative unit owner's and similar policies.
- Commercial lines residential coverage: coverage provided by a condominium association, cooperative association, apartment building and similar policies.
- Commercial nonresidential coverage: coverage provided by commercial business policies.[4]

[3] Section 624.604, F.S., defines property insurance as insurance on real or personal property of every kind and interest, whether on land, water, or in the air, against loss or damage for any and all hazards and against loss or damage.

[4] Section 627.4025(1), F.S., defines residential property insurance as including both personal lines residential property insurance and commercial residential property insurance. Personal lines residential property insurance consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies covering damage to property. Commercial lines residential property insurance consists of condominium association, apartment building and homeowner's association policies covering damage to property.

Generally, residential property insurance covers a policyholder's residence, providing reimbursement due to damages sustained by the residence, including windstorm damage.

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The primary purpose of Part I of ch. 627, F.S., known as the Rating Law, is to ensure that property, casualty, and surety insurance rates are not excessive, inadequate, or unfairly discriminatory and that these standards apply to every property insurance rate.

Section 627.0645, F.S., requires every property insurance company to make a rate filing, which contains the insurer's proposed rates, with the office each year. The office reviews the rate filing and either approves or disapproves the proposed rates. If an insurer does not want to change its rates one year, instead of a rate filing the insurer may file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate. In determining whether a rate is excessive, inadequate, or unfairly discriminatory, the office uses the following statutory factors.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, when applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.

Excess Rates

Section 627.171, F.S., permits an insurer to use a rate in excess of the insurer's filed rate on a specific risk if the insurer obtains the signed, written consent of the insured prior to the policy inception date. The signed consent form must include the filed rate and the excess rate for the risk insured. An insurer may not use excess rates for more than 5 percent of its personal lines insurance policies written or renewed in each calendar year.

Citizens Property Insurance Corporation (Citizens or corporation)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the

voluntary admitted market.[5] It is not a private insurance company.[6] Citizens' book of business is divided into three separate accounts:[7]

- **Personal Lines Account (PLA)** – Multiperil Policies[8]
  Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies covering damage to property from windstorm and from other perils.
- **Commercial Lines Account (CLA)** – Multiperil Policies
  Consists of condominium association, apartment building and homeowners' association policies covering damage to property from windstorm and from other perils.
- **High-Risk Account (HRA)** – Wind-only[9] and Multiperil Policies
  Consists of personal lines wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas which cover damage to property from windstorm only. Also consists of personal and commercial residential multiperil policies in specified coastal areas (wind-only zones) issued since 2007 which cover damage to property from windstorm and from other perils.

Each Citizens' account is a separate statutory account and, therefore, has separate calculations of surplus and deficits. By statute, assets of each account may not be comingled or used to fund losses in another account.[10]

Assessments: In the event Citizens incurs a deficit, i.e., its obligations to pay claims exceed its capital plus reinsurance recoveries, it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[11] The three Citizens' accounts calculate deficits and resulting assessment needs independently.

Citizens Policyholder Surcharges[12]

If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account for a maximum total of 45 percent. This surcharge is collected over 12 months on all Citizens' policies and collected upon issuance and renewal.

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[5] Voluntary admitted market refers to insurers licensed to transact insurance in Florida.
[6] s. 627.351(6)(a)1., F.S.
[7] s. 627.351(6)(b)2., F.S.
[8] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.
[9] A wind-only policy provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.
[10] s. 627.351(6)(b)2.b., F.S.
[11] s. 627.351(6)(b)3.a.,d., and i ., F.S.
[12] s. 627.351(6)(b)3.i., F.S.

Regular Assessments:[13]

Upon the exhaustion of the Citizens policyholder surcharge for a particular account, Citizens may levy a regular assessment of up to 6 percent of premium or 6 percent of the deficit per account, for a maximum total of 18 percent. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.[14] Property and casualty insurers with policies subject to the regular assessment provide the assessment to Citizens up front and subsequently recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Citizens is usually able to collect regular assessment funds within 30 days after levy.

Emergency Assessments:[15]

Upon the exhaustion of the Citizens' policyholder surcharge and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent. This assessment can be collected for as many years as is necessary to rectify a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.[16] Initially, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied, but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

III. Effect of Proposed Changes:

Section 1 amends s. 627.062(2), F.S., relating to insurer rate standards. The bill allows insurers meeting specified criteria to use a rate for personal lines residential and commercial lines residential property insurance that is different than the insurer's filed rate.[17]

The legislation establishes maximum limits on the amount an insurer may increase its rates over a period of years. The initial rates used by an insurer under this provision cannot provide for rates that are more than a ten percent statewide average increase over the most recently filed and approved rate. Subsequent rates are limited to a ten percent statewide average increase in any one year over the rates in effect at the time of the filing. Because the allowable increase is based on a percentage of the previous year's rates, the annual increase will be compounded over the previous year's rate increase. However, these rate filings cannot exceed a percentage rate increase that is more than two times the statewide average for any policyholder.

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[13] s. 627.351(6)(b)3.a. and b., F.S.

[14] The assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

[15] s. 627.352(6)(b)3.d., F.S.

[16] This assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

[17] Under s. 627.4025, F.S., personal lines residential property insurance policies include homeowner, mobile homeowner, dwelling, tenant's, condominium unit owner's, and cooperative unit owner's policies. Commercial lines residential property insurance policies include condominium association, cooperative association, apartment building and similar policies.

The bill requires that this type of rate filing be accompanied by an actuary's certification that the filing was prepared in accordance with current actuarial standards of practice of the Actuarial Standards Board and that the rates submitted are within a range consistent with applicable actuarial principles. The bill further requires that, when the percentage limitations do not allow for a rate within a range consistent with applicable actuarial principles, the certification must state that the rate is below the range.

The rates under this provision must be filed with the office as a separate filing and the office retains the authority to disapprove a rate as inadequate or to disapprove a rate filing for charging an insured or applicant a higher premium solely due to the insured's or applicant's race, color, creed, marital status, sex, or national origin. Upon a finding that an insurer has used any such factor in charging a higher premium, the office may require the insurer to make a new filing for a new rate that does not use that factor.

The office cannot disapprove a rate because it is excessive, or because it is unfairly discriminatory on the basis of factors other than those specified in the bill.[18] Finally, policies which are subject to this rate provision are not counted in the calculation of excess rates under s. 627.171, F.S.

The bill does not allow insurance companies to charge rates different than filed rates for commercial nonresidential property insurance policies, (i.e. property insurance covering businesses).

Section 2 amends s. 627.351, F.S., relating to Citizens Property Insurance Corporation. The bill clarifies that the Citizens policyholder surcharge is payable upon renewal, cancellation, termination, or issuance of a new policy by Citizens within the first 12 months after the date of the levy, or the period of time necessary to fully collect the policyholder surcharge amount.

Current law requires Citizens to collect the surcharge from policyholders over a 12 month period, but does not use the date of the surcharge levy as the date establishing who is responsible for paying the surcharge. As a result, under current law, policyholders of Citizens can avoid paying a Citizens' policyholder surcharge by nonrenewing their Citizens policy during the 12 month surcharge collection period and obtaining property insurance from an insurer in the voluntary market. The bill prevents the avoidance of surcharge payment in this manner by making Citizens' policyholders responsible, at the time the surcharge is levied, for payment of the surcharge. Citizens can collect the surcharge from unearned premium on the policy for policies that are cancelled by the policyholder before the expiration of the policy term so it is likely Citizens will be able to obtain payment of the surcharge under this circumstance.

The bill clarifies current law relating to the timing of Citizens' levy of regular assessments against insurance companies with respect to a particular year's deficit. The bill prohibits Citizens from levying regular assessments against insurers until it has first levied a policyholder

[18] Section 627.062(2)(e), F.S., enumerates what standards the office can use under current law to find a rate filing is excessive, inadequate, or unfairly discriminatory.

surcharge in the maximum statutorily allowed amount. According to a representative of Citizens, this is consistent with how Citizens currently levies regular assessments.

The bill requires insurance agents issuing property insurance on behalf of Citizens to obtain an acknowledgement signed by the applicant for insurance relating to the potential surcharges imposed on the policy by Citizens. The agent is also required to obtain the same acknowledgement form for existing Citizens' policies before the policy renews. Thus, potential and current policyholders of Citizens will be informed about the potential surcharges that can be imposed on their policy. The form also provides that such policyholders may be subject to emergency assessments to the same extent as policyholders of other insurance companies. The signed acknowledgement creates a conclusive presumption that the prospective or current policyholder understood and accepted the Citizens' surcharge and assessment liability. Citizens is required to keep a permanent copy of the signed acknowledgement and the agent may retain a copy.

Section 3 creates s. 627.7031, F.S., relating to the residential property insurance option. The bill specifies that an insurer holding a certificate of authority[19] to write property insurance in Florida may offer or renew policies at a rate different than the insurer's filed rates, however, it may not purchase coverage in the Florida Hurricane Catastrophe Fund (FHCF) for the temporary increase in coverage limit options (TICL options).[20] Before a property insurance policy can be issued or renewed by the insurer, the insurer must provide notice to the applicant or policyholder in 12-point boldfaced type that the policy's rate is not fully regulated by the office and may have a higher rate than rates approved by the office. The notice must indicate that a policy subject to full rate regulation may be purchased. The bill specifies how this notice must be given for policy renewals.

The insurer writing a policy with a rate different than its filed rate must provide an applicant for new coverage with a comparable premium estimate for a policy written by Citizens and this estimate must be given before the effective date of the new policy. Likewise, a premium estimate for a similar policy written by Citizens must be given before renewal to an existing policyholder whose policy is going to have a rate different than the insurer's filed rate at renewal.

An applicant or renewal policyholder must also sign an acknowledgement form relating to review of the required disclosures and premium comparison, an acknowledgement about the deregulated rate applicable to the policy and the availability of a policy with a regulated rate, and a notification about the assessability of the policy for deficits in Citizens. This form must be retained by the insurance company or insurance agent for at least 3 years. If an insurer receives a premium payment for a policy with a rate different than the filed rate, the insurer is deemed to comply with the acknowledgment form and premium estimate requirements as long as the company provided such form and premium estimate to the policyholder.

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[19] Citizens Property Insurance Corporation (Citizens) will not be able to offer property policies with rates different than the rate filed and approved by OIR because Citizens does not hold a certificate of authority. Citizens is a governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not an insurance company and thus not required to obtain a certificate of insurance in order to transact insurance. (s. 627.3351(6)(a)1., F.S.)

[20] The TICL options allow insurers to purchase reinsurance through the Florida Hurricane Catastrophe Fund in an amount up to $8 billion in excess of the reinsurance required by law to be purchased through the Fund.

The bill requires a property insurer to give a policyholder 180 days written notice of nonrenewal if the policyholder has a policy with the insurer with a rate that is different than the insurer's filed rate. Insurers cancelling property insurance policies with rates different than the insurer's filed rate must follow the cancellation protocol under current law (s. 627.4133, F.S.).[21]

Finally, the bill provides that the following residential property insurance policies are not eligible for rates that are different than the insurer's filed rate: policies that exclude coverage for windstorm or hurricane, and policies that are subject to a consent decree, agreement, or other arrangement between the insurer and the office relating to rates or premiums for policies removed from Citizens.

Section 4 provides that the act shall take effect January 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property insurance policies with rates different than an insurer's filed rates are likely to have higher premiums than those policies with rates that are fully regulated by the OIR; however, some homeowners may be willing to pay the higher premium in exchange for obtaining a policy from a particular insurer.

The bill establishes maximum limits on the amount an insurer may increase its rates over a period of years. Because the allowable increase is based on a percentage of the previous

[21] This provision requires written notice of cancellation 100 days before the cancellation is effective or by June 1st, whichever is earlier, or written notice 180 days before the cancellation's effective date if the policyholder has been insured with the company for the prior five years. Cancellation of a policy for nonpayment of premium only requires a 10 day written notice.

year's rates, the annual increase will be compounded over the previous year's rate increase.

The number of policies in Citizens may increase as a result of this bill. If property insurance premiums increase and if such increases make the premiums for a policy 15 to 20 percent higher than a comparable policy from Citizens, then some policyholders of insurers may opt to cancel their existing property policy and obtain a policy from Citizens due to the premium difference in the policies. The actual number of policies that may move from the voluntary market to Citizens cannot be calculated. Policyholders who buy property insurance based solely on price are more likely to move their policy to Citizens under this scenario. However, policyholders who base their property insurance purchase on loyalty to an insurer or on being insured by a particular insurer that is well capitalized, may opt to stay with their insurer in the private market even if that company increases its rates as allowed under the bill.

The bill may incentivize insurance companies in the private market to write multi-peril policies[22] currently written by Citizens. If insurers determine it is advantageous for their company to write these policies at rates different than their filed rates, then these companies will write multi-peril policies currently written by Citizens. However, the policyholder would have to choose to move from Citizens to the private market insurer.

The bill may also incentivize insurance companies in the private market to assume the wind coverage on wind-only policies[23] currently written by Citizens. If insurers charge rates different than their filed rates and determine it is advantageous for the company to write the wind portion of policies currently in Citizens as wind-only policies, then some of the wind-only policies could be written by the private market. Again, the policyholder would have to choose to move from Citizens to the private market insurer. As stated previously, policyholders who buy property insurance based solely on price may not move their policy to the private market insurer if that insurer charges more than they currently pay for a policy with non-wind coverage from the insurer plus a policy with wind only coverage from Citizens. However, policyholders who base their property insurance purchase on being insured by a particular insurer or who want one comprehensive property insurance policy may opt to move to the private market insurer for a policy with wind and non-wind coverage, even if that company charges more for the policy than the price of the Citizens wind-only policy added to the price of the private insurer's non-wind coverage.

C. Government Sector Impact:

The Office of Insurance Regulation indicates that implementation of the provisions of this bill will not result in a fiscal impact to the office.

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[22] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

[23] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability is available in a separate policy.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Office of Insurance Regulation submitted the following comments in their agency bill analysis:

> Regarding the issue of reinsurance, while this legislation does not permit insurers using the rate deregulation provision to purchase coverage under the TICL reinsurance option of the FHCF, the legislation does not prohibit the purchase of FHCF coverage in its entirety.
>
> An insurer exempt from rate regulation and review will benefit from lower cost reinsurance from the FHCF, thus increasing the insurer's profit margin. The purpose of the FHCF is to provide low cost reinsurance to insurers doing business in Florida, thus lowering the premium paid by consumers.

As to the issue of the impact on property insurance rates, the OIR stated that it is concerned that this change will yield dramatic rate increases for consumers, a concern bolstered by previous experience in Florida when motor vehicle insurance rates were "deregulated" in the 1960s, and again when the change to consent to rate laws led to dramatic increases in condominium association rates in the early years of this decade.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by General Government Appropriations on April 13, 2010:

This committee substitute:

- Modifies the maximum limits on the amount an insurer may increase its rates over a period of years. The provision limits the initial rate increase to no more than a ten percent statewide average increase over the most recently filed and approved rate. Subsequent rates are limited to no more than a ten percent statewide average rate increase in any one year over the rates in effect at the time of the filing.
- Requires that rates filed under the provisions of this bill be accompanied by an actuary's certification stating that the filing was prepared in accordance with current actuarial standards of practice of the Actuarial Standards Board.

CS by Banking and Insurance on March 24, 2010:

- Establishes maximum limits on the amount an insurer may increase its rates over a period of years. The provision limits the initial rate increase to no more than a 5 percent statewide average rate over the most recently filed and approved rate; to 10

percent statewide average rate over the rates in effect at the time of filing; and to 15 percent statewide average rate for the second year following the implementation of such initial rates, or for any subsequent year.

- Clarifies that a Citizens policyholder surcharge is payable upon renewal, cancellation, termination, or issuance of a new policy by Citizens within the first 12 months after the date of the levy, or the period of time necessary to fully collect the policyholder surcharge amount.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS/CS/SB 2000

INTRODUCER: Transportation and Economic Development Appropriations Committee; Environmental Preservation and Conservation Committee; Commerce Committee; and Senator Ring

SUBJECT: Seaports

DATE: April 16, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Fav/CS**
2.	Kiger	Kiger	EP	**Fav/CS**
3.	Carey	Noble	TA	**Fav/CS**
4.	Carey	Coburn	WPSC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

Florida has 14 public seaports that are considered significant economic drivers for the regions in which they are located and for the state in general. The individual seaports receive a combination of public funding and private revenues to finance their operations and capital improvements.

As work to widen and modernize the Panama Canal begins, ports on the entire U.S. coastline are considering their options on how to best position themselves to participate in what is expected to be an economic boon in maritime transit of oil, foodstuffs, consumer goods, and other cargo. States such as California, Maryland, South Carolina, and Texas are exploring options to finance major port improvements to attract the increased international shipping activities and to handle the larger tankers and cargo ships that will be traversing the Panama Canal.

This bill includes several proposals related to seaports:

- Creates a port conceptual permit system which would allow for the issuance of an umbrella permit that ties together a series of individual environmental permits and authorizations normally needed for port operations.

- Clarifies the applicability of state stormwater rules to structures related to port activities provided certain conditions are met.
- Revises the work program amendment process for seaport projects funded under the Department of Transportation's 5-year work program.
- As clarification, deletes references to memoranda of agreement between the Department of Environmental Protection and the Florida Ports Council for a supplemental permitting process for seaports. Instead, the department is empowered to directly provide a supplemental permitting process.
- Adds wetlands communities as an issue needing consideration when establishing mixing zones related to dredging and return water discharges.

This bill amends ss. 161.055, 253.002, 311.09, 373.403, 403.061, and 403.813, F.S. and creates s. 373.4133, F.S.

II. Present Situation:

Background on Florida's seaports

Florida has 14 public seaports:[1] Port of Fernandina, Port of Fort Pierce, Jacksonville (JaxPort), Port of Key West, Port of Miami, Port of Palm Beach, Port Panama City, Port of Pensacola, Port Canaveral, Port Everglades, Port Manatee, Port St. Joe, Port of St. Petersburg, and Port of Tampa.

These seaports are considered significant economic drivers. A recent economic analysis[2] prepared for the Florida Ports Council indicated that:

- In 2008, the maritime cargo activities at Florida seaports were responsible for generating more than 550,000 direct and indirect jobs and $66 billion in total economic value.
- In 2008, the maritime cargo activities at Florida seaports contributed $1.7 billion in state and local tax revenues.
- The average annual wage of seaport-related jobs is $54,400, more than double the average annual state wage for all other non-advanced degree workers ($26,933) and over $15,000 more than the average annual state wage for all occupations ($38,470).
- The return on investment for seaport projects is an estimated $6.90 to $1.

Florida's public seaports handled more than 121 million tons of cargo in FY 2006-2007, the most recent year for which information is available.[3] Of that, 19 million tons were exports, 50.3 million tons were imports, and 51.9 million tons were domestic shipments.[4] Florida's top five international trading partners, in terms of cargo value, are: Brazil, Japan, Germany, Venezuela, and China.[5] The cruise business also is a significant segment of Florida's seaport activity; in

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[1] Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: http://www.flaports.org/index.htm. Last visited March 1, 2010.

[2] Available at http://www.flaports.org/docs/2010%20economic%20action%20plan%20for%20florida%20-%20january%202010(2).pdf. Last visited March 1, 2010.

[3] Available at http://www.dot.state.fl.us/planning/trends/tc-report/Seaport032509.pdf. Last visited March 1, 2010.

[4] Ibid, page 2.

[5] Florida Ports Council Statistics Report, available at http://www.flaports.org/statistics.htm. Page 6. Last visited March 1, 2010.

2007, more than 14 million passengers embarked and disembarked from the nine ports with cruise operations, and an estimated 17.7 million passengers are predicted for FY 2010-2011.[6]

Florida seaports are eligible, per s. 311.07, F.S., for a minimum of $8 million a year[7] in grants from the State Transportation Trust Fund for projects to improve the "movement and intermodal transportation" of cargo and passengers. The projects are recommended annually by the Florida Seaport Transportation and Economic Development (FSTED) Council[8] and approved by the Florida Department of Transportation (DOT). Most years, the Legislature appropriates more than $8 million to the seaports; for FY 2009-2010, for example, DOT was directed to spend $21.9 million on seaport grants.

The ports also benefit from an additional $25 million in debt service paid with motor vehicle license fees from the State Transportation Trust Fund for 1996 and 1999 bond issues, per ch. 315, F.S., which financed major port projects.

Pursuant to s. 311.07, F.S., the state grant funds cannot exceed 50 percent of the total cost of an FSTED project. In order to be approved, a project must be consistent with the seaport's comprehensive master plan and the applicable local government's comprehensive plan, and comply with water-quality standards and requirements specified in ch. 403, F.S.

Eligible projects per the statute include:

- Dredging or otherwise deepening channels, harbors, and turning basins;
- Construction or rehabilitation of wharves, docks, piers, and related structures;
- Transportation facilities, such as roads or rail lines, located within a port; and
- Acquisition of land for port purposes.

Projects on the current FSTED 5-year work program include berth and terminal construction at Port Canaveral; purchases of cranes for Port Everglades; construction of cold storage warehouses at Port Manatee; and dredging at Port of Miami.

The FSTED port projects also are part of DOT's 5-Year Work Program, which is submitted to the Legislature for approval. In order to shift funding among approved seaport projects included in the Adopted 5-Year Work Program within a given fiscal year, DOT must seek approval through the submission of a budget amendment as required by s. 216.292, F.S.

Port planning and regulatory requirements

Section 163.3178, F.S., requires each applicable county and municipal comprehensive plan to include a chapter (or "element") on coastal zone management, and if applicable, the comprehensive master plan for the public seaport located within its geographic jurisdiction. These seaport master plans generally comprise a 25-year planning horizon for expansion, dredging, and other improvements at the particular ports.[9]

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[6] Supra FN 3, page 5.

[7] Since FY 2005-2006, FDOT by agreement with FSTED has earmarked at least $15 million for FSTED projects.

[8] Created in s. 311.09, F.S., the FSTED Council is comprised of the port directors, or their designees, of the 14 public seaports; the FDOT Secretary or designee; the director of the Governor's Office of Tourism, Trade, and Economic Development, or designee; and the Secretary of the Florida Department of Community Affairs or designee.

[9] The individual seaport master plans are available online at the ports' websites.

Dredging and other port projects that have the potential to impact water quality, sovereign submerged lands, sea grass and wildlife habitats, and upland disposal sites typically require permits from the U.S Army Corps of Engineers (Corps), or the Florida Department of Environmental Protection (DEP) and the water management districts under regulations in chs. 161, 253, 373, and 403, F.S.

These agencies and the seaports work together early in the project planning process to identify environmental impacts and possible mitigation solutions. To that end, s. 311.105, F.S., created the Florida Seaport Environmental Management Committee to serve as a forum for seaport-related environmental permitting issues. The committee is comprised of five seaport directors as voting members and representatives of DEP, the Department of Community Affairs, the Corps, and the Florida Inland Navigation District as non-voting, ex officio members.

Section 311.105, F.S., also specifies the documentation required for applications submitted by seaports for joint coastal permits, which have a duration of 5 years, and for 15-year conceptual joint coastal permits. These permits are designed to address in a comprehensive manner the variety of environmental impacts large-scale port projects might create.[10]

Panama Canal Project[11]

Built by the United States and opened in 1914, the Panama Canal is a 48-mile-long ship canal in the narrow Central American isthmus that joins the Atlantic and Pacific oceans. On December 31, 1999, ownership and control of the canal transferred from the United States to Panama. Today, the Panama Canal Authority (ACP) manages the canal.

The ACP has undertaken a $5.2 billion modernization and expansion of the canal, which includes a third lock to move the new larger ships through the isthmus. Private investors and bank loans will finance some of the cost, and ACP is hoping that increased toll revenues from increased usage will generate enough money to pay for the rest of the project, which is expected to be completed by 2014.

For decades the Panama Canal has been a significant shipping lane for international maritime trade. Annual traffic has risen from about 1,000 ships in the canal's early days to 14,702 vessels in 2008. While the canal was built to handle the largest ships of its era, modern tankers and container vessels are bigger. As a result, these larger ships either take a different route or their owners don't use them in the Western Hemisphere, or, more commonly, goods are dropped off at seaports on the U.S. west and east coasts – depending on the final destination of the goods – and then hauled by truck or rail across the continent, where they may be loaded onto outbound ships. Some cargo stays in the United States, and some is further transported on land to points north or south.

Supporters of the Panama Canal expansion contend the improved shipping will significantly reduce shipping costs, and even transit time.

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[10] See s. 403.061(37) and (38), F.S.

[11] Numerous sources are available for information about the Panama Canal expansion project, but a basic primer is found here: http://en.wikipedia.org/wiki/Panama_Canal_expansion_project.

The economic implications of the expansion have led several states, such as California, Maryland, South Carolina, and Texas, to reevaluate their long-term port planning and financing strategies, in order to take advantage of the anticipated greater volume of cargo. Also under re-evaluation nationwide are intermodal transportation plans, related to financing and location of rail and highway infrastructure improvements.

III. Effect of Proposed Changes:

Section 1 creates s. 373.4133, F.S., to provide for the issuance of port conceptual permits. Specific provisions provide:

- Legislative findings that port facilities are critical infrastructures and significantly support economic development and because of this it is important to provide a permit review process to help ports remain internationally competitive.
- That any of the 14 ports listed in s. 311.09(1), F.S., may apply to the DEP for a port conceptual permit. The conceptual permit may include authorizations required for the use of sovereignty submerged lands and the requirements for receiving an environmental resource permit. The ability to apply for a conceptual permit is also extended to private entities that may have a controlling interest in property, located in the immediate vicinity of a port listed in s. 311.09(1), F.S., used for private industrial marine activities. The conceptual permits may be issued for a period of up to 20 years and provide for one additional extension of 10 years. The conceptual permit shall also certify compliance with state's federally approved coastal zone management programs.
- Requirements for information to be contained in the permit application. These include: data that supports conceptual engineering and environmental designs that will meet applicable rule criteria for the issuance of construction permits for subsequent phases of the project; identification of proposed construction areas detailing where construction will or will not occur; anticipated impacts to wetlands and proposed mitigation; projections of cost, revenue and job creation; amount of impervious surface and design of stormwater treatment systems for those areas; and the general location of activities on sovereignty submerged lands. The DEP is authorized to specify any additional information they need to complete the permit.
- Directions to the DEP to effect a reasonable balance between the potential benefits of the facility and the impacts upon the state's natural resources when evaluating whether to approve a permit application.
- That approval of a permit provides the permitholder with the assurance that during the duration of the permit the engineering and environmental concepts are likely to meet applicable rule criteria needed for the issuance of permits provided: there have been no changes to rules governing the permits; the permit is not inconsistent with any total maximum daily load or basin management action plan adopted for the water body into which the system discharges; and activities and impacts are consistent with factors described in the original permit. Should it be determined that a proposed activity is inconsistent with the original permit the applicant can ask to modify the original permit or seek the issuance of a new permit.
- That the permit may authorize advance mitigation for impacts expected to result from future activities.

- That final agency action concerning authorizations to use sovereignty submerged land may not be delegated by the Board of Trustees of the Internal Improvement Trust Fund. However, upon this approval, the applicant is not required to return to the Board as the activities are implemented unless specifically requested by at least one member of the Board. Any delegations made by the Board to the DEP concerning the private party use of sovereignty submerged lands does not exempt the private party from applicable rules.
- That the following procedures shall apply to the approval or denial of a permit:
    - Processing shall be subject to the procedures of s. 373.427, F.S., (concurrent permit review) and s. 120.60, F.S., (administrative procedures).
    - Applicants may request an informal hearing, pursuant to s. 120.57(2), F.S., if they feel requests for additional information are not authorized by law.
    - Upon the DEP's notice of intent to issue a permit the applicant is required to publish a one-time notice in a local newspaper of such intent.
    - Final agency action is subject to ss. 120.569 and 120.57, F.S., (administrative procedures) except when such action is only approving a subsequent construction project authorized under the original permit.
    - That anyone wishing to challenge the issuance of a permit shall have 21 days from the date of publication of the notice of intent to initiate such a challenge.
    - If an administrative hearing is requested it shall be subject to the summary hearing provisions of s. 120.574, F.S.
    - If an administrative law judge issues a recommended order instead of a final order then the summary proceeding shall occur within 90 days after a party files a motion for a summary hearing.
- The authority to the DEP and Board of Trustees of the Internal Improvement Trust Fund to issue permits and authorizations in advance of the actual issuance of a wildlife take authorization under the federal Endangered Species Act, provided that the permits and authorizations include a condition that the authorized activity may not occur until the formal authorization is granted. Authority is also provided for the DEP to unilaterally modify these permits or authorizations to make them consistent with any subsequently issued incidental take permit. Such modification shall not be subject to administrative proceedings under ss. 120.569, and 120.57, F.S.
- That any port listed in s. 311.09(1), F.S., may propose alternative stormwater treatment and design criteria for stormwater management systems serving overwater piers. The proposal shall include structural components and best management practices to address the stormwater discharge from the pier, including the consideration of the activities conducted on the pier, to assure that stormwater discharged from the system will meet applicable state water quality standards in receiving waters.
- Specific authority to the DEP to adopt rules and provisions for the implementation of this new permit. The provision also states that while such rules are being developed the program may be implemented.

This section takes effect July 1, 2010, and its implementation may not be delayed pending the adoption of rules.

Section 2 amends s. 311.07, F.S., to provide a 25-percent match requirement for port projects involving the rehabilitation of wharves, docks, berths, bulkheads, or similar structures that are

financed through the Florida Seaport Transportation Economic Development Program within the Department of Transportation.

Section 3 amends s. 311.109, F.S., to direct the FSTED Council to submit to the DOT a list of port projects which are to be funded during the next fiscal year. DOT is directed to submit the list as part of its annual legislative budget request. The DOT is also required to include the total amount of funding that is to be allocated to port projects during the successive four fiscal years.

Further the FSTED Council can request that the DOT submit work plan amendments for port projects to the Governor 10 days after submitting the request or at the time of closure of the funding agreement between the DOT and the port. The bill also notwithstands the provisions s. 339.135(7)(c), F.S., to allow work program amendments to transfer prior year funds from one approved seaport project to another according to the procedures in s. 339.135(7)(d)(2), F.S.

Section 4 amends s. 403.061, F.S., to remove references to DEP entering into memoranda of agreements with the Florida Ports Council, a trade organization representing Florida's seaports, to provide a supplemental permitting process for the 5-year or conceptual 15-year joint coastal permits and environmental resource permits necessary for certain port projects.

Section 5 amends s. 403.813, F.S., to add wetland communities to existing provisions that restrict the size and impacts of mixing zones associated with dredging activities and return water discharges. A provision of the bill also extends from 2 to 3 the number of years in which maintenance dredging will be presumed to be in compliance when done as a result of a storm event that causes impacts to the original approved design areas.

Section 6 amends s. 161.055, F.S., to provide that activities contained within a port conceptual permit may be undertaken under a joint coastal permit.

Section 7 amends s. 253.002, F.S., to provide that any delegation concerning the use of state owned lands by a port shall be subject to the conditions created in accordance with the development of the port conceptual plan created in s. 373.4133, F.S.

Section 8 creates an undesignated section of law to allow a port listed in s. 311.09(1), F.S., to enter into a public-private infrastructure projects agreement with a private entity, or consortium of private entities to build, operate, maintain or finance a port related infrastructure project.

Section 9 provides an effective date of July 1, 2010, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate, but likely positive.

C. Government Sector Impact:

The DEP expects to incur some additional costs associated with the provisions of the bill that can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce Committee – March 10, 2010:

The CS differs from the bill as filed in the following ways:

- Removed the two sections of the original bill that expressed legislative intent about the economic significance of seaports and gave them preference for all available economic incentives, and which amended the Economic Development Road Fund, in s. 288.063, F.S., to make seaport projects approved by the FSTED Council eligible for the fund.
- Removed language in the original bill that briefly described the process and information DEP would use to evaluate a proposed port master plan authorization and either approve or deny it.
- Added detailed provisions on:
  - What information must be included in the port project applicant's request to DEP;
  - The balancing criteria DEP must use when evaluating the application;
  - The expedited administrative review process and time-frames for decisions by DEP and the administrative law judge; and

  - Access to the administrative hearing process for persons or entities substantially affected by the proposed port project.
- Corrected scrivener's errors.

CS/CS by Environmental Preservation and Conservation Committee – March 23, 2010:

The CS/CS differs from the CS in the following ways:

- Revises the port conceptual permit program to clarify the information needed by the DEP when evaluating and making a decision regarding the application for the permit. Additional changes provide clarification to the process used for obtaining the permit and authorizations granted by the permit.
- The CS originally created an expedited permitting process in 311.106, F.S., the CS/CS strikes this and creates a conceptual permit and related processes to be used in s. 373.4133, F.S.
- Revises the definition of stormwater management system to clarify that certain port structures are exempt provided they meet certain conditions.
- Revises the work program amendment process for seaport projects funded under the DOT 5-year work program.
- Adds wetlands communities as an issue needing consideration when establishing mixing zones related to dredging and return water discharges.

CS/CS/CS by Transportation and Economic Development Appropriations – April 13, 2010:

The CS/CS/CS differs from the CS/CS in the following ways:

- Removes a provision from the bill which amended the definition of "stormwater management system" to exclude piers, docks, and similar structures used by ports, if the port has a stormwater prevention plan developed pursuant to the National Pollution Discharge Elimination System.
- Provides that any port listed in s. 311.09(1), F.S., may propose alternative stormwater treatment and design criteria for stormwater management systems serving overwater piers. The proposal must include structural components and best management practices to address the stormwater discharge from the pier, including the consideration of the activities conducted on the pier, to assure that stormwater discharged from the system will meet applicable state water quality standards in receiving waters.
- Provides a 25-percent match requirement for port projects involving the rehabilitation of wharves, docks, berths, bulkheads, or similar structures that are financed through the Florida Seaport Transportation Economic Development Program within the Department of Transportation.
- Provides that a work program amendment may transfer prior year funds from one approved seaport project to another project subject only to the procedures in s. 339.135(7)(d)(2) and allows the department to transfer unexpended balances between seaport projects identified in the approved work program amendments.

- Provides that a seaport listed in s. 311.09,(4), F.S., may enter into a public-private infrastructure project agreement with private entities to build, operate, manage, maintain or finance a port-related public infrastructure project.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Fasano) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 291 - 292
4 and insert:
5 in s. 339.135(7)(d). Notwithstanding any other provision of law,
6 the department may transfer unexpended budget
7
8 ========== T I T L E A M E N D M E N T ==========
9 And the title is amended as follows:
10 Delete line 41
11 and insert:
12 providing for the transfer of unexpended budget

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/SB 2434

INTRODUCER: Health Regulation Committee and Senator Gardiner

SUBJECT: Reduction and Simplification of Health Care Provider Regulation

DATE: April 15, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	**Fav/CS**
2.	Hansen MPH	Coburn	WPSC	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

This bill repeals obsolete and redundant provisions, defines and corrects references to the Joint Commission, updates references to a variety of organizations and state agencies to reflect current titles or responsibilities related to facilities regulated by the Agency for Health Care Administration (AHCA), and streamlines reporting by licensed facilities and state agencies.

The bill makes the following substantive changes:

- Authorizes the Department of Health (DOH) to accept funds from local governments and spend those funds for licensable products approved by the U.S. Department of Health and Human Services in response to a public health emergency;
- Revises provisions affecting nursing homes as follows:
  - Limits the DOH food service inspections in nursing homes to twice per year, absent complaints, and the State Fire Marshal inspections to once per year, absent complaints;
  - Revises the timeframe for a nursing home to provide a resident accounting of personal property held by the facility;
  - Expands the authorized staffing of a geriatric outpatient clinic in a nursing home to include a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, or physician;
  - Authorizes a $1,000 fine per day if a nursing home fails to impose a moratorium on new admissions when the facility has not complied with the minimum-staffing requirements;
  - Eliminates the requirement for a newly hired nursing home surveyor to observe a facility's operations as a part of basic training;
  - Relieves the annual assessment related to Medicaid overpayments for leased nursing homes if the bond fund exceeds $25 million;

  - Requires the AHCA to adopt rules for minimum staffing requirements for nursing homes that serve persons under 21 years of age; and
  - Eliminates the monthly reporting of any notice of claims or liability claims filed against the facility;
- Revises provisions affecting assisted living facilities (ALFs) as follows:
  - Repeals the limited nursing services (LNS) specialty license and authorizes LNS to be provided by appropriately licensed persons in an ALF with a standard license;
  - Increases the per-bed fee for a standard-licensed ALF by $8.50 biennially for beds that are not designated for recipients of optional state supplementation payments (OSS), to offset the loss of revenue that is currently generated from the fees associated with the LNS specialty license. The maximum amount that an ALF is required to pay for the standard license fee is increased;
  - Requires additional monitoring, either onsite or by a desk review, for an ALF that has been cited with a class I or class II deficiency. The bill repeals the requirement for additional monitoring inspections of an ALF licensed with an extended congregate care (ECC) specialty license;
  - Requires all ALFs to report electronically to the AHCA, at least semiannually, certain aggregated data related to the residents and staff of the facility;
  - Modifies the AHCA's consultation responsibilities; and
  - Eliminates the monthly reporting of any notice of claims or liability claims filed against the facility;
- Expands the definition of a portable equipment provider within the requirements for a health care clinic license to include a portable *health service* or equipment provider;
- Provides additional exemptions for licensure and regulation as a health care clinic for the following:
  - Pediatric cardiology or perinatology clinic facilities;
  - Certain corporate entities with $250 million or more in annual sales of health care services provided by licensed health care practitioners; and
  - Certain publicly traded entities;
- Enhances the general licensing provisions of part II of ch. 408, F.S., to:
  - Provide that the license renewal notice that the AHCA sends is a *courtesy* notice;
  - Authorize the AHCA to impose an administrative fine, not to exceed $500 per violation, for violations that do not qualify within the classification scheme of class I – class IV violations;
  - Authorize the AHCA to extend the license expiration date for up to 30 days and impose other conditions during that extension period in order to accomplish the safe and orderly discharge of clients or residents; and
  - Prohibit activities related to altering, defacing, or falsifying a license certificate;
- Authorizes the AHCA to impose an administrative fine for class IV violations that are uncorrected or repeated by a licensed intermediate care facility for developmentally disabled persons;
- Requires a Medicaid claim for a prescription drug billed as a 340B prescribed medication to meet certain requirements;
- Eliminates the requirement for prescription drugs that were purchased at public health prices and held by a contract provider or subcontractor to be stored separately from other prescription drug inventory;

- Requires a community blood center to disclose certain information on its website; exempts certain blood establishments from licensure as a prescription drug manufacturer and registering products; and enables certain community blood centers to obtain a permit to lawfully engage in the wholesale distribution of certain prescription drugs;
- Eliminates the requirement for a pedigree paper for prescription drugs that are distributed in certain medical convenience kits; and
- Includes licensed orthotists and prosthetists in the definition of a health care provider under ch. 766, F.S., related to medical malpractice.

Adoption of this legislation is anticipated to have an insignificant fiscal impact on state agencies. Some types of facilities (such as certain ALFs) may experience a fee increase; and some types of facilities (such as a community blood centers) may experience a fee decrease. Please see the fiscal impact statement in section V of this analysis for details.

This bill amends the following sections of the Florida Statutes: 154.11, 318.21, 381.00315, 381.0072, 381.06014, 394.4787, 394.741, 395.002, 395.003, 395.0193, 395.1023, 395.1041, 395.1055, 395.10972, 395.2050, 395.3036, 395.3038, 395.602, 400.021, 400.0239, 400.0255, 400.063, 400.071, 400.0712, 400.111, 400.1183, 400.141, 400.142, 400.162, 400.179, 400.19, 400.23, 400.275, 400.484, 400.606, 400.607, 400.915, 400.925, 400.931, 400.932, 400.967, 400.9905, 400.991, 400.9935, 408.034, 408.036, 408.043, 408.05, 408.061, 408.07, 408.10, 408.804, 408.806, 408.810, 408.813, 408.815, 409.91196, 409.912, 429.07, 429.11, 429.14, 429.17, 429.19, 429.255, 429.35, 429.41, 429.53, 429.54, 429.71, 429.915, 430.80, 440.13, 483.201, 483.294, 499.003, 499.005, 499.01, 499.01212, 627.645, 627.668, 627.669, 627.736, 633.081, 641.495, 651.118, 766.1015, and 766.202.

The bill repeals the following sections of the Florida Statutes: 112.0455(10)(e), 383.325, 395.1046, 395.3037, 400.147(10), 400.148, 400.195, 408.802(11), 409.221(4)(k), 429.12(2), 429.23(5), 429.28(3), and 429.911(2)(a).

II. Present Situation:

Health Care Licensing

The AHCA regulates over 41,000 health care providers under several regulatory programs based upon individual licensing statutes and the general licensing provisions in part II of ch. 408, F.S. The health care providers include:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act, as provided under ss. 112.0455 and 440.102, F.S.;
- Birth centers, as provided under ch. 383, F.S.;
- Abortion clinics, as provided under ch. 390, F.S.;
- Crisis stabilization units, as provided under parts I and IV of ch. 394, F.S.;
- Short-term residential treatment facilities, as provided under parts I and IV of ch. 394, F.S.;
- Residential treatment facilities, as provided under part IV of ch. 394, F.S.;
- Residential treatment centers for children and adolescents, as provided under part IV of ch. 394, F.S.;
- Hospitals, as provided under part I of ch. 395, F.S.;
- Ambulatory surgical centers, as provided under part I of ch. 395, F.S.;

- Mobile surgical facilities, as provided under part I of ch. 395, F.S.;
- Health care risk managers, as provided under part I of ch. 395, F.S.;
- Nursing homes, as provided under part II of ch. 400, F.S.;
- Assisted living facilities, as provided under part I of ch. 429, F.S.;
- Home health agencies, as provided under part III of ch. 400, F.S.;
- Nurse registries, as provided under part III of ch. 400, F.S.;
- Companion services or homemaker services providers, as provided under part III of ch. 400, F.S.;
- Adult day care centers, as provided under part III of ch. 429, F.S.;
- Hospices, as provided under part IV of ch. 400, F.S.;
- Adult family-care homes, as provided under part II of ch. 429, F.S.;
- Homes for special services, as provided under part V of ch. 400, F.S.;
- Transitional living facilities, as provided under part V of ch. 400, F.S.;
- Prescribed pediatric extended care centers, as provided under part VI of ch. 400, F.S.;
- Home medical equipment providers, as provided under part VII of ch. 400, F.S.;
- Intermediate care facilities for persons with developmental disabilities, as provided under part VIII of ch. 400, F.S.;
- Health care services pools, as provided under part IX of ch. 400, F.S.;
- Health care clinics, as provided under part X of ch. 400, F.S.;
- Clinical laboratories, as provided under part I of ch. 483, F.S.;
- Multiphasic health testing centers, as provided under part II of ch. 483, F.S.; and
- Organ, tissue, and eye procurement organizations, as provided under part V of ch. 765, F.S.

The general licensing provisions contain standards for licensure application requirements, ownership disclosure, staff background screening, inspections, and administrative sanctions. Each provider type has an authorizing statute (as listed above) that includes unique provisions for licensure beyond the general licensing provisions. If a conflict exists between the general licensing provisions and the authorizing statute, s. 408.832, F.S., provides that the general licensing provisions prevail.

There are several references in the authorizing statutes that conflict or duplicate regulations in the general licensing provisions, including references to the classification of deficiencies, penalties for an intentional or negligent act by a provider, provisional licenses, proof of financial ability to operate, inspection requirements, and plans of corrections from providers.

Nursing Homes

Nursing homes provide long-term and sub-acute care to persons in need of 24-hour nursing services or significant supportive services. Nursing home residents are generally frail, physically and psychosocially compromised, heavily dependent upon others for basic care and sustenance, and in some cases near the end of their lives. When residents live in an environment where they are totally dependent on others, they are especially vulnerable to abuse, neglect, and exploitation.

The quality of care and quality of life for residents of nursing homes have been a concern for decades. Nursing home regulation has evolved over the past 20 years at the state and federal levels. In February 2001, the Committee on Health, Aging and Long-Term Care in the Florida Senate published Interim Project Report 2001-025, *Long-Term Care Affordability and*

Availability.[1] This report lays out the historical landscape and challenges of long-term care in Florida as it existed in the early part of this decade. Generally, the nursing home system in Florida was near crisis with increasing litigation and adverse judgments, spiraling liability insurance premiums or the inability to obtain liability coverage from regulated carriers, financial instability of nursing homes, and concerns regarding the quality of care that patients were receiving and prospective care based on increasingly more complex resident needs.
Chapter 2001-45, Laws of Florida (L.O.F.), stemming in part from the Interim Project Report 2001-025, represented a significant overhaul of the long-term care system in Florida. Among other things, this law established a monthly reporting requirement of liability claims filed against nursing homes. This data, as well as other data related to nursing homes was included in a Semi-annual Report on Nursing Homes that the AHCA was required to submit to the Governor and Legislature. This statutory reporting obligation in s. 400.195, F.S., expired on June 30, 2005. Cumulative data is reported on the AHCA's website that reflects trending information on the number of claims filed statewide monthly and quarterly.[2]

Food Services
The DOH regulates all food hygiene standards in nursing homes licensed by the AHCA using rule chapter 64E-11, F.A.C. These rules are based on the most recent U.S. Food and Drug Administration (FDA) Federal Food Code at the time of adoption. Nursing home kitchens are issued a sanitation certificate annually to operate their food service kitchens. Routine inspections are conducted quarterly to ensure that the health of residents is protected and the establishments are in compliance with the food safety, sanitation, and health standards. This complies with the FDA's inspection frequency standards, which recommend that nursing home food operations be inspected four times per year.

Assisted Living Facilities
An assisted living facility (ALF) provides housing, meals, personal care services, and supportive services to older persons and disabled adults who are unable to live independently. ALFs are intended to be an alternative to more restrictive, institutional settings for individuals who need housing and supportive services, but who do not need 24-hour nursing supervision. Generally, an ALF provides supervision, assistance with personal care services, such as bathing, dressing, eating, and assistance with or administration of medications.

As of December 2009, there were 2,830 ALFs licensed with a standard license by the AHCA in this state, for a total of 80,539 beds.[3] In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide LNS, limited mental health services,[4] and

[1] The Florida Senate Interim Project Report 2001-025, *Long-Term Care Affordability and Availability,* may be found at <http://www.flsenate.gov/data/Publications/2001/Senate/reports/interim_reports/pdf/2001-025hc.pdf> (Last visited on April 8, 2010).
[2] See: <http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/NH_Chart.pdf> (Last visited on April 8, 2010).
[3] Source: The AHCA 2010 Bill Analysis & Economic Impact Statement for SPB 7018, on file with the Senate Health Regulation Committee.
[4] An ALF that serves three or more mental health residents must obtain a limited mental health specialty license. A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives OSS.

ECC services. As of September 2009, there were 475 ALFs licensed with a standard license only, for a total of 32,356 beds.[5]

LNS Specialty License
An LNS license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license. As of December 2009, there were 977 ALFs licensed with an LNS specialty license.[6]

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules,[7] may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community. A nursing assessment, that describes the type, amount, duration, scope, and outcomes or services that are rendered and the general status of the resident's health, is required to be conducted at least monthly on each resident who receives a limited nursing service.

An LNS licensee is subject to monitoring inspections by the AHCA or its agents at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.[8]

The biennial fee for an LNS license is $296 per license with an additional fee of $10 per resident based on the total licensed resident capacity of the facility.[9] Ostensibly, this fee covers the additional monitoring inspections currently required of facilities with an LNS license.

Licensure Fees
The biennial licensure fees for the ALF standard license and specialty licenses are found in s. 429.07(4), F.S. This section refers to the general health care licensure provisions in part II of ch. 408, F.S. Section 408.805, F.S., provides for licensure fees to be adjusted annually by not more than the change in the Consumer Price Index (CPI) based on the 12 months immediately

[5] Source: The AHCA in an email to committee professional staff dated September 23, 2009.
[6] Ibid, 6. The AHCA does not track the number of LNS beds.
[7] Rule 58A-5.031, F.A.C. The additional nursing services that might be performed pursuant to the LNS license include: conducting passive range of motion exercises; applying ice caps or collars; applying heat, including dry heat, hot water bottle, heating pad, aquathermia, moist heat, hot compresses, sitz bath and hot soaks; cutting the toenails of diabetic residents or residents with a documented circulatory problem if the written approval of the resident's health care provider has been obtained; performing ear and eye irrigations; conducting a urine dipstick test; replacing an established self-maintained indwelling urinary catheter, or performing an intermittent urinary catheterization; performing digital stool removal therapies; applying and changing routine dressings that do not require packing or irrigation, but are for abrasions, skin tears and closed surgical wounds; caring for stage 2 pressure sores, (care for stage 3 or 4 pressure sores are not permitted); caring for casts, braces and splints, (care for head braces, such as a halo, is not permitted); assisting, applying, caring for, and monitoring the application of anti-embolism stockings or hosiery; administering and regulating portable oxygen; applying, caring for, and monitoring a transcutaneous electric nerve stimulator (TENS); performing catheter, colostomy, and ileostomy care and maintenance; conducting nursing assessments; and, for hospice patients, providing any nursing service permitted within the scope of the nurse's license, including 24-hour nursing supervision.
[8] s. 429.07(3)(c), F.S.
[9] s. 429.07(4)(c), F.S., as adjusted per s. 408.805(2), F.S.

preceding the increase. The following chart reflects the licensure fees contained in s. 429.07(4), F.S., and the adjusted licensure fees based on the CPI that are currently in effect.[10]

Fee Description	Per s. 429.07(4), F.S.	CPI adjusted (current fee)
Standard ALF Application Fee	$300	$356
Standard ALF Per-Bed Fee (non-OSS)	$ 50	$ 59
Total Licensure fee for Standard ALF	$10,000	$13,087
ECC Application Fee	$400	$501
ECC Per-Bed Fee (licensed capacity)	$ 10	$ 10
LNS Application Fee	$250	$296
LNS Per-Bed Fee (licensed capacity)	$ 10	$ 10

Senate Interim Project Report 2010-118
During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the licensure structure for ALFs. The recommendations in the resulting report are to repeal the LNS specialty license and authorize a standard-licensed ALF to provide the nursing services currently authorized under the LNS license; require an additional inspection fee, adjusted for inflation, for a facility that indicates that it intends to provide LNS; require each ALF to periodically report electronically information, as determined by rule, related to resident population, characteristics, and attributes; authorize the AHCA to determine the number of additional monitoring inspections required for an ALF that provides LNS based on the type of nursing services provided and the number of residents who received LNS as reported by the ALF; and repeal the requirement for the AHCA to inspect *all* the ECC licensees quarterly, instead targeting monitoring inspections for those facilities with residents receiving ECC services.

Liability Claims Reporting
Chapter 2001-45, L.O.F.,[11] also established a monthly reporting requirement of liability claims filed against assisted living facilities. Cumulative data is reported on the AHCA's website that reflects trending information on the number of claims filed statewide monthly and quarterly.[12]

Adult Family-Care Homes
An adult family-care home is a full-time family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. The adult family-care home provider must live in the home. Adult family-care homes are licensed and regulated under part II of ch. 429, F.S., part II of ch. 408, F.S., and Chapter 58A-14, F.A.C., unless the person who owns or rents the home provides room, board, and personal services for not more than two adults who do not receive optional state supplementation, or for only his or her relatives. A frail elder is a functionally impaired person who is 60 years of age or older and

[10] Found on the AHCA website at: <http://ahca.myflorida.com/MCHQ/LONG_TERM_CARE/Assisted_living/alf/ALF_fee_increase.pdf>, (Last visited on April 5, 2010).
[11] s. 36, ch. 2001-45, L.O.F., creating s. 400.423, F.S.
[12] See: <http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf> (Last visited on April 8, 2010).

who has physical or mental limitations that restrict the person's ability to perform the normal activities of daily living and impede the person's capacity to live independently.

Consumer Directed Care Program
The Consumer Directed Care Program (CDC) was implemented as a Medicaid 1115 Research and Demonstration waiver. As part of the new program, the AHCA was required to produce an annual report to the Legislature. In March 2008, the CDC program was approved to be under the 1915(j) self-directed option as a Medicaid state plan amendment instead of an 1115 Research and Demonstration waiver. The 1915(j) state plan amendment requires annual and 3-year comprehensive reporting to the federal Centers for Medicare and Medicaid Services (CMS). The report to the CMS communicates the current status of the CDC program, data on CDC enrollment, demographics, consumer satisfaction and cost effectiveness. The CMS requires this report to be available for public review.

Blood Establishments[13]
A blood establishment is defined in s. 381.06014, F.S., to mean any person, entity, or organization, operating within Florida, which examines an individual for the purpose of blood donation or which collects, processes, stores, tests, or distributes blood or blood components collected from the human body for the purpose of transfusion, for any other medical purpose, or for the production of any biological product.

The state of Florida does not issue a specific license as a blood establishment. Florida law[14] requires a blood establishment operating in Florida to operate in a manner consistent with the provisions of federal law in Title 21 Code of Federal Regulations (C.F.R.) parts 211 and 600-640, relating to the manufacture and regulation of blood and blood components. If the blood establishment does not operate accordingly and is operating in a manner that constitutes a danger to the health or well-being of blood donors or recipients, the AHCA or any state attorney may bring an action for an injunction to restrain such operations or enjoin the future operation of the establishment.

Federal law classifies blood establishments as follows:[15] community (non-hospital) blood bank ("community blood center"), hospital blood bank, plasmapheresis center, product testing laboratory, hospital transfusion service, component preparation facility, collection facility, distribution center, broker/warehouse, and other. Community blood centers are primarily engaged in collecting blood and blood components from voluntary donors to make a safe and adequate supply of these products available to hospitals and other health care providers in the community for transfusion. Blood establishments that focus on the collection of plasma that is

[13] During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the regulation of blood banks (a.k.a. community blood centers). For additional information refer to Interim Report 2010-119 available at: <http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-119hr.pdf> (Last visited on April 8, 2010).
[14] s. 381.06014, F.S.
[15] A description of these classifications may be found at: <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/ucm055484.htm> (Last visited on April 8, 2010).

not intended for transfusion, but is intended to be sold for the manufacture of blood derivatives[16] routinely pay donors.

Community blood centers in Florida are licensed as clinical laboratories by the AHCA, unless otherwise exempt.[17] As a part of the clinical laboratory license, the facility is inspected at least every two years. The AHCA may accept surveys or inspections conducted by a private accrediting organization in lieu of conducting its own inspection. The clinical laboratory personnel are required to maintain professional licensure by the Department of Health (DOH). Community blood centers must also have appropriate licenses issued by the DOH and must comply with laws related to biomedical waste[18] and radiation services.[19]

Currently, there are six not-for-profit corporations and one for-profit corporation that operate community blood centers in Florida. Several hospital-owned blood centers operate in this state as well, primarily collecting for their own use. At least one community blood center that does not have a fixed location in Florida, collects blood and blood components using a mobile blood-collection vehicle from volunteer donors and distributes blood and blood components to health care providers in Florida.

Human blood and blood products are characterized as both "biologics,"[20] for purposes of regulation under the federal Public Health Service Act, as amended, and also as "drugs," subject to regulation under applicable provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act).[21] Some of the community blood centers are licensed by the DOH as a prescription drug wholesaler since they purchase and distribute prescription drugs, such as blood, blood components, blood derivatives, and other prescription drugs used in the collection, processing, and therapeutic activities conducted by the community blood centers.[22]

The Florida Drug and Cosmetic Act (the Act),[23] as well as federal law,[24] prohibits the sale, purchase or trade (wholesale distribution) of a prescription drug that was purchased by… a health care entity. A community blood center is a health care entity,[25] however, some of the

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[16] Blood derivatives are classified as prescription drugs.
[17] Rule 59A-7.019, F.A.C., and part I of ch. 483, F.S., related to Health Testing Services.
[18] Rule ch. 64E-16, F.A.C., Biomedical Waste, and s. 381.0098, F.S.
[19] Rule ch. 64E-5, F.A.C., Control of Radiation Hazards. If a blood center irradiates blood products using radioactive materials, the location in which this occurs must be licensed. If a blood center irradiates blood products using a machine, then the community blood center must register the machine.
[20] The term "biologics" or "biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product,… applicable to the prevention, treatment, or cure of a disease or condition of human beings.
See: <http://www.law.cornell.edu/uscode/42/usc_sec_42_00000262----000-.html> (Last visited on April 8, 2010).
[21] The FDA "CPG 230.120 – Human Blood and Blood Products as Drugs" "Inspections, Compliance, Enforcement, and Criminal Investigations" available at:
< http://www.fda.gov/ICECI/ComplianceManuals/CompliancePrograpManual/ucm073863.htm> (Last visited on April 8, 2010). Blood and blood components intended for further manufacture into products that meet the device definition are biological devices.
[22] Ch. 499, F.S., related to Drugs, Devices, and Cosmetics.
[23] s. 499.005(21), F.S.
[24] 21 U.S.C. 353(c)(3)(A)(ii)(l) (Section 503(c)(3)(A)(ii)(l) of the FD&C Act).
[25] A health care entity is defined as a closed pharmacy or any person, organization, or business entity that provides diagnostic, medical, surgical, or dental treatment or care, or chronic or rehabilitative care, but does not include any wholesale

community blood centers in this state are licensed as prescription drug wholesalers in order to purchase and distribute certain prescription drugs that are needed by community blood centers and hospitals to deliver health care services that are traditionally performed by, or in cooperation with, community blood centers. For example, some community blood centers offer hospitals the full range of blood-related products, such as albumin (to replace fluid), Rh Immune Globulin (to prevent incompatible maternal-fetal blood admixture), and erthropoietin (to stimulate the production of red blood cells), as well as trained personnel and expertise in handling those products. The Act and licensure of community blood centers under the Act are at odds with providing critical health care services by community blood centers.[26]

In November 2008, the FDA's rule to address this dilemma in federal law became effective.[27] That rule provides for exceptions to authorize a registered blood establishment that qualifies as a health care entity to sell, purchase, or trade certain prescription drugs that would otherwise be prohibited. The DOH suggested that the authorizations in the federal rule should be included in the Act, but could be more narrowly crafted to limit the sale, purchase, or trade of these prescription drugs *to a health care entity* to avoid unintended consequences or the opportunity for community blood centers to compete in the marketplace as a prescription drug wholesaler.

The DOH recently noted that blood establishments have not been permitted under the Act as a prescription drug manufacturer and have not registered the prescription drugs that they manufacture (the blood and blood components) with the DOH, notwithstanding the fact that blood establishments are considered manufacturers of prescription drugs under federal law. The distribution of the prescription drugs that blood establishments manufacture have been exempted from the definition of wholesale distribution under s. 499.003(53)(d), F.S., for years. This situation applies to the community blood centers as well as other types of blood establishments, such as the establishments that collect plasma from paid donors.

III. Effect of Proposed Changes:

Sections 1, 7, 15, 20, 33, 34, 38, 59, 65, 70, 74, 76, and 82. Repeal the following sections of the Florida Statutes:

- s. 112.0455(10)(e), F.S., to remove an obsolete provision concerning drug testing within the Drug-Free Workplace Act. The Division of Statutory Revision requested clarification of this provision;
- s. 383.325, F.S., related to public access to governmental inspection reports for birth centers, since this is required in the general licensing provisions in part II of ch. 408, F.S.;
- s. 395.1046, F.S., related to the AHCA's investigation procedures for complaints against a hospital for violations of the access to emergency services and care provisions under s. 395.1041, F.S. Complaint procedures exist in the general licensing provisions in part II of

distributor or retail pharmacy licensed under state law to deal in prescription drugs. See s. 499.003(23), F.S. The federal definition, found at 21 C.F.R. § 203.3(q), is similar.

[26] The DOH indicated in an email to Florida Senate Health Regulation Committee staff, dated November 12, 2009, that at the present time, they are not aware of any serious abuses or action by the licensed community blood centers that may pose a public health threat.

[27] The final rule in Vol. 73, No. 197 of the Federal Register on page 59496, published on October 9, 2008, is available at: <http://edocket.access.gpo.gov/2008/pdf/E8-24050.pdf> (Last visited on April 8, 2010).

ch. 408, F.S. The federal process for emergency access complaints dictates that access to emergency services and care complaints be handled similarly to routine complaints;

- s. 395.3037, F.S., related to definitions of Department and Agency as they pertain to stroke centers. These terms are already defined in s. 395.002, F.S., which provides definitions for all of ch. 395, F.S.;
- s. 400.147(10), F.S., related to the requirement for a licensed nursing home to report to the AHCA monthly any notice of claims against the facility for violation of a resident's rights or negligence. This information has been required to be submitted since 2001. It was included in the AHCA's Semi-Annual Report on Nursing Homes, which is repealed in section 31 of this bill. Currently this information is reported on the AHCA's website;
- s. 400.148, F.S., related to the obsolete Medicaid "Up-or-Out" Quality of Care Contract Management Program;
- s. 400.195, F.S., related to an obsolete requirement for the AHCA to report on lawsuits against and deficiencies in nursing homes. The statutory reporting requirement was for the period June 30, 2001 through June 30, 2005;
- s. 408.802(11), F.S., related to the general licensure provisions, to delete reference to private review agents. The regulation of private review agents was repealed by the Legislature in 2009;
- s. 409.221(4)(k), F.S., related to the CDC program, to eliminate the requirement for the AHCA, the DOEA, the DOH, the Department of Children and Family Services, and the Agency for Persons with Disabilities to review and assess the implementation of this program on an ongoing basis. The requirement for the AHCA to submit an annual written report to the Legislature on these reviews and recommendations to improve the program is also repealed;
- s. 429.12(2), F.S., related to change of ownership for assisted living facilities, since this is addressed under the general licensing provisions in part II of ch. 408, F.S.;
- s. 429.23(5), F.S., to repeal the requirement for an assisted living facility to report monthly to the AHCA any liability claim filed against it, which is currently reported on the AHCA's website;
- s. 429.28(3), F.S., to eliminate duplicative provisions related to inspections and monitoring facilities that have been cited with violations. The provision requiring the AHCA to determine whether an ALF licensee is adequately protecting residents' rights in its biennial survey is transferred to s. 429.07, in section 68 of this bill; and
- s. 429.911(2)(a), F.S., related to adult day care center licensure, to remove a duplicative provision that now exists in the general licensing provisions in part II of ch. 408, F.S.

Sections 2, 9, 21, 45, 51, 55, 84, 85, 92, 93, 94, 95, 97, and 99. Amend the following sections of the Florida Statutes to update the name of certain accrediting organizations, including the Joint Commission:

- s. 154.11, F.S., related to facilities owned and operated by the board of trustees of each public health trust;
- s. 394.741, F.S., related to providers of behavioral health care services;
- s. 395.3038, F.S., related to stroke centers;
- s. 400.925, F.S., related to home medical equipment providers;
- s. 400.9935, F.S., related to health care clinics;
- s. 408.05, F.S., related to health care quality measures that are reported by the AHCA;

- s. 430.80, F.S., related to the teaching nursing home pilot project;
- s. 440.13, F.S., related to workers' compensation;
- s. 627.645, F.S., related to health insurance;
- s. 627.668, F.S., related to insurance coverage for mental and nervous disorders;
- s. 627.669, F.S., related to insurance for substance abuse impaired persons;
- s. 627.736, F.S., related to personal injury protection automobile insurance;
- s. 641.495, F.S., related to health maintenance organizations and prepaid health clinics; and
- s. 766.1015, F.S., related to boards or other groups established for quality improvement purposes.

Section 3. Amends s. 318.21, F.S., to redirect funding intended to serve Medicaid recipients with complex spinal cord injuries from the AHCA to the Brain and Spinal Cord Injury Rehabilitation Trust Fund within the DOH.

Section 4. Amends s. 381.00315, F.S., to authorize the DOH to accept funds from local governments and spend those funds for licensable products that have been approved by the U.S. Department of Health and Human Services in response to a public health emergency.

Section 5. Amends s. 381.0072, F.S., to limit the DOH food services inspections in nursing homes to twice per year, absent complaints, and requires the inspection to occur at least 60 days after a recertification visit by the AHCA.

Section 6. Amends s. 381.06014, F.S., to define a volunteer donor as a person who does not receive remuneration, other than an incentive, for a blood donation intended for transfusion and the product container of the donation from the person qualifies for labeling with the statement "volunteer donor" under federal regulations.

The committee substitute requires a blood establishment that collects blood or blood components from volunteer donors to disclose information on its Internet website concerning its activities. A hospital that collects blood or blood components from volunteer donors for its own use is not required to disclose this information. The disclosures may be cumulative for all blood establishments (branches) within the business entity. The information required to be disclosed includes:

- A description of the activities of the blood establishment related to collecting, processing, and distributing volunteer blood donations. This information is to be presented in a manner that is appropriate for the donating public;
- The number of units by component (whole blood, red blood cells, leukoreduced red blood cells, fresh frozen plasma or equivalent, recovered plasma, platelets, and cryoprecipitated AHF) that the blood establishment:
  - Produced (such as units that passed quality control and are available for use),
  - Obtained from other sources,
  - Distributed to health care providers that are located outside the state. However, if the blood center collects donations in a county outside Florida and distributes to health care providers in that county, then the distributions made to that county must be excluded. This distribution information must be aggregated by health care providers that are located

within the United States and its territories or outside the United States and its territories, and
  - Distributed to entities that are health care providers. This information must be aggregated by purchasers that are located within the United States and its territories or outside the United States and its territories.

  This information must be on the establishment's website by March 1 of each year reflecting data from the preceding calendar year;
- The blood establishment's policies pertaining to conflicts of interest, related-party transactions, and determining executive compensation. If any changes are made to any of these policies, the revised document must be on the blood establishment's website by the following March 1; and
- Either the most recent three years of a not-for-profit blood establishment's Form 990 that have been reported to the Internal Revenue Services, which must be posted within 30 calendar days after filing, or an audited or reviewed balance sheet, income statement, and statement of changes in cash flow, along with the expression of opinion on these statements from a certified public accountant, which must be posted within 120 days following the end of the fiscal year for a for-profit blood establishment and which must remain on the website for 36 months.

The clinical laboratory license of a blood establishment that fails to disclose this information is subject to an administrative fine as provided in section 86 of the bill.

Section 8. Amends s. 394.4787, F.S., to correct a cross-reference concerning licensure of a specialty psychiatric hospital.

Section 10. Amends s. 395.002, F.S., to redefine the term "accrediting organizations" as it relates to hospitals and other licensed facilities to delete the list of four organizations that are identified in statute. The term is redefined to mean nationally recognized or approved accrediting organizations whose standards incorporate comparable licensure requirements as determined by the AHCA. In addition, the following obsolete definitions are repealed: "initial denial determination," "private review agent," "utilization review," and "utilization review plan."

Section 11 Amends s. 395.003, F.S., to remove obsolete language concerning emergency departments located off-site from a licensed hospital.

Section 12. Amends s. 395.0193, F.S., related to peer review of physicians within hospitals and licensed facilities, to correct references to the Division of Medical Quality Assurance of the DOH.

Section 13. Amends s. 395.1023, F.S., related to reporting actual or suspected cases of child abuse, abandonment, or neglect by hospitals and licensed facilities, to clarify that references to the Department mean the Department of Children and Family Services.

Section 14. Amends s. 395.1041, F.S., to remove obsolete language pertaining to services within a hospital's service capability. The Division of Statutory Revision requested clarification of this provision.

Section 16. Amends s. 395.1055, F.S., to require that the AHCA's rulemaking concerning licensed facility beds conform to standards specified by the AHCA, the Florida Building Code, and the Florida Fire Prevention Code.

Section 17. Amends s. 395.10972, F.S., to update the reference to the current name of the Florida Society for Healthcare Risk Management and Patient Safety.

Section 18. Amends s. 395.2050, F.S., to update the reference to the current name of the Centers for Medicare and Medicaid Services.

Section 19. Amends s. 395.3036, F.S., to correct a cross-reference concerning the confidentiality of records and meetings of corporations that lease public health care facilities. The Division of Statutory Revision requested clarification of this provision.

Section 22. Amends s. 395.602, F.S., to eliminate one of the conditions that qualifies a hospital as a rural hospital. This condition is a hospital in a constitutional charter county with a population of over 1 million persons that has imposed a local option health service tax, in an area that was directly impacted by a catastrophic event on August 24, 1992, for which the Governor of Florida declared a state of emergency, has 120 beds or less that serves an agricultural community with an emergency room utilization of no less than 20,000 visits, and a Medicaid inpatient utilization rate greater than 15 percent. No hospitals meet this condition.

Section 23. Amends s. 400.021, F.S., to expand the definition of a geriatric outpatient clinic in a nursing home, to add that it may be staffed by a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, or physician. Currently the definition of a geriatric outpatient clinic provides that it be staffed by a registered nurse or a physician assistant.

Section 24. Amends s. 400.0239, F.S., to delete an obsolete reference to the Medicaid "Up or Out" Quality of Care Contract Management Program.

Section 25. Amends s. 400.0255, F.S., to correct an obsolete cross-reference to an administrative rule concerning fair hearings requested by nursing home residents. This correction was requested by the Joint Administrative Procedures Committee.

Section 26. Amends s. 400.063, F.S., to eliminate a cross-reference in the procedures for resident protection and relocation accounts, since the section of law that is referenced was repealed. The Division of Statutory Revision requested clarification of this provision.

Section 27. Amends s. 400.071, F.S., to repeal disclosure of certain information related to the closure of other licensed facilities in which the nursing home licensure applicant held a controlling interest. Section 29 of this bill amends s. 400.111, F.S., to require certain disclosures to replace these requirements. This section also repeals the requirement for a nursing home licensure applicant to identify the number of beds and number of Medicare and Medicaid certified beds since this is required in the general licensing provisions in s. 408.806(1)(d), F.S.

Section 28. Amends s. 400.0712, F.S., to repeal the authority for a nursing home to request an inactive license for a portion of its beds and to provide a cross-reference to the general licensure provisions in part II of ch. 408, F.S.

Section 29. Amends. s. 400.111, F.S., to require disclosure of certain information concerning other licenses that a controlling interest has held when requested by the AHCA instead of a mandatory submission for all nursing home licensure applications.

Section 30. Amends s. 400.1183, F.S., to repeal the requirement for a nursing home to report to the AHCA upon relicensure information concerning grievances received by the facility.

Section 31. Amends s. 400.141, F.S., to authorize a nursing home with a standard licensure status or one that has been awarded a Gold Seal, to provide respite care for a maximum of 14 days per stay pursuant to an abbreviated plan of care. The abbreviated plan of care must, at a minimum, include nutritional requirements, medication orders, physician orders, nursing assessments, and dietary preferences. A contract must be executed for each person admitted under the respite care program that specifies the services to be provided and the charges for those services. This contract may be used for subsequent admissions for that person within one year after the date of execution. A respite resident may receive a total of 60 days of respite care within a 12-month period. A prospective respite resident must provide medical information from one of the specified practitioners along with an order for respite care. Provisions are made for the respite resident to use his or her personal medications and the nursing home must arrange for transportation to certain health care services to ensure continuity of care and services while the resident is receiving the respite care. A person admitted to the nursing home under the respite care program is exempt from requirements related to discharge planning and is covered by certain residents' rights.

A nursing home is required to maintain complete clinical records on each resident that must be readily accessible and systematically organized.

The committee substitute eliminates the requirement for a licensed nursing facility to disclose, within 30 days after the nursing home executes an agreement with a company to manage the nursing home, certain information related to the closure of other licensed facilities in which the management company held a controlling interest.

The committee substitute requires the AHCA to fine a nursing facility $1,000 if it fails to impose a moratorium on new admissions when the facility has not complied with the minimum-staffing requirements.

The committee substitute repeals the requirement for a licensed nursing home to report to the AHCA information concerning filing for bankruptcy, divestiture of assets, or corporate reorganization. A similar provision is amended into the general licensing provisions in s. 408.810, F.S., in Section 62 of this bill.

Section 32. Amends s. 400.142, F.S., to eliminate the requirement for the AHCA to adopt rules related to nursing facility staff implementing an order to withhold or withdraw cardiopulmonary

resuscitation inasmuch as statutory provisions exist in s. 401.45, F.S., for emergency medical responders.

Section 35. Amends s. 400.162, F.S., to require a nursing home to provide a resident accounting of personal property held by the facility annually or within 7 days after a request for a statement, rather than quarterly.

Section 36. Amends s. 400.179, F.S., to require the AHCA to assess the cumulative fees collected minus authorized deductions under the leased nursing home bond provisions for Medicaid overpayments annually by March 31. If the net amount exceeds $25 million, leased nursing homes do not have to make the annual bond payment.

Section 37. Amends s. 400.19, F.S., to authorize the AHCA to certify correction of a class III or class IV deficiency related to resident rights or resident care based on written documentation from the facility.

Section 39. Amends s. 400.23, F.S., to update the reference to the current name of the Division of Children's Medical Services Network of the DOH. The Division of Statutory Revision requested clarification of this provision.

In addition, the committee substitute requires the AHCA to adopt rules for minimum staffing requirements for nursing homes that serve persons under 21 years of age. These rules are to be adopted in collaboration with the DOH Division of Children's Medical Services Network and must require, at a minimum, 3.9 hours of direct care per resident per day for residents requiring skilled care and 5 hours of direct care per resident per day for residents who are fragile.

Section 40. Amends s. 400.275, F.S., to eliminate the requirement for the AHCA to assign each newly hired nursing home surveyor to observe a facility's operations as a part of basic training. The AHCA nursing home staff must be qualified under the federal requirements for the Surveyor Minimum Qualifications Test.

Section 41. Amends s. 400.484, F.S., related to violations by home health agencies, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section.

Section 42. Amends s. 400.606, F.S., to eliminate the requirement for an applicant for a hospice license to submit the projected annual operating cost of the hospice. Under the general licensing provisions, in part II of ch. 408, F.S., an applicant for licensure must submit information pertaining to the applicant's financial ability to operate.

Section 43. Amends s. 400.607, F.S., to clarify the grounds for administrative action by the AHCA against a hospice and eliminate duplicative provisions found in the general licensing provisions in part II of ch. 408, F.S.

Section 44. Amends s. 400.915, F.S., to correct an obsolete cross-reference to an administrative rule concerning the construction or renovation of a prescribed pediatric extended care center. This correction was requested by the Joint Administrative Procedures Committee.

Section 46. Amends s. 400.931, F.S., to repeal the option for an applicant for a home medical equipment provider license to submit a $50,000 surety bond in lieu of proof of financial ability to operate.

Section 47. Amends s. 400.932, F.S., to clarify the grounds for administrative action by the AHCA against a home medical equipment provider.

Section 48. Amends s. 400.967, F.S., related to violations by intermediate care facilities for developmentally disabled persons, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section. In addition, the committee substitute requires the AHCA to impose an administrative fine not to exceed $500 for each occurrence and each day that an uncorrected or repeated class IV violation exists.

Section 49. Amends s. 400.9905, F.S., to revise the definitions related to the health care clinic act. This includes an entity that contracts with or employs a person to provide portable *health care services or* equipment to multiple locations, which bills third-party payors for those services, and that otherwise, meets the definition of a clinic.

The committee substitute also exempts the following entities from the definition and regulation as a health care clinic:

- A pediatric cardiology or perinatology clinic facility that is a publicly traded corporation or that is wholly owned by a publicly traded corporation;
- Entities that are owned by a corporation that has $250 million or more in total annual sales of health care services provided by licensed health care practitioners if at least one of the owners is a Florida-licensed health care practitioner who is responsible for supervising the business activities and legally responsible for compliance with state law for purposes of this section of law; and
- Entities that are owned or controlled, directly or indirectly, by a publicly traded entity with $100 million or more in total annual revenues derived from providing health care services by licensed health care practitioners who are employed with or contracted by the entity.

Section 50. Amends s. 400.991, F.S., to repeal the option for an applicant for a health care clinic license to submit a $500,000 surety bond in lieu of proof of financial ability to operate. Another cross-reference is added to reflect an existing provision concerning proof of financial ability to operate for an applicant for a health care clinic license.

Section 52. Amends s. 408.034, F.S., to correct a reference to the AHCA's authority to issue licenses to intermediate care facilities for developmentally disabled persons under part VIII of ch. 400, F.S., without the facility first obtaining a certificate of need as required by s. 408.036(1)(a), F.S.

Section 53. Amends s. 408.036, F.S., to eliminate a cross-reference to an exception to the certificate-of-need requirements for a hospice. No exceptions are currently provided in s. 408.043, F.S.

Section 54. Amends s. 408.043, F.S., to remove the term "primarily" to clarify that a certificate of need is required to establish or expand an inpatient hospice facility unless the facility is licensed as a health care facility, such as a hospital or skilled nursing facility.

Section 56. Amends s. 408.061, F.S., to remove an inappropriate reference to an administrative rule that describes data reporting.

Section 57. Amends s. 408.07, F.S., to conform the definition of a rural hospital to the provisions related to licensure of rural hospitals in s. 395.602, F.S., as amended in section 22 of this committee substitute.

Section 58. Amends s. 408.10, F.S., to eliminate the requirement for the AHCA to investigate consumer complaints related to health care facilities' billing practices and publish related reports.

Section 60. Amends s. 408.804, F.S., related to the general licensing provisions. The act of, or causing another to alter, deface, or falsify a license certificate is a misdemeanor of the second degree. A licensee or provider who displays an altered, defaced, or falsified license certificate is subject to an administrative fine of $1,000 for each day of illegal display and a license or application for a license is subject to revocation or denial.

Section 61. Amends s. 408.806, F.S., related to general licensing provisions, to require the AHCA to send a courtesy notice to the licensee 90 days before renewal. However, the AHCA's failure to do so or the licensee's failure to receive the notice does not excuse the licensee's responsibility to timely submit the renewal application and fee. Submission of the renewal application, application fee, and any applicable late fees is required to renew the license.

Section 62. Amends s. 408.810, F.S., related to general licensing provisions, to require an applicant to submit to the AHCA proof that the applicant has notified a mortgagor or landlord, if applicable, of the applicant's intent to provide services on the property that require licensure by the AHCA and instructed the mortgagor or landlord to notify the AHCA if the mortgagor or landlord initiates action against the applicant.

A controlling interest shall notify the agency within 10 days after initiation of a court action, such as bankruptcy proceedings, foreclosure, or eviction proceedings in which the controlling interest is a petitioner or defendant.

Section 63. Amends s. 408.813, F.S., related to general licensing provisions, to authorize the AHCA to impose an administrative fine, not to exceed $500 per violation, for violations that do not qualify within the classification scheme of class I – class IV violations. Unclassified violations might include: violating any term or condition of a license; violating any provision of the general licensing provisions, authorizing statutes, or applicable rules; exceeding licensed capacity without authorization; providing services beyond the scope of the license; or violating a moratorium.

Section 64. Amends s. 408.815, F.S., related to general licensing provisions, to authorize the AHCA to extend the license expiration date for up to 30 days and to impose other conditions during that 30-day extension in order to accomplish the safe and orderly discharge of clients. The

authority to extend is at the discretion of the AHCA after considering the nature and number of clients, the availability and location of acceptable alternative placements, and the ability of the licensee to continue providing care to the clients. This agency authority does not create any right or entitlement to an extension of a license expiration date.

Section 66. Amends s. 409.91196, F.S., related to Medicaid supplemental rebate agreements, to correct a cross-reference resulting from the amendment in section 67 of this bill.

Section 67. Amends s. 409.912, F.S., to require a Medicaid claim for a prescription drug billed as a 340B prescribed medication to meet certain requirements and be billed at the actual acquisition cost.

Section 68. Amends s. 429.07, F.S., to repeal the LNS specialty license and its requirements and the quarterly monitoring requirements related to ALFs that are licensed to provide ECC services. The bill requires an ALF that has been cited within the previous 24 months for a class I or class II violation to be subject to unannounced monitoring. This monitoring may occur through a desk review or onsite, unless a cited violation relates to providing or failing to provide nursing care. In that case, a registered nurse is required to participate in at least two onsite monitoring visits within a 12-month period. The monitoring requirement applies regardless of the status of the enforcement or disciplinary action for the cited violation.

The biennial per-bed licensure fee for a standard license is increased by $8.50 to $67.50 from the current per-bed licensure fee (CPI adjusted) of $59. The other licensure fees in this section are amended to reflect the current CPI adjusted fee, only. The total standard licensure fee is increased from the current fee (CPI adjusted) of $13,087 to $18,000.

The bill eliminates the requirement for the Department of Elderly Affairs (DOEA) to report annually to the Governor and Legislature on the status of and recommendations related to ECC services. A provision requiring the AHCA to determine whether the ALF licensee is adequately protecting residents' rights in its biennial survey is transferred from s. 429.28(3), F.S.

Section 69. Amends s. 429.11, F.S., to remove language related to provisional licenses within the authorizing statutes for the ALFs since provisional licenses are authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 71. Amends s. 429.14, F.S., to authorize the AHCA to provide information concerning any ALFs that have had their license denied, suspended, or revoked to the Department of Business and Professional Regulation electronically or through the AHCA's website. The committee substitute also strikes language that duplicates a provision in the general licensing provisions in part II of ch. 408, F.S.

Section 72. Amends s. 429.17, F.S., to conform provisions related to the ALF licenses to the repeal of the LNS specialty license. This section of law is also amended to remove the requirement for a plan of correction as a part of issuing a conditional license for an ALF since this is authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 73. Amends s. 429.19, F.S., to clarify that a monitoring fee may be assessed against an ALF in addition to an administrative fine.

Section 75. Amends s. 429.255, F.S., to eliminate the authorization for an ALF to use volunteers to provide certain health-related services, including: administering medications, taking residents' vital signs, managing individual pill organizers for residents who self-administer medication, giving prepackaged enemas, observing residents and documenting observations on the resident's record or reporting observations to the resident's physician, and performing all duties within the scope of their license or certification in a facility licensed to provide ECC services.

In addition, this section authorizes contracted personnel or facility staff who are licensed under the nurse practice act to provide LNS to residents in a standard-licensed ALF. The licensee is responsible for maintaining documentation of health-related services provided as required by rule and ensuring that staff are adequately trained to monitor residents who have received these health-related services.

Section 77. Amends s. 429.35, F.S., to authorize the AHCA to provide the results of an inspection of an ALF to the local ombudsman council and others electronically or through the AHCA's website.

Section 78. Amends s. 429.41, F.S., to conform provisions related to rulemaking for ALFs to changes made in this bill.

Section 79. Amends s. 429.53, F.S., related to consultation by the agency pertaining to an ALF. The bill expands the staff who may provide consultation and eliminates the requirement for the AHCA to consult in areas that are beyond its jurisdiction and areas of expertise.

Section 80. Amends s. 429.54, F.S., to require licensed ALFs to report electronically to the AHCA semiannually certain data related to the facility's residents and staffing. This data includes, but is not limited to the:

- Number of residents;
- Number of residents receiving LMH services;
- Number of residents receiving ECC services;
- Number of residents receiving LNS; and
- Professional personnel providing resident services.

The DOEA, in consultation with the AHCA, is required to adopt rules related to these reporting requirements.

Section 81. Amends s. 429.71, F.S., related to violations by adult family-care homes, to cross-reference the definitions of the classes of violations in the general licensing provisions in part II of ch. 408, F.S., thereby eliminating redundant definitions for deficiencies in this section. The provisions within the section related to the plan of correction are removed since it is also addressed in the general licensing provisions.

Section 83. Amends s. 429.915, F.S., to remove the requirement for a plan of correction as a part of issuing a conditional license for an adult day care facility since this is authorized in the general licensing provisions in part II of ch. 408, F.S.

Section 86. Amends s. 483.201, F.S., to add the failure of a blood establishment that collects blood or blood components from volunteer donors to disclose the information required by s. 381.06014, F.S., regarding the blood establishment's activities to the grounds for which disciplinary action may be taken against a blood establishment's clinical laboratory license. If multiple blood establishments are operated by the blood establishment, the fines may be assessed against only one of the clinical laboratory licenses of the business entity. A $1,000 fine may be assessed for each day for which the disclosure is not made, up to a maximum amount of $10,000 for each annual reporting period.

Section 87. Amends s. 483.294, F.S., to correct the inspection frequency for licensed multiphasic health testing centers to biennially, consistent with the general licensing provisions in part II of ch. 408, F.S.

Section 88. Amends s. 499.003, F.S., to revise the definition of a health care entity to authorize a blood establishment that collects blood or blood components from volunteer donors to be a health care entity and engage in the wholesale distribution of prescription drugs in accordance with the requirements contained in section 90 of the committee substitute related to the restricted prescription drug distributor permit for a blood establishment.

The committee substitute also eliminates the requirement for prescription drugs that were purchased at public health prices and held by a contract provider or subcontractor to be stored separately from other prescription drug inventory.

Section 89. Amends s. 499.005, F.S., to remove the prohibition against the wholesale distribution by a blood establishment that collects blood or blood components from volunteer donors if the blood establishment is operating in compliance with the requirements contained in section 90 of the committee substitute related to the restricted prescription drug distributor permit for a blood establishment.

Section 90. Amends s. 499.01, F.S., to exempt a blood establishment that only manufactures blood and blood components from the requirements to be permitted as a prescription drug manufacturer and register the products it manufacturers.

The committee substitute also requires certain blood establishments to obtain a permit as a restricted prescription drug distributor in order to lawfully sell and distribute prescription drugs to another health care entity. The committee substitute provides for certain restrictions on this authorization, including:

- The permit may be issued only to a blood establishment that is located in Florida;
- The permit may be issued to a blood establishment that collects blood and blood components from volunteer donors only or pursuant to an authorized practitioner's order for medical treatment or therapy;

- The distributions may be made only to a health care entity that is licensed as a closed pharmacy or provides health care services at the location where the health care entity receives the prescription drugs;
- The prescription drugs that may be distributed pursuant to the restricted prescription drug distributor permit are limited to:
  - A prescription drug that is indicated for a bleeding disorder, clotting disorder, or anemia;
  - A blood collection container that is approved under s. 505 of the federal FD&C Act related to new drugs;
  - A drug that is a blood derivative, or a recombinant or synthetic form of a blood derivative; or
  - A prescription drug that is essential to services performed or provided by blood establishments and is authorized for distribution by blood establishments under federal law if it is identified in rules adopted by the DOH; and
- The blood establishment may only provide health care services that:
  - Are related to its activities as an FDA-registered blood establishment;
  - Consist of collecting, processing, storing, or administering human hematopoietic stem cells or progenitor cells; or
  - Consist of performing diagnostic testing of specimens if these specimens are tested together with specimens undergoing routine donor testing.

In addition, the committee substitute provides that a blood establishment that is permitted as a restricted prescription drug distributor must comply with all the storage, handling, and recordkeeping requirements with which a prescription drug wholesale distributor must comply. This includes providing pedigree papers[28] upon the wholesale distribution of these prescription drugs.

The DOH is authorized to adopt rules related to the distribution, transportation, storage, and recordkeeping of prescription drugs by blood establishments. These rules may include requirements for the use of prescription drugs in mobile blood-collection vehicles.

Section 91. Amends s. 499.01212, F.S., to exempt the wholesale distribution of prescription drugs that are contained within a sealed medical convenience kit that has been assembled in an establishment that is registered with the FDA as a medical device manufacturer and which does not contain controlled substances from the requirement for a pedigree paper.

Section 96. Amends s. 633.081, F.S., to limit inspection of nursing homes by the State Fire Marshal to once per year and upon receiving a complaint that forms the basis of a reasonable cause to believe that a violation may exist or upon identifying a violation in the course of conducting orientation or training activities within a nursing home.

Section 98. Amends s. 651.118, F.S., related to nursing homes in continuing care communities, to conform a cross-reference to changes made in section 31 of this committee substitute.

[28] A pedigree paper contains information required by s. 499.01212, F.S., regarding the sale and distribution of a prescription drug.

Section 100. Amends s. 766.202, F.S., to add licensed orthotists and prosthetists to the definition of a health care provider under ch. 766, F.S., related to medical malpractice.

Section 101. Provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

Article III, Section 6 of the Florida Constitution requires every law to embrace but one subject and matter properly connected therewith, and the subject must be briefly expressed in the title. The title of this committee substitute was amended to "an act relating to the reduction and simplification of health care provider regulation." This title may be too narrow. For example, the committee substitute includes requirements for billing a 340B prescribed medication in section 67, requirements for blood establishments in sections 6 and 90, an exemption for prescription drug wholesalers in section 91, and the addition of orthotists and prosthetists in a definition related to medical malpractice in section 100.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill authorizes an ALF to provide LNS without obtaining an additional specialty license at a fee of $296 plus $10 per-bed fee based on the total licensed resident capacity of the facility. The per-bed licensure fee for all ALFs is increased $8.50 biennially for non-OSS beds. This increased fee offsets the loss of revenue currently generated from the LNS license and will be used to fund monitoring of any ALF that has been cited with a class I or class II deficiency. The maximum amount that an ALF is required to pay biennially for the licensure fees associated with the standard license is increased by $4,913 to accommodate the increased per-bed licensure fee increase.

Instead of paying $900 annually for a prescription drug wholesale distributor permit, providing a $100,000 bond, and employing a certified designated representative, a community blood center that intends to engage in the wholesale distribution of certain prescription drugs in order to provide healthcare services typically provided by blood establishments will pay a $600 fee biennially for a restricted prescription drug distributor permit.

B. Private Sector Impact:

This bill streamlines regulations for 29 provider types regulated by the AHCA through repeal of obsolete or duplicative provisions in licensing laws and reform of regulations related to inspections, electronic publication of documents and reports, timeframes for reporting licensure changes, and financial information and bonds.

The bill does not require an ALF to provide LNS, but an ALF may choose to do so with appropriate nursing personnel without the requirement to obtain an additional specialty license. All ALFs are required to report electronically, at least semiannually, certain information about the facility's residents and professional staffing. Monitoring inspections will be tied to performance rather than requiring a set number of monitoring inspections for each specialty license.

A community blood center that collects donations of blood and blood components from volunteer donors, except hospitals, will be required to post certain information concerning its activities on its Internet website.

A community blood center that chooses to engage in the wholesale distribution of certain prescription drugs may lawfully do so if it is permitted as a restricted prescription drug distributor and complies with the requirements of that permit.

C. Government Sector Impact:

Same as comment for the private sector impact. The AHCA estimates that $55,700 will be saved in certified mail costs as a result of the courtesy notice for license renewal in section 61 of the bill. The AHCA will be able to target its monitoring resources on facilities that have been cited for certain violations rather than whether a facility has a particular type of specialty license. This should generate efficiencies and focus resources on resident protection activities.

The AHCA and DOH are required to adopt rules, some of which require collaboration with other state agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on April 13, 2010:

- Eliminates the limitation on the use of traffic fines for *adult* Medicaid recipients with certain spinal cord injuries;
- Authorizes the DOH to accept funds from local governments and spend those funds for licensable products approved by the U.S. Department of Health and Human Services in response to a public health emergency;
- Limits the DOH food service inspections in nursing homes to twice per year, absent complaints, and requires the inspections to occur at least 60 days after a recertification visit by the AHCA;
- Adds a physician as another practitioner who may supervise a licensed practical nurse in a geriatric outpatient clinic in a nursing home;
- Simplifies regulatory requirements for respite care provided by an expanded group of eligible nursing homes;
- Requires nursing homes to provide a resident accounting of personal property held by the facility annually or within 7 days of a request, rather than quarterly;
- Requires the AHCA to assess the nursing home lease bond fund annually and if the fund has a balance exceeding $25 million, leased nursing homes do not have to make the annual payment;
- Requires the AHCA to adopt rules for minimum staffing requirements for nursing homes that serve persons under 21 years of age;
- Reinstates the exemption from inspection by the AHCA for a home medical equipment provider with a conditional accreditation rating;
- Eliminates the requirement for the background screening attestation for a home medical equipment provider to be submitted upon licensure renewal rather than annually;
- Provides for the AHCA to impose an administrative fine for class IV violations that are uncorrected or repeated by a licensed intermediate care facility for developmentally disabled persons;
- Exempts additional entities from licensure as a health care clinic;
- Eliminates the explicit authority for the AHCA to staff the complaint hot-line and strikes the requirement for the AHCA to investigate consumer complaints related to billing practices;
- Reduces the timeframe for a license extension to provide for the orderly discharge of clients from 60 days to 30 days and provides factors the AHCA must consider in its determination whether to extend the license;
- Eliminates the phase-out of the Medicaid adult day health care waiver program;
- Reinstates the reporting requirements for the CARES program;
- Requires a Medicaid claim for a prescription drug billed as a 340B prescribed medication to meet certain requirements and be billed at the actual acquisition cost;

- Eliminates the requirement for the LNS specialty license, modifies the licensure fees for an ALF, eliminates the annual report by the DOEA concerning ECC, and requires all ALFs to report semiannually certain information related to residents and staffing;
- Eliminates the authorization for an adult family-care home to be owned or rented by two individuals;
- Reinstates the section of law related to administrative action against adult day care homes and repeals only the duplicative provision;
- Eliminates the requirement for prescription drugs that were purchased at public health prices and held by a contract provider or subcontractor to be stored separately from other prescription drug inventory;
- Exempts the distribution of prescription drugs in certain medical convenience kits from the pedigree paper requirements;
- Limits inspections of nursing homes by the State Fire Marshal to once per year and upon receiving a complaint;
- Requires a community blood center to disclose certain information on its website;
- Enables certain community blood centers to obtain a permit to lawfully engage in the wholesale distribution of certain prescription drugs; and
- Adds licensed orthotists and prosthetists to the definition of a health care provider under ch. 766, F.S., related to medical malpractice;

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

COMMITTEE AMENDMENT

1

680222

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete line 1457
and insert:
of licensed nurses, respiratory therapists, respiratory care practitioners, and certified

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 2 - 3
and insert:
An act relating to health care; amending s. 112.0455,

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178550

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Bennett) recommended the following:

1 **Senate Amendment (with directory and title amendments)**
2
3 Between lines 3481 and 3482
4 insert:
5 (q) *Device manufacturer permit.*—
6 1. A device manufacturer permit is required for any person
7 that engages in the manufacture, repackaging, or assembly of
8 medical devices for human use in this state, except that a
9 permit is not required if:
10 a. The person is engaged only in manufacturing,
11 repackaging, or assembling a medical device pursuant to a
12 practitioner's order for a specific patient; or~~.~~

178550

13 b. The person does not manufacture, repackage, or assemble
14 any medical devices or components for such devices, except those
15 devices or components that are exempt from registration pursuant
16 to s. 499.015(8).
17 2.~~1.~~ A manufacturer or repackager of medical devices in
18 this state must comply with all appropriate state and federal
19 good manufacturing practices and quality system rules.
20 3.~~2.~~ The department shall adopt rules related to storage,
21 handling, and recordkeeping requirements for manufacturers of
22 medical devices for human use.
23
24 ====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
25 And the directory clause is amended as follows:
26 Delete line 3396
27 and insert:
28 Section 90. Paragraphs (a), (g), and (q) of subsection (2)
29 of
30
31 ================ T I T L E A M E N D M E N T ================
32 And the title is amended as follows:
33 Delete line 293
34 and insert:
35 Department of Health to adopt rules; revising the list
36 of exemptions from the requirement that certain
37 persons engaged in the manufacture, repackaging, or
38 assembly of medical devices hold a device manufacturer
39 permit; amending s.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/SB 2746

INTRODUCER: Education Pre-K Committee and Senator Gardiner

SUBJECT: Education Programs for Children with Disabilities

DATE: April 16, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	**Fav/CS**
2.	Armstrong	Coburn	WPSC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

For the John M. McKay Scholarships for Students with Disabilities Program, the bill allows the parent of a student with a disability to receive a scholarship if the student received early intervention services under the Voluntary Prekindergarten (VPK) Education Program during the previous school year and has a current individual education plan (IEP). The bill also authorizes the Commissioner of Education to deny, suspend, or revoke the participation of any private school determined to be operating or have operated an educational institution in Florida or another state that jeopardizes the health, safety, or welfare of the public.

For the Voluntary Prekindergarten Education (VPK) program, the bill creates a prekindergarten program for children with disabilities, which:

- Allows parents of eligible children to select one or more early intervention services that are consistent with the child's individual education plan;
- Requires early intervention services to be provided according to professional accepted standards and those adopted by the Department of Education;
- Specifies the responsibilities of the Department of Education;
- Provides for payment to early intervention service providers by early learning coalitions;

- Authorizes parents who have not expended more than 70 percent of the funds for early intervention services to withdraw their children from the early intervention services program and reenroll in the VPK school-year or summer program; and
- Requires the Agency for Workforce Innovation (AWI) to adopt procedures governing the payment of early interventions service providers.

This bill substantially amends sections 1002.39, 1002.51, 1002.53, 1002.71, and 1002.75 and creates section 1002.66 of the Florida Statutes.

II. Present Situation:

John M. McKay Scholarships for Students with Disabilities Program (McKay program)[1]

Current law sets forth the requirements for parental placement of a student with disabilities in an eligible private school or another public school. The law also establishes requirements for student eligibility for scholarships to attend an eligible private school or to provide transportation to another public school and provides eligibility requirements for private schools participating in the program. As well, the law establishes responsibilities for school districts and the Department of Education (DOE). The State Board of Education (SBE) may adopt rules to administer the program.[2]

Eligible Students[3]
Eligible students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; another health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.[4]

To be eligible for a McKay scholarship to attend a private school, a student with a disability must meet the following requirements:

- Have an individual education plan (IEP) written in accordance with SBE rules;[5] and
- Have spent the prior school year in attendance at a Florida public school.[6]

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[1] s. 1002.39, F.S.
[2] s. 1002.39(13), F.S.
[3] s. 1002.39(2), F.S.
[4] s. 1002.39(1), F.S.
[5] s. 1002.39(1), F.S. Rule 6A-6.03028, F.A.C., addresses the development of IEPs and requires school districts to provide a copy of an IEP to parents, upon request. Students whose parents choose the option of attending another public school must have an IEP.
[6] Prior school year in attendance means that the student was enrolled and reported by a school district or the Florida School for the Deaf and the Blind for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys in kindergarten through grade 12. This includes a child who was at least 4 years old when so enrolled and reported, and was eligible for services under s. 1003.21(1)(e), F.S. Chapter 2004-230, L.O.F., waived the requirement that the student must have spent the prior year in attendance at a Florida public school for otherwise qualifying military students who relocate to Florida pursuant to a parent's military orders. Under this provision, transferring military students are still required to submit an IEP and evaluation data necessary to establish program eligibility.

At any time, the student's parent may remove the student from the private school and place the student in another eligible private school or in a public school.[7]

Parent and Student Obligations[8]
A parent who applies for a McKay scholarship is exercising his or her parental option to place his or her child in a private school. Parents are responsible for the following:

- Requesting the scholarship at least 60 days prior to the first scholarship payment;
- Selecting the private school and applying for the admission of the student;
- Complying fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause;
- Restrictively endorsing the warrant to the private school for deposit into the account of the private school, upon receipt of a scholarship warrant; [9] and
- Transporting the student to:[10]
    - A public school in an adjacent school district with available space and a program with the services agreed to in the student's IEP already in place; and
    - A designated assessment site, if he or she requests that the student take all statewide assessments.

Students participating in the scholarship program must:

- Remain in attendance throughout the school year, unless excused by the school for illness or other good cause; and[11]
- Comply fully with the school's published policies.[12]

Term of Scholarship[13]
For purposes of continuity of educational choice, the scholarship remains in force until the student returns to a public school, graduates from high school, or reaches the age of 22, whichever occurs first.

Scholarship Funding and Payment[14]
The scholarship amount is either a calculated amount or the amount of the private school's tuition and fees, whichever is less. Until the school district completes a matrix, the scholarship calculation is based on the lowest level of service. Payments must be made by individual warrant payable to the student's parent for his or her endorsement and for deposit into the private school's account.

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[7] s. 1002.39(4)(d), F.S.
[8] s. 1002.39(9), F.S.
[9] s. 1002.39(9)(f), F.S. A participant who fails to comply with this requirement forfeits the scholarship.
[10] s. 1002.39(5)(e), F.S.
[11] s. 1002.39(9)(c), F.S.
[12] s. 1002.39(9)(d), F.S.
[13] s. 1002.39(3), F.S.
[14] s. 1002.39(10), F.S.

Matrix of Services
When a parent indicates that he or she intends to place the child in a private school, the child may or may not have a matrix of services. Under current law, only students with Florida Education Finance Program exceptional student education cost factors for Support Levels IV and V must have a matrix of services that documents the services that each student will receive.[15] Consequently, students who are at exceptional student education support levels I, II, and III will need a matrix of services. There are no specific administrative rules that address matrices. Rather, various DOE publications address the implementation of matrices.

Eligible Private Schools[16]
Current law provides for the obligations of private schools. These responsibilities include:

- Complying with all state laws relating to the general regulation of private schools, including ss. 1002.42[17] and 1002.421,[18] F.S.;
- Providing the DOE with all documentation for each scholarship student's participation in the program, including the private school's fees for services, tuition, and instructional materials, and each scholarship student's schedule of fees and charges at least 30 days prior to the first quarterly scholarship payment;
- Demonstrating academic accountability to the parent for meeting the educational needs of the student;
- Maintaining a physical location in Florida where the scholarship student regularly attends classes;
- Demonstrating fiscal soundness and accountability;
- Meeting applicable state and local health, safety, and welfare laws, codes, and rules;
- Disqualifying instructional personnel and school administrators from employment in any position that requires direct contact with students if the personnel or administrators are ineligible for such employment under s. 1012.315, F.S.; and
- Adopting policies establishing standards of ethical conduct for instructional personnel and school administrators.

Currently, there are 941 participating private schools and 20,524 students receiving McKay scholarships.[19]

Voluntary Prekindergarten (VPK) Education Program
In 2002, the State Constitution was amended to require the establishment of a prekindergarten program for every 4-year-old child in the state which is voluntary, high-quality, free, and

[15] s. 1011.62(1)(e), F.S.
[16] ss. 1002.39 and 1002.421, F.S.
[17] Private schools must register with the DOE and comply with requirements that include compulsory attendance, immunizations, and school health exams.
[18] Under s. 1002.421, F.S., private schools that fail to meet the requirements in this section are ineligible to participate in the program. The DOE must suspend the payment of scholarship funds to a private school that knowingly fails to comply with this section and must prohibit the school from enrolling new scholarship students, for one fiscal year and until the school complies. These provisions also apply to private schools that participate in the Florida Tax Credit Scholarship Program.
[19] *DOE February Quarterly Report, 2010*, for the 2009-2010 school year, payment periods September, November, and February. *See* https://www.floridaschoolchoice.org/Information/McKay/quarterly_reports.asp. Of the participating private schools, 37.1 percent were non-religious and 62.9 percent were religious.

delivered according to professionally accepted standards.[20] The Legislature created the VPK program, which became effective in the 2005 school year, and provided the parents of eligible children a choice among three program options:[21] a school-year VPK program delivered by a private prekindergarten provider; a school-year VPK program delivered by a public school; or a summer VPK program delivered by a public school or private prekindergarten provider.

The VPK program is administered at the local level by school districts and early learning coalitions.[22] At the state level, the Department of Education (DOE) administers the educational accountability requirements of the program and the Agency for Workforce Innovation (AWI) administers the operational requirements of the program.[23] The AWI's specific operational requirements are enumerated in s. 1002.75, F.S., and include determining the eligibility of private providers to deliver the VPK program.

All VPK providers must register with an early learning coalition, comply with federal antidiscrimination requirements, and may not discriminate against a parent or child, including the refusal to admit a child for enrollment in the VPK program, in violation of the antidiscrimination requirements.[24]

In 2008-2009, there were 5,660 providers that participated in the VPK program, 657 offered the summer program and 5,472 offered the school year program. [25] Most of the VPK providers (84 percent) were private centers.[26] For 2008-2009, the VPK program enrollment is estimated to be 63.5 percent of the 4-year old population.[27] The projected participation rate for 2009-2010 is 168,622 or 68.41 percent of all four-year-olds.[28]

Children with disabilities, as defined by s. 1003.01(3)(a), F.S., are eligible to receive their special education and related services from their local school district, based upon their IEP, and are also eligible to participate in the VPK program. Based on 2009-2010 data, at least four percent of the children enrolled in the VPK program were children with disabilities, as defined by s. 1003.01(3)(a), F.S.[29]

III. Effect of Proposed Changes:

McKay Scholarship Program

The parent of a student with a disability who received early intervention services under the new VPK Education Program option during the previous school year and who has a current individualized education plan (IEP) could request and receive a McKay Scholarship to enroll his

[20] Art. IX, s. 1(b) and (c) of the State Constitution.
[21] ch. 2004-484, L.O.F. See ss. 1002.55, 1002.61, and 1002.63, F.S.
[22] Pursuant to s. 1002.51(2), F.S., early learning coalitions are created under s. 411.01(5), F.S.
[23] ss. 1002.73 and 1002.75, F.S.
[24] ss. 1002.53(6)(c) and 1002.75(2), F.S., and 42 U.S.C. s. 2000d.
[25] Correspondence with AWI, March 12, 2010, on file with the Education Pre-K – 12 Committee.
[26] *Id.*
[27] DOE bill analysis, April 8, 2010.
[28] *Id.*, based on the March 8, 2010 VPK Estimating Conference.
[29] DOE bill analysis, April 8, 2010. Data was obtained via the matching process of 2008-2009 Coalition/AWI VPK data and the DOE's Survey 2 data.

or her child in a private school without having to spend the prior year in attendance at a public school.

The Commissioner of Education is authorized to deny, suspend, or revoke participation of any private school that operated an educational institution in Florida or another state that jeopardizes the health, safety, or welfare of the public.

VPK Prekindergarten Program for Children with Disabilities

Beginning in the 2012-2013 school year, the bill creates a new VPK program option for eligible students with disabilities whereby a student may receive early intervention services indicated by the student's IEP, as appropriate, from a DOE-approved service provider in lieu of the traditional school-year or summer VPK program. Currently, students with disabilities, who receive their exceptional student education (ESE) services from their local school district are eligible for either the school-year or summer VPK program.[30]

The bill specifies that the early intervention services must be delivered according to accepted professional standards and the VPK performance standards adopted by the DOE. It also requires the DOE to approve early intervention service providers, maintain an approved list of providers, and notify school districts and early coalitions of the approved provider list. Upon the request of a parent, the DOE may approve an early intervention service provider not on the approved list if the provider meets the applicable standards and the child's IEP indicates that such services are appropriate. It is unclear if this is intended to be an exception, whereby on a case-by-case basis the DOE can allow a provider to provide services to a particular child, or if the intent is that the provider is approved to provide services to any child and is added to the approved list.

The bill requires the early learning coalitions to reimburse an approved early intervention service provider for the services provided to an eligible child. The reimbursement may not exceed the VPK base student allocation.

The bill allows parents of a child receiving early intervention services in the VPK program to withdraw from that program option for good cause if they have not expended more than 70 percent of the funds allotted. The parents may choose to participate in the school-year or the summer VPK program.
The bill authorizes AWI to adopt procedures for the payment of early intervention service providers.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[30] *Id.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Children who meet the eligibility requirements for the new program will be able to participate.

C. Government Sector Impact:

According to the DOE, in 2012-2013, the estimated fiscal impact of serving children with disabilities in the new VPK program option is $11,432,674, based on the following assumptions:

2012-2013 Fiscal Impact on the VPK Program	
Projected Total Population of Four-Year Olds[31]	233,541
Estimated Participation Rate - 75%[32]	175,156
Estimated Number of Unserved Four-Year Olds	58,385
Estimated Percent of Kindergarten Children With Disabilities[33]	9.67%
Increase in the Number of Children with Disabilities Anticipated to be Served in the New VPK Option (58,385 x 9.67%)	5,646
2009-2010 Base Student Allocation	$2,575
2009-2010 Administrative Cost	4.85%
Projected Fiscal Impact ($2,575 x 75% x 1.0485)	$11,432,674

The DOE notes that the calculations do not assume changes in student enrollment or in the base student allocation.[34]

According to the DOE, in 2013-2014, the estimated fiscal impact to the FEFP is $5,722,786[35] using the value of the average McKay Scholarship in 2009-2010 ($7,240). This analysis is based on the following assumptions. According to the October 2009 FEFP survey, 86 percent of all five-year olds currently attend kindergarten in public school and generate funds for school districts or McKay scholarships in the FEFP. [36] In

[31] The projected number of four-year-olds determined by the VPK estimating conference on March 8, 2010.
[32] The participation rate in the calculation (75%) is the percentage adopted by the VPK estimating conference.
[33] Based on the 2009-2010 percentage of kindergarten children with disabilities from the October 2009 FEFP survey.
[34] DOE bill analysis, April 8, 2010.
[35] *Id.*
[36] *Id.*

2013-2014, the students in the new VPK program for children with disabilities may enter public school kindergarten. Eighty-six percent of the 5,646 additional VPK students would already have attended public school. However, the balance, or 790 children served in the previous year in the new VPK program who would not otherwise have attended public school (14 percent of 5,646) may be provided a McKay Scholarship from FEFP funds.

The DOE notes that it would also incur an indeterminate workload impact to approve early intervention service providers, maintain a list of such approved providers, and notify school districts and coalitions of the approved list.[37]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education Pre-K – 12 Committee on April 14, 2010:
The committee substitute:

- Cross-references the practice acts for applied behavior analysis, speech language pathology, and physical therapy; and
- Authorizes the Commissioner of Education to deny, suspend, or revoke participation of any private school determined to be operating or have operated an educational institution in Florida or in another state or jurisdiction that jeopardizes the health, safety, or welfare of the public.

B. Amendments:

None.

[37] *Id.*

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LEGISLATIVE ACTION

Senate	.	House
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	.	

The Policy and Steering Committee on Ways and Means (Wise) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (2), paragraph (a) of subsection (7),
6 and paragraphs (a), (c), and (d) of subsection (10) of section
7 1002.39, Florida Statutes, are amended to read:
8 1002.39 The John M. McKay Scholarships for Students with
9 Disabilities Program.—There is established a program that is
10 separate and distinct from the Opportunity Scholarship Program
11 and is named the John M. McKay Scholarships for Students with
12 Disabilities Program.

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13 (2) JOHN M. MCKAY SCHOLARSHIP ELIGIBILITY.—The parent of a
14 ~~public school~~ student with a disability ~~who is dissatisfied with~~
15 ~~the student's progress~~ may request and receive from the state a
16 John M. McKay Scholarship for the child to enroll in and attend
17 a private school in accordance with this section if:
18 (a) The student has:
19 1. Received specialized instructional services under the
20 Voluntary Prekindergarten Education Program pursuant to s.
21 1002.66 during the previous school year and the student has a
22 current individual educational plan developed by the local
23 school board in accordance with rules of the State Board of
24 Education for the John M. McKay Scholarships for Students with
25 Disabilities Program; or
26 2. Spent the prior school year in attendance at a Florida
27 public school or the Florida School for the Deaf and the Blind.
28 For purposes of this subparagraph, prior school year in
29 attendance means that the student was~~:~~
30 ~~1.~~ enrolled and reported by:
31 a. A school district for funding during the preceding
32 October and February Florida Education Finance Program surveys
33 in kindergarten through grade 12, which includes ~~shall include~~
34 time spent in a Department of Juvenile Justice commitment
35 program if funded under the Florida Education Finance Program;
36 b.~~2.~~ ~~Enrolled and reported by~~ The Florida School for the
37 Deaf and the Blind during the preceding October and February
38 student membership surveys in kindergarten through grade 12; or
39 c.~~3.~~ ~~Enrolled and reported by~~ A school district for funding
40 during the preceding October and February Florida Education
41 Finance Program surveys, was at least 4 years of age ~~old~~ when so

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42 enrolled and reported, and was eligible for services under s.
43 1003.21(1)(e).
44
45 However, a dependent child of a member of the United States
46 Armed Forces who transfers to a school in this state from out of
47 state or from a foreign country due to ~~pursuant to~~ a parent's
48 permanent change of station orders is exempt from this paragraph
49 but must meet all other eligibility requirements to participate
50 in the program.
51 (b) The parent has obtained acceptance for admission of the
52 student to a private school that is eligible for the program
53 under subsection (8) and has requested from the department a
54 scholarship at least 60 days before ~~prior to~~ the date of the
55 first scholarship payment. The request must be communicated
56 ~~through a communication~~ directly to the department in a manner
57 that creates a written or electronic record of the request and
58 the date of receipt of the request. The department ~~of Education~~
59 must notify the district of the parent's intent upon receipt of
60 the parent's request.
61 (7) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—
62 (a) The Commissioner of Education:
63 1. Shall deny, suspend, or revoke a private school's
64 participation in the scholarship program if it is determined
65 that the private school has failed to comply with the provisions
66 of this section. However, if ~~in instances in which~~ the
67 noncompliance is correctable within a reasonable amount of time
68 and if ~~in which~~ the health, safety, or welfare of the students
69 is not threatened, the commissioner may issue a notice of
70 noncompliance which provides ~~shall provide~~ the private school

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71 with a timeframe within which to provide evidence of compliance
72 before ~~prior to~~ taking action to suspend or revoke the private
73 school's participation in the scholarship program.
74 2. May deny, suspend, or revoke a private school's
75 participation in the scholarship program if the commissioner
76 determines that an owner or operator of the private school is
77 operating or has operated an educational institution in this
78 state or in another state or jurisdiction in a manner contrary
79 to the health, safety, or welfare of the public.
80 a. In making such a determination, the commissioner may
81 consider factors that include, but are not limited to, acts or
82 omissions by an owner or operator which led to a previous denial
83 or revocation of participation in an education scholarship
84 program; an owner's or operator's failure to reimburse the
85 Department of Education for scholarship funds improperly
86 received or retained by a school; imposition of a prior criminal
87 sanction related to an owner's or operator's management or
88 operation of an educational institution; imposition of a civil
89 fine or administrative fine, license revocation or suspension,
90 or program eligibility suspension, termination, or revocation
91 related to an owner's or operator's management or operation of
92 an educational institution; or other types of criminal
93 proceedings in which an owner or operator was found guilty of,
94 regardless of adjudication, or entered a plea of nolo contendere
95 or guilty to, any offense involving fraud, deceit, dishonesty,
96 or moral turpitude.
97 b. For purposes of this subparagraph, the term "owner or
98 operator" includes an owner, operator, superintendent, or
99 principal of, or a person who has equivalent decisionmaking

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100 authority over, a private school participating in the
101 scholarship program.
102 (10) JOHN M. MCKAY SCHOLARSHIP FUNDING AND PAYMENT.—
103 (a)1. The maximum scholarship granted for an eligible
104 student with disabilities shall be ~~a calculated amount~~
105 equivalent to the base student allocation in the Florida
106 Education Finance Program multiplied by the appropriate cost
107 factor for the educational program that would have been provided
108 for the student in the district school to which he or she was
109 assigned, multiplied by the district cost differential.
110 2. In addition, a share of the guaranteed allocation for
111 exceptional students shall be determined and added to the
112 ~~calculated~~ amount in subparagraph 1. The calculation shall be
113 based on the methodology and the data used to calculate the
114 guaranteed allocation for exceptional students for each district
115 in chapter 2000-166, Laws of Florida. Except as provided in
116 subparagraphs 3. and 4., the calculation shall be based on the
117 student's grade, matrix level of services, and the difference
118 between the 2000-2001 basic program and the appropriate level of
119 services cost factor, multiplied by the 2000-2001 base student
120 allocation and the 2000-2001 district cost differential for the
121 sending district. ~~Also,~~ The calculated amount shall include the
122 per-student share of supplemental academic instruction funds,
123 instructional materials funds, technology funds, and other
124 categorical funds as provided ~~for such purposes~~ in the General
125 Appropriations Act.
126 3. The ~~calculated~~ scholarship amount for a student who is
127 eligible under sub-subparagraph (2)(a)2.b. ~~subparagraph (2)(a)2.~~
128 shall be calculated as provided in subparagraphs 1. and 2.

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129 However, the calculation shall be based on the school district
130 in which the parent resides at the time of the scholarship
131 request.
132 4. Until the school district completes the matrix required
133 by paragraph (5)(b), the calculation shall be based on the
134 matrix that assigns the student to support level I of service as
135 it existed prior to the 2000-2001 school year. When the school
136 district completes the matrix, the amount of the payment shall
137 be adjusted as needed.
138 (c)1. The school district shall report all students who are
139 attending a private school under this program. The students with
140 disabilities attending private schools on John M. McKay
141 Scholarships shall be reported separately from other students
142 reported for purposes of the Florida Education Finance Program.
143 2. For program participants who are eligible under sub-
144 subparagraph (2)(a)2.b. ~~subparagraph (2)(a)2.~~, the school
145 district that is used as the basis for the calculation of the
146 scholarship amount as provided in subparagraph (a)3. shall:
147 a. Report to the department all such students who are
148 attending a private school under this program.
149 b. Be held harmless for such students from the weighted
150 enrollment ceiling for group 2 programs in s. 1011.62(1)(d)3.b.
151 during the first school year in which the students are reported.
152 (d) Following notification on July 1, September 1, December
153 1, or February 1 of the number of program participants, the
154 department shall transfer, from General Revenue funds only, the
155 amount calculated under paragraph (b) from the school district's
156 total funding entitlement under the Florida Education Finance
157 Program and from authorized categorical accounts to a separate

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158 account for the scholarship program for quarterly disbursement
159 to the parents of participating students. Funds may not be
160 transferred from any funding provided to the Florida School for
161 the Deaf and the Blind for program participants who are eligible
162 under sub-subparagraph (2)(a)2.b. ~~subparagraph (2)(a)2.~~ For a
163 student exiting a Department of Juvenile Justice commitment
164 program who chooses to participate in the scholarship program,
165 the amount of the John M. McKay Scholarship calculated pursuant
166 to paragraph (b) shall be transferred from the school district
167 in which the student last attended a public school before ~~prior~~
168 ~~to~~ commitment to the Department of Juvenile Justice. When a
169 student enters the scholarship program, the department must
170 receive all documentation required for the student's
171 participation, including the private school's and the student's
172 fee schedules, at least 30 days before the first quarterly
173 scholarship payment is made for the student.
174 Section 2. Present subsections (2) through (5) of section
175 1002.51, Florida Statutes, are redesignated as subsections (4)
176 through (7), respectively, and new subsections (2) and (3) are
177 added to that section, to read:
178 1002.51 Definitions.—As used in this part, the term:
179 (2) "Disability" means any disability listed in the
180 definition of exceptional student in s. 1003.01.
181 (3) "Specialized instructional services provider" means a
182 provider delivering specialized instructional services under s.
183 1002.66.
184 Section 3. Subsections (1) and (3) of section 1002.53,
185 Florida Statutes, are amended to read:
186 1002.53 Voluntary Prekindergarten Education Program;

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187 eligibility and enrollment.—
188 (1) ~~There is created~~ The Voluntary Prekindergarten
189 Education Program is created and~~. The program shall take effect~~
190 ~~in each county at the beginning of the 2005-2006 school year and~~
191 shall be organized, designed, and delivered in accordance with
192 s. 1(b) and (c), Art. IX of the State Constitution.
193 (3) The parent of each child eligible under subsection (2)
194 may enroll the child in one of the following programs:
195 (a) A school-year prekindergarten program delivered by a
196 private prekindergarten provider under s. 1002.55;
197 (b) A summer prekindergarten program delivered by a public
198 school or private prekindergarten provider under s. 1002.61; ~~or~~
199 (c) A school-year prekindergarten program delivered by a
200 public school; or
201 (d) A specialized instructional services program for
202 children who have disabilities, if the child has been evaluated
203 and determined as eligible, has an individual educational plan
204 developed by the local school board, and is eligible for the
205 program under s. 1002.66.
206
207 Except as provided in s. 1002.71(4), a child may not enroll in
208 more than one of these programs.
209 Section 4. Section 1002.66, Florida Statutes, is created to
210 read:
211 1002.66 Specialized instructional services for children
212 with disabilities.—
213 (1) Beginning with the 2012-2013 school year, a child who
214 has a disability and enrolls with the early learning coalition
215 under s. 1002.53(3)(d) is eligible for specialized instructional

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216 services if:
217 (a) The child is eligible for the Voluntary Prekindergarten
218 Education Program under s. 1002.53; and
219 (b) A current individual educational plan has been
220 developed for the child by the local school board in accordance
221 with rules of the State Board of Education.
222 (2) The parent of a child who is eligible for the
223 prekindergarten program for children with disabilities may
224 select one or more specialized instructional services that are
225 consistent with the child's individual educational plan. These
226 specialized instructional services may include, but are not
227 limited to:
228 (a) Applied behavior analysis as defined in ss. 627.6686
229 and 641.31098.
230 (b) Speech-language pathology as defined in s. 468.1125.
231 (c) Occupational therapy as defined in s. 468.203.
232 (d) Physical therapy as defined is s. 486.021.
233 (3) The specialized instructional services provided for a
234 child under this section must be delivered according to
235 professionally accepted standards; must be in accordance with
236 the performance standards adopted by the department under s.
237 1002.67; and must address the age-appropriate progress of the
238 child in the development of the capabilities, capacities, and
239 skills required under s. 1(b), Art. IX of the State
240 Constitution.
241 (4) The department shall approve specialized instructional
242 service providers whose services meet the standards in
243 subsection (3), maintain a list of approved providers, and
244 notify each school district and early learning coalition of the

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245 approved provider list. Upon the request of a child's parent,
246 the department may approve a specialized instructional service
247 provider that is not on the approved list if the provider's
248 services meet the standards in subsection (3) and the service is
249 consistent with the child's individual educational plan.
250 (5) The coalition shall reimburse an approved specialized
251 instructional service provider for authorized services provided
252 to an eligible child; however, the cumulative total of services
253 reimbursed for a child may not exceed the amount of the base
254 student allocation provided in the Voluntary Prekindergarten
255 Education Program in the General Appropriations Act. Providers
256 shall be reimbursed from funds allocated to the early learning
257 coalition for the Voluntary Prekindergarten Education Program.
258 Section 5. Paragraph (a) of subsection (4) of section
259 1002.71, Florida Statutes, is amended to read:
260 1002.71 Funding; financial and attendance reporting.—
261 (4) Notwithstanding s. 1002.53(3) and subsection (2):
262 (a) A child who, for any of the prekindergarten programs
263 listed in s. 1002.53(3), has not completed more than 70 percent
264 of the hours authorized to be reported for funding under
265 subsection (2), or has not expended more than 70 percent of the
266 funds authorized for the child under s. 1002.66, may withdraw
267 from the program for good cause and reenroll in one of the
268 programs. The total funding for a child who reenrolls in one of
269 the programs for good cause may not exceed one full-time
270 equivalent student. Funding for a child who withdraws and
271 reenrolls in one of the programs for good cause shall be issued
272 in accordance with the agency's uniform attendance policy
273 adopted pursuant to paragraph (6)(d).

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274
275 A child may reenroll only once in a prekindergarten program
276 under this section. A child who reenrolls in a prekindergarten
277 program under this subsection may not subsequently withdraw from
278 the program and reenroll. The Agency for Workforce Innovation
279 shall establish criteria specifying whether a good cause exists
280 for a child to withdraw from a program under paragraph (a),
281 whether a child has substantially completed a program under
282 paragraph (b), and whether an extreme hardship exists which is
283 beyond the child's or parent's control under paragraph (b).
284 Section 6. Subsection (2) of section 1002.73, Florida
285 Statutes, is amended to read:
286 (2) The department shall adopt procedures for its ~~the~~
287 ~~department's~~:
288 (a) Approval of prekindergarten director credentials under
289 ss. 1002.55 and 1002.57.
290 (b) Approval of emergent literacy training courses under
291 ss. 1002.55 and 1002.59.
292 (c) Administration of the statewide kindergarten screening
293 and calculation of kindergarten readiness rates under s.
294 1002.69.
295 (d) Approval of specialized instructional services
296 providers under s. 1002.66.
297 Section 7. Subsection (3) of section 1002.75, Florida
298 Statutes, is amended to read:
299 1002.75 Agency for Workforce Innovation; powers and duties;
300 operational requirements.—
301 (3) The Agency for Workforce Innovation shall adopt, in
302 consultation with and subject to approval by the department,

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303 procedures governing the administration of the Voluntary
304 Prekindergarten Education Program by the early learning
305 coalitions and school districts for:
306 (a) Approving improvement plans of private prekindergarten
307 providers and public schools under s. 1002.67.
308 (b) Placing private prekindergarten providers and public
309 schools on probation and requiring corrective actions under s.
310 1002.67.
311 (c) Removing a private prekindergarten provider or public
312 school from eligibility to deliver the program due to the
313 provider's or school's remaining on probation beyond the time
314 permitted under s. 1002.67.
315 (d) Enrolling children in and determining the eligibility
316 of children for the Voluntary Prekindergarten Education Program
317 under s. 1002.66.
318 (e) Paying specialized instructional services providers
319 under s. 1002.66.
320 Section 8. This act shall take effect July 1, 2010.
321
322 ========== T I T L E A M E N D M E N T ==========
323 And the title is amended as follows:
324 Delete everything before the enacting clause
325 and insert:
326 A bill to be entitled
327 An act relating to education programs for children
328 with disabilities; amending s. 1002.39, F.S.; revising
329 provisions relating to the John M. McKay Scholarships
330 for Students with Disabilities Program; authorizing
331 students who receive certain services under the

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332 Voluntary Prekindergarten Education Program to receive
333 a John M. McKay Scholarship; authorizing the
334 Commissioner of Education to deny, suspend, or revoke
335 a private school's participation in the scholarship
336 program if the owner or operator of such school has
337 operated an educational institution in this state or
338 another in a manner contrary to the health, safety, or
339 welfare of the public; providing factors for the
340 commissioner to consider in making a determination;
341 providing a definition for the term "owner or
342 operator"; conforming cross-references; amending s.
343 1002.51, F.S.; providing definitions for the terms
344 "disability" and "specialized instructional services
345 provider" for purposes of the Voluntary
346 Prekindergarten Education Program; amending s.
347 1002.53, F.S.; providing that a parent may enroll his
348 or her child in a specialized instructional services
349 program for children who have disabilities if the
350 child is eligible for the Voluntary Prekindergarten
351 Education Program; creating s. 1002.66, F.S.;
352 establishing specialized instructional services for
353 children with disabilities; providing eligibility
354 criteria for such services; requiring that such
355 services be delivered in accordance with certain
356 standards; requiring that the Department of Education
357 approve specialized instructional service providers;
358 authorizing the expenditure of funds for specialized
359 instructional services; amending s. 1002.71, F.S.;
360 revising provisions for the funding of a child

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361 receiving specialized instructional services to
362 conform to changes made by the act; amending s.
363 1002.73, F.S.; requiring that the Department of
364 Education adopt procedures for approving specialized
365 instructional services providers; amending s. 1002.75,
366 F.S.; requiring that the Agency for Workforce
367 Innovation adopt procedures for enrolling children in
368 and determining the eligibility of children for the
369 Voluntary Prekindergarten Education Program and paying
370 specialized instructional services providers;
371 providing an effective date.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/SB 2450

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Assessment of Property for Back Taxes

DATE: April 15, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Fav/CS**
2.	Fournier	Coburn	WPSC	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This committee substitute for SB 2450 creates an exception from the assessment of back taxes on property that was not assessed by a property appraiser. The bill also implements a "whistleblower" provision that would allow an individual who reports a possible homestead exemption violation to the property appraiser to receive a reward of up to $500, if the property appraiser thereafter verifies that the homestead exemption was illegally or improperly obtained.

The Revenue Estimating Conference has estimated that the provisions of this bill related to back taxes will have a negative indeterminate fiscal impact on local government revenues. The REC has not analyzed the whistleblower provision of the bill.

This bill substantially amends section 193.092 of the Florida Statutes.

II. Present Situation:

Property Tax Assessments

Chapters 193-195, Florida Statues, address property assessment procedures. On January 1 of each year, local property appraisers are required to assess all real and tangible personal property

located within the county by determining the property's just value.[1] Under Florida Statutes, "just value" is defined as what a willing buyer would pay a willing seller for the property in an arm's length transaction.[2] To determine the property's just valuation, property appraisers are required to utilize the factors outlined in s. 193.011, F.S.

The Florida Constitution authorizes certain alternatives to the just valuation standard for special classes of property.[3] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[4] Livestock and tangible personal property that are held for sale as stock in trade may be assessed at a specified percentage of value or may be totally exempted from taxation.[5] The "Save Our Homes" provision limits the amount a homestead's assessed value can increase annually to the lesser of 3 % or the consumer price index.[6] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[7] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[8] The assessed value of nonhomestead residential property and nonresidential property may not increase by more than 10 percent over the previous year's assessment unless there has been a change in ownership or control or, in the case of nonresidential property, a qualifying improvement has been made.[9]

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[10]

The property appraiser's assessment roll must be completed and submitted to the executive director of the Department of Revenue for approval by July 1 of each year, unless the Department determines that there is good cause for extension.[11] Section 193.023, F.S., provides that in making the assessment of the value of real property, the property appraiser must physically inspect each property every five years to ensure that the tax roll meets all the requirements of law.[12] However, the property appraiser must also physically inspect any parcel of taxable real property upon the request of the taxpayer or owner.[13]

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[1] FLA. CONST. art. VII, s. 4.
[2] Section 193.011, F.S. *See also Walter v. Shuler,* 176 So.2d 81 (Fla.1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla.1976); *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).
[3] The exceptions are implemented in Part II of ch. 193, F.S.
[4] Art. VII, section 4(a) of the State Constitution.
[5] Art. VII, section 4(c) of the State Constitution.
[6] Art. VII, section 4(d) of the State Constitution.
[7] Art. VII, section 4(e) of the State Constitution.
[8] Art. VII, section 4(f) of the State Constitution.
[9] Art. VII, sections 4(g), (h) of the State Constitution.
[10] Art. VII, sections 3 and 6 of the State Constitution. *See also* ch.196, F.S.
[11] Section 193.023, F.S.
[12] Section 193.023(2), F.S.
[13] *Id.*

If a property appraiser discovers property that was mistakenly not assessed and levied upon for which ad valorem taxes are assessable by state or county authority, s. 193.092, F.S., requires the property appraiser to retroactively assess that property for each year in which it escaped taxation, for a period of up to three years.[14]

Homestead Exemption

Section 6, Art. VII, State Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains the permanent residence of the owner is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts.[15] An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by schools. The "Save Our Homes" provision limits the amount a homestead's assessed value can increase annually to the lesser of 3 % or the consumer price index.[16]

A person who claims a homestead exemption to which he or she is not entitled is subject to a penalty of 50 percent of the unpaid taxes for each year for the previous 10 years plus 15 percent interest.[17] A person who is granted a Save Our Homes limitation to which he or she is not entitled is subject to a penalty of 50 percent of the unpaid taxes for each year for the previous 10 years plus 15 percent interest.[18]

III. Effect of Proposed Changes:

This bill amends s. 193.092, F.S., to provide that the retroactive assessment and collection of ad valorem taxes is not applicable if:

- The owner of a building, structure, or improvement that was not previously assessed, complied with all necessary permitting requirements when the improvement was built; or
- The owner of real property that was not previously assessed voluntarily disclosed the existence of the property to the property appraiser before January 1 of the year in which the property was first assessed, on a form provided by the property appraiser.

The bill also allows an individual who reports a homestead exemption violation to a property appraiser to receive a reward of 25 percent of the penalties collected up to $500, if the property appraiser determines that the homestead exemption was in fact illegally or improperly obtained. The bill directs the Department of Revenue to create a report form to be used for suspected homestead exemption violations.

The provisions of this bill shall take effect July 1, 2010.

[14] Section 193.092(1), F.S.
[15] FLA. CONST. art. VII, s. 6.
[16] Art. VII, section 4(d) of the State Constitution.
[17] Section 196.161(1)(b), F.S.
[18] Section 193.155(10), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Article VII, of the Florida Constitution provides that, "except upon approval by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989." [19] Subsection (d) of that section provides that laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

The provisions of this bill would reduce a county or municipality's authority to collect certain back taxes. None of the exemptions, including the exemption for laws having insignificant fiscal impact, applies.[20]

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill provides that the statutory requirement for assessment and collection of back taxes does not apply to certain real property.

B. Private Sector Impact:

The bill will reduce the tax burden for certain property owners that would have otherwise been subject to back taxes under s. 193.092, F.S. The bill may reduce the number of improperly granted homestead exemptions.

C. Government Sector Impact:

The Revenue Estimating Conference[21] has estimated that the provisions of this bill related to back taxes will have a negative but indeterminate fiscal impact on local

[19] FLA. CONST. art. VII, s. 18(b).
[20] FLA. CONST. art. VII, s. 18(d). See below for estimated fiscal impact.
[21] Revenue Estimating Conference, *Fiscal Analysis on Senate Bill 2450* (March 26, 2010) (on file with the Senate Committee on Community Affairs) (These results were based on a survey of selected counties with 263,992 reported just value changes.

government revenues.[22] The REC has not analyzed the whistleblower provision of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 14, 2010:
Authorizes an individual to report a possible homestead exemption violation to his local property appraiser's office. If the property appraiser verifies that a homestead exemption was illegally or improperly obtained, the "whistleblower" is entitled to a reward of up to $500.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

Of this number only 77,563 showed a positive change in just value and approximately 18,000 of those were made by the property appraiser due to correction of a material mistake of fact relating to the physical characteristics of the property.)

[22] *Id.* at 314-15. The Revenue Estimating Conference stated that there was no information available to determine if the changes in just value resulted in the assessment of back taxes. But stated that based on conversations with property appraisers, the number involving back taxes is estimated to be small. Additionally, the Conference stated that if the term "retroactive" is interpreted to mean changes made in the same year after the tax bill was sent out, then the provisions of this bill may have more of an impact.

COMMITTEE AMENDMENT

1

689168

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete lines 99 - 100
and insert:
(1) Any person may report to the county property appraiser a possible homestead exemption violation in the county if

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 6
and insert:
to the county property appraiser a possible

2

470060

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Bennett) recommended the following:

1 **Senate Amendment**
2
3 Delete line 107
4 and insert:
5 violation a reward of 25 percent of the penalties collected
6 pursuant to s. 193.155(10) or s. 196.161(1), not

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS/SB 2322

INTRODUCER: Finance and Tax Committee, Community Affairs Committee, and Senator Bennett

SUBJECT: Energy Improvement Districts

DATE: April 15, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Fav/CS**
2.	Wiehle	Caldwell	CU	**Favorable**
3.	Fournier	McKee	FT	**Fav/CS**
4.	Fournier	Coburn	WPSC	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 2322 provides supplemental authority for local governments to finance energy efficiency and renewable energy improvements, and changes or improvements made for the purpose of improving a property's resistance to wind damages for property owners that wish to participate in this financing program on a voluntary basis.

The bill authorizes a local government to levy a non-ad valorem assessment to fund such improvements. A property owner may apply to the local government for funding to finance such an improvement and enter a financing agreement with the local government. Costs incurred by the local government for such purposes may be collected as a non-ad valorem assessment, a municipal or county lien, or other lawful method. The bill also grants local governments the authority to issue debt, payable from revenues received from the improved property, and to partner with one or more local governments for the purpose of providing such improvements.

The bill deletes an obsolete requirement that the Public Service Commission (PSC or commission) adopt rules for a renewable portfolio standard. It also requires that the commission provide for full cost recovery for certain renewable energy projects; provides a legislative finding of need for these projects, presumably avoiding the existing statutory requirement for the

PSC to make such a determination; and requires that the commission approve a petition filed by a provider for approval of a facility after considering specified factors. Finally the bill redefines the term "electrical power plant" for purposes of the Florida Electrical Power Plant Siting Act to exclude solar electrical generating facilities.

The bill substantially amends sections 366.92 and 403.503 of the Florida Statutes. It also creates section 163.08 and 366.921 of the Florida Statutes.

II. Present Situation:

Property Assessed Clean Energy (PACE) Financing
Property Assessed Clean Energy (PACE) financing allows property owners to borrow money from a newly established "municipal financing district" to purchase renewable energy devices for their home.[1] These newly established districts provide funding to participating homeowners through the issuance of local revenue bonds that are repaid through special assessments that act as liens on the property until the amount is paid off.

This recently-developed policy was facilitated by the passage of the American Recovery and Reinvestment Act (ARRA), which repealed a former restriction that limited the use of Investment Tax Credits (ITC) on projects that also provided energy financing.[2] Berkeley, California was the first city to implement PACE financing in November 2008, through The Berkeley First Program by adding the costs for energy efficiency improvements to the homeowner's annual property tax bill paid over a period of twenty years.[3] PACE financing programs begin with state legislation that authorizes the creation of special taxing districts to issue bonds to real estate applicants to purchase energy efficiency devices.[4] As of November 2009, the following 16 states had passed enabling legislation for PACE financing:

- California (AB 811)
- Colorado (HB 08-1350)
- Illinois (SB 583)
- Louisiana (SB 224)
- Maryland (HB 1567)
- Nevada (SB 398)
- New York (AB 8862)

[1] Fir Tree Partners *PACE Finance: Innovative Funding to Accelerate the Energy Retrofit of America's Buildings*, Oct. 2009 (Slideshow Introduction to PACE- Washington D.C. Presentation 10-6-09) available online at http://pacenow.org/documents/Basic_Slide_Intro_to_PACE.pdf (last visited March 8, 2010).
[2] Interstate Renewable Energy Council (IREC), *2009 Updates and Trends* at 2 (Presented on Oct. 26, 2009, in Anaheim, CA) (Barnes, Justin, Rusty Haynes, Amy Heinemann, Brian Lips and Amanda Zidek-Vanega; NC Solar Center) available online at http://www.dsireusa.org/documents/PolicyPublications/IREC_Updates_%20Trends_2009.pdf (last visited on March, 8 2010).
[3] BerkeleyFIRST, *Financing Initiative for Renewable and Solar Technology: Program Details*, available online at http://www.berkeleyfirst.renewfund.com/learn-more/program-details (last visited on March 8, 2010). (As a city in a charter county, Berkeley was permitted to develop a PACE financing program independent of state enabling legislation.)
[4] Fir Tree Partners, *See supra* note 1. (Note- pursuant to article VII, section 1(g) of the State Constitution, cities or counties operating under county charters may be permitted to develop PACE programs without enabling state legislation, through locally adopted ordinances).

- New Mexico (HB 572)
- North Carolina (SB 97)
- Ohio (BH 1)
- Oklahoma (SB 668)
- Oregon (HB 2181 & HB 2626)
- Texas (HB 1391 & HB 1937)
- Vermont (H 446)
- Virginia (SB 1212)
- Wisconsin (AB 255)[5]

Both Florida and Hawaii appear to have authority under existing law to launch PACE programs.[6] The primary incentive for PACE programs is to eliminate high up-front cost barriers for property owners to install renewable energy sources while providing an alternative revenue source to finance energy efficiency projects without impacting the state budget.[7]

Counties

Article VIII, section 1 of the State Constitution requires the state of Florida to be divided into political subdivisions known as counties which shall provide state services at the local level. There are two types of counties that are recognized under the Florida Constitution: 1) counties that are not operating under a county charter and 2) counties that are operating under a county charter.[8]

Non-Charter Government- As provided in Article VIII, section 1(f), of the State Constitution:

> Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.[9]

Charter Government- Charter counties were created in 1968 when they were added to Article VIII, section 1(g), of the State Constitution, providing that:

> Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.[10]

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[5] Fir Tree Partners, *See supra* note 1.
[6] *Id.*
[7] Interstate Renewable Energy Council (IREC), *See supra* note 2.
[8] Art. VIII, s. 1(f)-(g), of the Florida Constitution.
[9] Art. VIII, s. 1(f), of the Florida Constitution
[10] Art. VIII, s. 1(g), of the Florida Constitution

Although a non-charter county can be established through general law, a county charter can only be adopted, amended, or repealed through a special election by the vote of the electors in that county. Unless otherwise provided in a county charter or special law, the electors of each county must elect the following constitutional officers for a four-year term: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of circuit court.[11]

Municipalities

Article VIII, section 2, of the State Constitution authorizes the Legislature to establish or abolish municipal governments pursuant to general or special law. A municipality is a local government entity located within a county that is created to perform additional functions and services for the particular benefit of the population within the municipality. The Municipal Home Rule Powers Act,[12] authorized by Art. VIII, section 2(b), of the State Constitution, states that a municipality may provide any governmental, corporate, or proprietary powers necessary so long as: 1) it is for a municipal purpose, and 2) it is not otherwise prohibited by general or special law.[13] The Florida Supreme Court considers any activity that is "essential to the health, morals, protection and welfare of the municipality" to be a valid municipal purpose.[14] While municipalities and charter counties have constitutional home rule power, non-charter counties only have home rule powers as provided by law.

Chapter 125, Florida Statutes

The legislative enactment of s. 125.01, F.S., provided non-charter counties with the authority to exercise home rule powers that are not inconsistent with general or special law.[15] These statutory powers and duties include but are not limited to, the power to:

- Provide fire protection, ambulance services, parks and recreation, waste and sewage collection and disposal, and water and alternative water supplies;
- Enter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions;
- Levy and collect taxes, fees and special assessments for certain county and municipal services, borrow and expend money, and issue bonds, revenue certificates and other obligations of indebtedness, according to general law; and
- Adopt ordinances and resolutions along with fines and penalties for the violation of such ordinances.[16]

Counties may also establish and subsequently merge or abolish dependent special districts that include both incorporated and unincorporated areas, subject to the approval of the governing body of the affected incorporated area, and to the extent not inconsistent with general or special

[11] Art. VIII, s. 1(d), of the Florida Constitution
[12] Section 166.011, F.S.
[13] *City of Boca Raton v. Gidman*, 440 So.2d 1277 (Fla. 1983) (providing money for a daycare is a valid municipal purpose that was not precluded by the city charter).
[14] *State v. City of Jacksonville*, 50 So.2d 532,535 (Fla. 1951) (stating that "municipal purpose" is broadly interpreted to include the maintenance and operation of a radio broadcasting system by the city).
[15] Section 125.01(2)(b), F.S.
[16] Sections 125.01(1)(d)(e)(k)(p)(r) and (t), F.S.

law.[16] The municipal services and facilities within the district may then be provided through funds derived from services charges, special assessments or taxes within the district.[17]

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 under ch. 189, F.S. A special district is a confined local government unit established for a special purpose that can be created by general law, special act, local ordinance, or by rule of the Governor or the Cabinet. [18] There are two types of special districts: independent districts and dependent districts. Dependent special districts are created at the prerogative of individual counties and municipalities and meet at least one of the following criteria:

- The membership of its governing body is identical to the governing body of a single county or municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.[19]

Independent special districts can only be created through legislative authorization and may encompass more than one county.[20] The policy behind independent special districts is to provide an "alternative method to manage, own, operate, construct and finance basic capital infrastructure, facilities and services".[21] Pursuant to s. 189.404(3), F.S., and with the exception of community development districts, general laws or special acts that create or authorize the creation of an independent special district must provide the following information in their charters:

- The purpose of the special district;
- The powers, functions and duties of the special district relating to ad valorem taxes, bonds and other revenue-raising abilities, budget preparation and approval, liens and lien foreclosures, and the use of tax deeds and certificates for non-ad valorem assessments and contractual agreements;
- The methods for establishing the district and amending the charter;
- The membership, organization, compensation, and administrative duties of the governing board and its members;
- The applicable financial disclosure, noticing and reporting requirements;
- The procedures and requirements for issuing bonds, if applicable;
- The election procedures and requirements;
- The methods for financing the district;

[16] Sections 125.01(5)(a), F.S.
[17] *Id.*
[18] Section 189.403, F.S.
[19] Section 189.403 (2), F.S.
[20] *See* s. 189.403 (3), F.S.
[21] Section 189.402 (4), F.S.

- The authorized millage rate and method(s) for collecting non-ad valorem assessments, fees, or service charges;
- The planning requirements; and
- The district boundaries.[22]

The Department of Community Affairs maintains and updates an official list of all the special districts within the state of Florida on October 1 of each year. Additionally, the department's Special District Information Program (SDIP), provides detailed information on the individual functions and status of each special district. To date, there are 1,622 special districts in the state of Florida: 1007 independent districts and 615 dependent districts. Of the total number, 69 districts are multicounty districts and 1,553 are single county districts, and include various types of special districts which include but are not limited to: community development districts (576), community re-development districts (201), drainage and water control districts (94), fire control and rescue districts (67), mosquito control districts (18), neighborhood improvement districts (33), and soil and water conservation districts (63).[23]

Special Assessments

Special assessments are a revenue source that may be used by local governments to fund certain services and maintain capital facilities. Unlike taxes, these assessments are directly linked to a particular service or benefit. Examples of special assessments include fees for garbage disposal, sewer improvements, fire protection, and rescue services.[24] Counties and municipalities have the authority to levy special assessments based on their home rule powers. Special districts derive their authority to levy these assessments through general law or special act.

As established in Florida case law, an assessment must meet two requirements in order to be classified as a valid special assessment:

1) The assessment must directly benefit the property, and
2) The assessment must be apportioned fairly and reasonably amongst the beneficiaries of the service.[25]

These special assessments are generally collected on the annual ad valorem tax bills; characterized as a "non-ad valorem assessment" under the statutory procedures in ch. 197, F.S.[26] Section 197.3632(1)(d), F.S., defines a non-ad valorem assessment as "those assessments that are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X, of the State Constitution".[27]

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[22] Section 189.404(3)(a) – (o), F.S.

[23] Florida Department of Community Affairs, *Official List of Special Districts Online*, available at http://www.floridaspecialdistricts.org/OfficialList/index.cfm (last visited on March 8, 2010).

[24] *See Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So. 2d 578 (Fla. 2d DCA 1977); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380 (Fla. 1973); and *Sarasota County v. Sarasota Church of Christ*, 641 So. 2d 900 (Fla. 2d DCA 1994).

[25] *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).

[26] *Primer on Home Rule & Local Government Revenue Sources* at 35 (June 2008).

[27] Section 4(a), Art. X, of the State Constitution, provides, in pertinent part that "[t]here shall be exempt from forced sale under process of any court, and no judgment, decree, or execution shall be a lien thereon, except for the payment of taxes and assessments thereon ..."

Renewable Energy
Subsection 366.92(3), F.S., was enacted in 2008. It requires the Public Service Commission (PSC or commission) to adopt rules for a renewable portfolio standard (RPS) requiring each provider to supply renewable energy to its customers directly, by procuring, or through renewable energy credits. It provides that the rule cannot be implemented until ratified by the Legislature, and requires the commission to present a draft rule for legislative consideration by February 1, 2009. The PSC presented its Draft Renewable Portfolio Standard Rule report on January 30, 2009. RPS legislation was filed in the 2009 Regular Session, but did not pass. The language is now obsolete as the PSC has completed its report and the legislative review has been accomplished.

Subsection 366.92(4), F.S., requires the PSC to provide for full cost recovery, under the environmental cost-recovery clause, of all reasonable and prudent costs incurred by an investor-owned utility (IOU) for renewable energy projects that are zero greenhouse gas emitting at the point of generation, up to a total of 110 megawatts statewide, and for which the provider has secured necessary land, zoning permits, and transmission rights within the state. The costs must be deemed reasonable and prudent for purposes of cost recovery so long as the provider has used reasonable and customary industry practices in the design, procurement, and construction of the project in a cost-effective manner appropriate to the location of the facility. Pursuant to this subsection, Florida Power and Light is constructing three solar projects, a 25 megawatt solar photovoltaic project in Desoto County, a 75 megawatt solar thermal project co-located with an existing combined-cycle power plant in Martin County, and a 10 megawatt solar photovoltaic project located at Kennedy Space Center.

Sections 403.501-403.518, F.S., are the "Florida Electrical Power Plant Siting Act." Subsection 403.503(14), F.S., defines the term "electrical power plant" to mean any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity. Section 403.519, F.S., requires that the power plant siting process begin with a determination of the need for that power plant by the PSC. The commission is the sole forum for the determination of need. In making its determination, the commission is required to take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available. The commission must also expressly consider the conservation measures taken by or reasonably available to the applicant or its members that might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant creates a presumption of public need and necessity.

III. Effect of Proposed Changes:

Section 1 of this bill creates s. 160.08, F.S., to provide local governments with supplemental authority to finance energy efficiency, renewable energy and wind resistance improvements to real property for participating property owners, which may be repaid through a local government levied non-ad valorem assessment, municipal or county lien, or other lawful method.

Subsection (1) of s. 163.80, F.S., provides legislative intent, confirming the policies created in the State Comprehensive Plan to promote energy conservation, energy security and reduce greenhouse gasses by continuing to provide a schedule for increases in energy performance of buildings. [28] It also declares a state importance in making renewable energy, energy efficiency, and wind resistance improvements more affordable and enabling property owners, on a voluntary basis, to finance such improvements with local government assistance. Finally, it finds that the provisions in this act are reasonable and necessary to achieve a compelling state interest for the prosperity and welfare of the state, and its property owners and inhabitants.

The bill provides definitions for the following terms: "local government," "qualifying improvement," "energy conservation and efficiency improvement," "renewable energy improvement," and "wind resistance improvement."

The bill authorizes a local government to adopt an ordinance or resolution under which a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government, with the local government to recover its costs through a non-ad valorem assessment, a municipal or county lien, or pursuant to any other lawful method. Specific terms are provided for collection as a non-ad valorem assessment or as a municipal lien paid through a surcharge on a utility or other municipal service bill.

A local government may incur debt for the purpose of providing the improvements, payable from revenues received from the improved property or any other available revenue source as authorized by law.

A local government may enter into a financing agreement only with the owner of record of the affected property. Before entering into a financing agreement, the local government must reasonably verify that, during the past 3 years or the property owner's period of ownership, whichever is less, all property taxes have been paid, there are no involuntary liens, and no notices of default or other evidence of property-based debt delinquency have been recorded; and that the property owner is current on all mortgage debt on the property.

If there is a mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment or municipal or county lien may not exceed 20 percent of the just value of the property as determined by the county property appraiser without the consent of the holders or loan servicers of the mortgage or other encumbrance. This limit does not apply if there has been an energy audit that demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment or municipal or county lien.

If there is a mortgage or other encumbrance on the property, at least 30 days before entering into a financing agreement, the property owner must provide to the holders or loan servicers of the mortgage or other encumbrance notice of intent to enter into a financing agreement, together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay such amount. Any provision of any agreement between a mortgagee or other

[28] Chapter 187, F.S.

lienholder and a property owner allowing for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

A qualifying improvement must be affixed to an existing building or facility that is part of the property and constitutes an improvement to the building or facility or a fixture thereto. An agreement between a local government and a qualifying property owner may not cover projects to improve wind resistance in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

A local government may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements, using this section, other applicable law, or its home rule power. A local government may have its qualifying improvement program administered by a for-profit entity or a not-for-profit organization.

Any work requiring a license under any applicable law to make a qualifying improvement must be performed by a contractor properly certified or registered pursuant to part I or part II of chapter 489.

No provision of any agreement between a local government and a public or private power or energy provider, or other utility provider, may limit or prohibit any local government from exercising its authority under this section.

This section must be construed to be additional and supplemental to county and municipal home-rule authority and not in derogation thereof or a limitation thereon.

Section 2 of the bill amends s. 366.92, F.S., on renewable energy. The bill deletes obsolete language requiring the PSC to adopt rules establishing a renewable portfolio standard by February 1, 2009. The bill also expands the existing authority for IOUs to obtain full cost recovery of costs related to clean energy projects to up to 300 megawatts in 2010 and up to 200 megawatts more annually in 2011 and 2012, plus up to 15 megawatts for 2010 and up to 10 megawatts annually for 2011 and 2012, which must be rooftop or pole-mounted solar energy applications.

Section 3 of the bill creates s. 366.921, F.S. It provides that, notwithstanding s. 403.519, F.S., which requires that the PSC make determination of need for a proposed electrical power plant, the Legislature finds that there is a need for Florida renewable energy resources. Presumably, this replaces the requirement for such a determination by the PSC. The bill also requires providers of Florida renewable energy resources to acquire PSC approval before the construction, conversion, licensing, and operation of a facility producing such resources or the purchase of capacity or energy from a facility producing such resources. It sets out a list of factors that the PSC must consider "before approving the petition" in essence requiring approval of all petitions. The listed considerations are whether:

- the proposed facility employs reasonable and customary industry practices in the design, engineering, and construction of the facility producing the Florida renewable energy resource in a cost-effective manner that is appropriate to the proposed technology and location of the facility;
- the entity, including a provider, which would engineer, design, and construct the proposed facility has the requisite technical and financial qualifications, expertise, and capability;
- the entity, including a provider which would operate the proposed facility, has the requisite technical qualifications, expertise, and capability;
- the proposed production of the Florida renewable energy resource will have a positive impact on the environment, including the reduction of greenhouse gas emissions;
- the proposed production of the Florida renewable energy resource will result in local economic benefits, including job creation, for the state's economy;
- the proposed Florida renewable energy resource will enhance the fuel diversity of the provider; and
- the proposed facility producing the Florida renewable energy resource will mitigate or avoid the use of water resources in the production of renewable power.

The PSC must schedule a formal administrative hearing on a petition within 10 days after the date of the filing, and it must vote on the petition within 120 days after such filing.

The commission's final order approving a facility must include express authorization for annual cost recovery pursuant to ss. 366.92 and 366.8255, F.S.

Section 4 amends s. 403.503(14), F.S., which defines the term "electrical power plant," to delete solar power from this definition.

Section 5 states that this act shall take upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, section 10, of the State Constitution, prohibits the enactment of any law that impairs contract obligations.[30] Section 163.08(13), of this bill **(lines 261-2267)** provides that:

> "A provision of any agreement between a mortgagee or other lienholder and a property owner or otherwise now or hereafter binding upon a property owner allowing for acceleration of payment of the mortgage, note or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable."

Section 163.08(14), of this bill **(lines 271-274)** provides that:

> "A provision of any agreement between a local government and a public or private power or energy provider, or other utility provider, may not limit or prohibit any local government from exercising its authority under this section."

These provisions may impair certain contractual obligations, which would violate Article 1, s.10, of the State Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Section 1 of this bill authorizes local governments to finance energy efficiency and renewable energy improvements, and changes or improvements made for the purpose of improving a property's resistance to wind damages for property owners that wish to participate in this financing program on a voluntary basis. Local governments may levy a non-ad valorem assessment for such improvements that shall be repaid through an assessment, a municipal or county lien, or other lawful method. None of these are taxes or fees for government services.

Sections 2-4 of the bill may increase gross receipts tax revenue, since ratepayers of a utility constructing a renewable energy will pay more for electricity. The Revenue Estimating Conference has not determined what, if any, the impact will be.

B. Private Sector Impact:

This bill may encourage owners and builders of residential and commercial property to install energy efficiency, renewable energy, and wind resistance improvement devices, by providing a public option for financing these improvements at lower initial costs. The installation of renewable energy and energy efficiency devices on residential and commercial properties will reduce greenhouse gasses and lower fossil fuel use. Property

[30] Art. I, s.10, of the Florida Constitution.

owners that install wind-resistance devices will reduce wind damage and may also be eligible for wind-storm mitigation discounts and premiums as provided in s. 627.06501, F.S.

Ratepayers of a utility constructing a renewable energy project will pay for the project through an increase in their utility bills. The PSC has projected both the cost and the impact on an average residential customer's monthly bill, using five different cost levels. The total annual incremental cost[31] for 735 megawatts of renewable energy (assumed to be solar energy) ranges from $145.5 million to $374.5 million, the impact on a monthly bill ranges from $1.01 to $2.61 (assuming the 735 megawatts are spread evenly over the four IOUs).

This bill also has the potential to create new jobs in the state and benefit the insurance, solar energy and construction industries.

C. Government Sector Impact:

This bill directs local governments to adopt a model financing program but does not mandate any specific structures or procedures for such program. Therefore, the level of funding is left to the discretion of the local government.

The bill reduces the role of the PSC in making a determination of need for a proposed electrical power plant and approving the construction, conversion, licensing, and operation of a renewable energy facility.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As reported by the *Wall Street Journal,* the Federal Housing Finance Agency has raised concerns about programs that finance energy improvements through non-ad valorem assessments, because the debt created to pay for energy improvements would be senior to existing mortgage debt. If the homeowner defaults or goes into foreclosure, the PACE loan would be paid before the mortgage lender gets any money[32]. Critics of the program also express concern that homeowners, prodded by contractors, could pile on more debt at a time when home values are falling.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on April 6, 2010:

[31] The incremental costs may actually be higher than projected. Incremental costs were produced by subtracting a per kilowatt hour avoided energy cost of six cents per kilowatt hour. If avoided costs are lower, incremental costs will be higher.
[32] "Loans to Go Green Irk Fannie, Freddie," Wall Street Journal, Thursday, March 25, 2010.

- The Committee Substitute allows financing under this program for improvements to new construction for purposes of energy efficiency and renewable energy, but not for wind resistance improvements.
- It significantly amends Florida's renewable energy policy. It requires that the Public Service Commission provide for full cost recovery for certain renewable energy projects; provides a legislative finding of need for these projects, avoiding the existing statutory requirement for the PSC to make such a determination; and requires that the commission approve a petition filed by a provider for approval of a facility after considering specified factors.
- It redefines the term "electrical power plant" for purposes of the Florida Electrical Power Plant Siting Act to exclude solar electrical generating facilities.
- It is effective upon becoming a law.

CS by Community Affairs on March 17, 2010:

- This Committee Substitute (CS) creates s. 163.08, F.S., to provide supplemental authority for local governments to finance energy efficiency and renewable energy improvements, and changes or improvements made for the purpose of improving a property's resistance to wind damages; for property owners that wish to participate in this financing program on a voluntary basis.
- The CS authorizes local governments to levy a non-ad valorem assessment for such improvements, repayable through an assessment, a municipal or county lien, or other lawful method.
- The CS grants local governments the authority to issue debt, payable from revenues received from the improved property and to partner with one or more local governments for the purpose of providing such improvements.
- The CS requires qualified improvements to be affixed to an existing building or facility that is part of the property and be made by a certified or registered contractor.

The CS deletes provisions related to the establishment of district boards.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 437 - 446
4 and insert:
5 (5) Of the 700 megawatts of renewable energy projects set
6 forth in subsection (4), the commission shall provide for full
7 cost recovery under the environmental cost-recovery clause for
8 any renewable energy purchased from a qualifying facility and
9 produced from small-scale renewable energy generation in size
10 from 1 kilowatt to 2 megawatts of up to 75 megawatts statewide
11 for the year 2011, 50 megawatts for the year 2012, and 50
12 megawatts for the year 2013. Such costs shall be deemed

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13 reasonable and prudent for purposes of cost recovery if the
14 commission adopts rules establishing reasonable costs associated
15 with harvesting and generating various renewable energy fuel
16 types and provides a suitable return for producers. The rules
17 must establish differentiated rates for purchase of various
18 renewable energy fuel types based on the fuel type technology. A
19 provider or producer of renewable energy fuel that is a
20 regulated utility or its unregulated affiliates is not eligible
21 to participate in the program as provided in this subsection. An
22 eligible qualifying facility must be located within the
23 territory served by a participating electric utility. The
24 commission shall issue a qualifying facility certificate of
25 eligibility within 30 days after receipt of an application for a
26 producer's small scale biomass, solar, or wind energy facility,
27 and if accompanied by proof that the applicant holds a current
28 qualifying facility federal designation and an application fee
29 not to exceed $250.
30 (6) ~~(5)~~ Each municipal electric utility and rural electric
31 cooperative shall develop standards for the promotion,
32 encouragement, and expansion of the use of renewable energy
33 resources and energy conservation and efficiency measures. On or
34 before April 1, 2009, and annually thereafter, each municipal
35 electric utility and electric cooperative shall submit to the
36 commission a report that identifies such standards.
37 (7) ~~(6)~~ ~~Nothing in~~ This section does not ~~shall be construed~~
38 ~~to~~ impede or impair terms and conditions of existing contracts.
39 (8) ~~(7)~~ The commission may adopt rules to administer ~~and~~

CS/SB 146

NOT RECEIVED

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/CS/SB 550

INTRODUCER: Governmental Oversight and Accountability Committee, Environmental Preservation and Conservation Committee, and Senator Constantine

SUBJECT: Environmental Protection

DATE: April 19, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	**Fav/CS**
2.	Wilson	Wilson	GO	**Fav/CS**
3.	Pigott	Coburn	WPSC	**Pre-meeting**
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This is a comprehensive committee substitute (CS) dealing with multiple water issues. Specifically the CS:

- Reorganizes various provisions of ch. 373, F.S., into a new part VII.
- Permits funding for alternative water supply projects through the State Board of Administration (SBA).
- Expands the definition of alternative water supply to include conservation projects.
- Adds a Blue Belt assessment criterion to the alternative water supply ranking criteria.
- Repeals portions of legislation passed in 2009 (SB 2080); removing provisions that require the delegation of permit decisions from a water management district (WMD, district) governing board to the executive director for certain permits.
- Establishes criteria for the development of a statewide stormwater management rule.
- Expands the definition of "pollution" to include nutrients when their concentrations in water bodies cause imbalances in the ecosystem.

- Provides specific authority to the Department of Environmental Protection (DEP) to establish water quality criteria to limit nutrient loading in water bodies.
- Requires the DEP, in cooperation with the WMDs, to create and maintain an online portal available to the public listing all consumptive use permits (CUP).
- Directs the DEP to create numeric nutrient criteria for the state that will fulfill the U.S. Environmental Protection Agency's (EPA) mandate under the federal Clean Water Act.
- Directs that $200 million in bonds may be issued for sewage collection, treatment and disposal in the Florida Keys Area of Critical State Concern.
- Provides specific standards that central wastewater facilities and onsite sewage treatment and disposal systems (septic systems) in the Florida Keys Area of Critical State Concern must meet.
- Permits residents of the Monroe County to adopt by referendum a 1-cent surtax to pay for stormwater and wastewater upgrades.
- Extends the deadline of compliance for central wastewater facilities and septic systems upgrades to December 31, 2015 from July 1, 2010.
- Provides procedures for removal of the designation of the Florida Keys Area of Critical State Concern once all requirements of the Administration Commission are met.
- Creates regional management entities (RME) for septic system inspection, maintenance, repair and replacement for all septic systems in the state.
- Provides for duties, powers and implementation requirements for RMEs and an equitable method of allocation their overhead expenses and operations.
- Directs the DEP to submit a report to the Governor and Legislature on the effects of reclaimed water use by February 1, 2012.
- Clarifies that wastewater facilities contributing flow to another wastewater facility that discharges to an ocean outfall must meet the 60-percent reuse requirement for any diverted quantity of wastewater flow. The percentage of the diverted flow processed as reuse will be applied to the facility discharging to an ocean outfall.
- Bans the land application of class AA, class A and class B wastewater residuals, except for class AA residuals marketed, distributed and applied as fertilizer products, after July 1, 2015.
- Bans the land application of septage after January 1, 2015, or sooner if the septage is produced as the result of operations from a RME.
- Renames the "Florida Water Pollution Control Financing Corporation" as the "Florida Water Pollution Control and Drinking Water Financing Corporation."
- Adds and modifies definitions to conform to the creation of the new corporation and its expanded duties, provides rulemaking authority, and specifies additional criteria concerning loan recipients' ability to repay their loans.
- Creates the "Florida Springs Protection Act."
- Provides specific requirements for septic systems and agricultural operations in spring zones.
- Authorizes governmental agencies and entities to engage in rule making to administer the provisions of the Florida Springs Protection Act.
- Expands the Acquisition and Restoration Council's ranking criteria for Florida Forever funding to contain springs protection criterion.
- Directs the University of Florida's Water Institute to serve as the lead advisory body to provide the Legislature scientifically-based policy recommendations for water resources.
- Directs the Building Commission to develop recommendations that result in water conservation.

- Reinforces the WMDs duty to negotiate disputes in good faith before proceeding to litigation against other governmental entities.
- Requires the lining of all construction and demolition debris landfills constructed after July 1, 2010.
- Clarifies penalties for damaging or destroying any drainage works constructed in any WMD.

The CS contains technical and conforming changes.

The CS provides for multiple effective dates.

The CS amends ss. 11.45, 120.52, 163.3167, 163.3177, 163.3191, 189.404, 189.4155, 189.4156, 215.47, 215.619, 259.105, 298.66, 367.021, 369.317, 373.019, 373.036, 373.0363, 373.0421, 373.0695, 373.079, 373.083, 373.118, 373.129, 373.223, 373.2234, 373.229, 373.236, 373.4131, 373.536, 373.59, 378.212, 378.404, 380.0552, 381.0065, 381.00655, 381.0066, 403.031, 403.061, 403.086, 403.0891, 403.1835, 403.1837, 403.707, 403.8532, 403.8533, 403.890, 403.891, 553.77 and 682.02, F.S.

The CS creates part VII of ch. 373, F.S., consisting of ss. 373.701, 373.703, 373.705, 373.707, 373.709, 373.711, 373.713 and 373.715, F.S., and part IV of ch. 369, F.S., consisting of ss. 369.401, 369.402, 369.403, 369.404, 369.405, 369.406 and 369.407, F.S. It also creates ss. 373.631 and 403.0675, F.S.

The CS repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962 and 373.1963, F.S., and ss. 4, 5 and 6 of ch. 99-395, L.O.F., as amended.

The CS renumbers s. 373.71, F.S., as s. 373.69, F.S.

II. Present Situation:

Florida Senate Select Committee on Florida's Inland Waters

On October 7, 2009, Senate President Jeff Atwater created the Florida Senate Select Committee on Florida's Inland Waters. In so doing, he recognized the importance that Florida's surface and groundwaters have on the state. The task set before the committee was to travel the state and listen and learn from constituents. To that end, six meetings were scheduled around the state.

In conjunction with the public hearings, the members of the committee and staff were invited on several site visits. Each site visited exemplified a unique challenge for Florida's water resources, from agricultural best-management practices to saltwater intrusion.

At the end of the hearings, the select committee unanimously adopted a final report containing 13 recommendations. The recommendations include:

1. The definition of alternative water supply projects should be expanded to include projects that demonstrate quantifiable water conservation. Such projects would then be eligible for Water Protection and Sustainability Trust Fund funding. Projects might include repairing municipal delivery systems and upgrading agricultural irrigation systems.

2. Funding for alternative water supply projects, including conservation projects, should be restored, at a minimum, to its original funding level. In order to achieve this goal, an innovative, recurring source of funding must be found.
3. In light of recent EPA proposed rules for Florida's water bodies, the DEP should continue its rulemaking to adopt quantitative nutrient water quality standards and its discussion with the EPA in hopes that the implementation of those standards in conjunction with implementation of total maximum daily loads and basin management action plans may satisfy the requirements of the federal Clean Water Act.
4. The "local sources first" policy should be maintained in its current form and emphasis directed towards water conservation and alternative water supply projects instead.
5. Aquifer and water resource protection measures must be adopted that reduce nitrogen and phosphorus loading.
6. Implement a watershed approach for springs protection, where needed, using the Surface Water Improvement and Management Program as a basis for its development.
7. The Legislature should consider the creation of regional management entities to effectuate a septic tank inspection and maintenance program. Counties and municipalities should have authority over the regional management entities.
8. Ban the land application of class A and B residuals from domestic wastewater facilities and the land spreading of septage from septic tank pump outs. Ensure that class AA residuals marketed as a fertilizer product are applied to the land at proper agronomic rates.
9. Require the DEP to study the effects that reclaimed water has on nutrient loading in Florida's water bodies and report its findings to the Legislature. If it is determined that using reclaimed water has negative effects, then the DEP must provide recommendations in its report that eliminate such effects.
10. Blue belt tax exemptions should be examined and expanded or other incentives given to compensate landowners in high-water recharge areas to hold more water on their land.
11. Utilize existing state water institutes and councils, such as the University of Florida's Water Institute, to provide their recommendations to the Legislature based on the best available science.
12. Direct the Florida Building Commission to evaluate and update existing building policies and codes, focusing on updating existing water conservation measures and including new measures. Examples of such measures are requiring ultra-low flush toilets (1.28 gallons/flush) or rainwater catchment devices for new construction.
13. Require the water management districts to negotiate disputes in good faith. When such negotiations do not reach an agreement, the districts shall submit to an alternative dispute resolution process, such as mediation or arbitration, before proceeding to court.

Along with the reorganization of ch. 373, F.S., the recommendations formed the basic structure on which the CS was drafted.

Reorganization of ch. 373, F.S.

Chapter 373, F.S., has undergone multiple revisions and additions since its enactment in 1957. The various major revisions have rendered the sections regulating water resources difficult to read as a whole, let alone navigate and understand from a regulatory perspective. This complexity, and the resultant inherent regulatory difficulties, stem from the multiple purposes of ch. 373, F.S., as it has evolved over the last 50 years.

As originally enacted in 1957, the primary purpose of ch. 373, F.S., was flood control. The regulatory structure was not built for water resource planning or development as no substantial need existed at the time. The 1972 revisions focused more on water resource management, for example codifying the creation of the five WMDs. The regulatory structure set in place then, which still exists today, created water managers that are both regulators and suppliers.

Both the 1997 and 2005 major additions required water managers to forecast and plan for future water use, looking at 10, 15 and 20-year planning horizons. The studies and data collected by the state's water managers show that traditional sources of water are not going to be sufficient to meet Florida's need in 2020. Yet, it was not until SB 444, passed in 2005, that a dedicated funding source was created for the development of alternative water projects. Since SB 444's enactment in 2005, funding for alternative water supply development has subsequently been eliminated from the Water Protection and Sustainability Trust Fund due to budget shortfalls.[1] The definition of alternative water supplies does not include quantities derived from conservation projects.[2] The "local sources first" policy was part of the 1998 amendments to s. 373.016, F.S. The policy discourages transmission of water between jurisdictions until all reasonable traditional and alternative water resources have been exhausted.[3]

HB 1111 was introduced during the 2009 Legislative session. The bill was a consensus product created by experts in water policy. It proposed creating a new Part VII of ch. 373, F.S., to reorganize many sections of part I of ch. 373, F.S., and various other sections in the Florida Statutes that address water supply policy, planning, production and funding. The bill passed unanimously through both the House Government Accountability Act Council and the House General Government Policy Council before being indefinitely postponed. The goal of the bill was a non-substantive reorganization of the relevant sections. Detailed analysis of the bill illuminated numerous, unintended substantive changes.

Delegation of Authority by Water Management District Governing Boards

Direct oversight for each of the five districts' activities is provided by a Governing Board whose members are appointed by the Governor and subject to confirmation by the Florida Senate.[4] Each Governing Board hires an Executive Director who must also be confirmed by the Florida Senate. In addition, pursuant to s. 373.026(7), F.S., the DEP is authorized to "exercise general supervisory authority over all water management districts."

The districts direct a wide range of programs, initiatives and actions to fulfill their statutory requirements. The specific duties of the districts include water use permitting, well construction, environmental resource permitting, water conservation, education, land acquisition, water resource and supply development, and supportive data collection and analysis efforts.

The Florida Environmental Reorganization Act of 1993 (ch. 93-204, Laws of Florida) created the environmental resource permitting program (ERP). Operationally the ERP program is now

[1] 2009-2010 Florida Budget.
[2] § 373.019(1), F.S. (2009).
[3] § 373.016(4)(a), F.S. (2009).
[4] § 373.073(1)(a), F.S. (2009).

jointly implemented by the DEP through its district offices and the WMDs. Most of the ERP permits are issued by the districts; however, large projects with statewide implications are issued by the DEP.

The CUP program includes permitting, compliance and enforcement, and water shortage plan support and enforcement. Any entity or person that wants to use large amounts of water, except those exempted by statute or rule, are required to obtain a CUP. These permits are issued for a finite duration and, upon expiration, must be renewed.

In 2009 the Legislature passed CS/CS/SB 2080 (ch. 2009-243, L.O.F.), which contained provisions concerning the delegation of permit decisions from the governing boards of WMDs to the executive directors. Specific provisions of the legislation mandated that the governing boards delegate to the executive directors the authority to take final agency action concerning permit applications for CUPs and ERPs. These changes where based on recommendations contained in a 2008 Senate interim report that found nearly 100% of all governing board decisions relating to the issuance of permits for CUPs and ERPs adopted the staff recommendation.[5]

Upon the 2009 Legislation becoming law, some interest groups expressed concern that the mandated delegation eliminated a critical portion of the public review process and would have the effect of reducing public input.

Nutrient Management in Florida's Water Bodies

The State of Florida has initiated rulemaking to adopt quantitative nutrient water quality standards to facilitate the assessment of designated use attainment for its waters and to provide a better means to protect state waters from the adverse effects of nutrient over enrichment. The addition of excess nutrients, often associated with human alterations to watersheds, can negatively impact water body health and interfere with designated uses of waters. Impacts include noxious tastes and odors in drinking water, algal blooms and excessive aquatic weeds in swimming and boating waters, and altering the natural community of flora and fauna.
The DEP plans to develop numeric criteria for phosphorus and nitrogen and possibly for their response variables, recognizing the differences in Florida's hydrology and geology, the nutrient levels of the state's waters, and the variability in ecosystem response to nutrient concentrations. The DEP's preferred approach is to develop cause and affect relationships between nutrients and valued ecological attributes and to establish nutrient criteria that ensure that the designated uses of Florida's waters are maintained.

Florida currently uses a narrative nutrient standard to guide the management and protection of its waters. Chapter 62-302.530, F.A.C., states, "in no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of flora or fauna." The narrative criteria also states that, for all waters of the state, "the discharge of nutrients shall continue to be limited as needed to prevent violations of other standards contained in this chapter [Chapter 62-302, F.A.C.]. Man-induced nutrient enrichment (total nitrogen or total phosphorus)

[5] Interim Report 2008-212, Agency Sunset Review of the Water Management Districts, by the Senate Committee on Environmental Preservation and Conservation.

shall be considered degradation in relation to the provisions of Sections 62-302.300, 62-302.700, and 62-4.242, F.A.C."

The DEP has relied on this narrative for many years because nutrients are unlike any other "pollutant" regulated by the federal Clean Water Act. Most water quality criteria are based on a toxicity threshold, evidenced by a dose-response relationship, where higher concentrations can be demonstrated to be harmful, and acceptable concentrations can be established at a level below which adverse responses are seen. In contrast, nutrients are not only naturally present in aquatic systems, they are necessary for the proper functioning of life.

The DEP has been actively working with EPA on the development of numeric nutrient criteria. The DEP submitted its initial Draft Numeric Nutrient Criteria Development Plan to the EPA in May 2002, and received mutual agreement on the Numeric Nutrient Criteria Development Plan from EPA in July 2004. The DEP revised its plan in September 2007 to more accurately reflect its evolved strategy and technical approach, and received mutual agreement on the 2007 revisions from the EPA.

The Florida Wildlife Federation filed a lawsuit in 2008 seeking to require the EPA to promulgate numeric nutrient water quality standards for Florida waters. The EPA settled the lawsuit and entered into a consent decree with the Florida Wildlife Federation. After EPA analyses of the facts in Florida and discussions with the DEP, on January 14, 2009, the EPA made a determination that numeric nutrient criteria in Florida were necessary to meet the requirements of the federal Clean Water Act. The EPA determined that Florida's existing narrative criteria on nutrients in water was insufficient to ensure protection of the state's water bodies. The determination recognized that, despite Florida's intensive efforts to diagnose and control nutrient pollution, substantial water quality degradation from nutrient over-enrichment remains a significant challenge in Florida and is likely to worsen with continued population growth and land-use changes. The January 14, 2009, determination stated the EPA's intent to propose numeric nutrient standards for lakes and flowing waters in Florida within twelve months of the determination, and for estuaries and coastal waters, within 24 months of the determination. The final EPA rule is scheduled for promulgation in October, 2010.

Stormwater Management

Florida receives approximately 40 to 60 inches of rain each year from about 130 storm events. While about 80% of the storms are small, with less than 1 inch of rainfall, the state also experiences torrential downpours and hurricane rains. This rainfall causes runoff carrying sediment, fertilizers, pesticides, oil, heavy metals, bacteria, and other contaminants to enter surface waters, causing adverse effects from increased pollution and sedimentation. The implementation of erosion control measures consistent with sound agricultural and construction operations is essential to minimizing these impacts.[6]

Florida's stormwater regulatory program requires the use of best management practices (BMPs) during and after construction to minimize erosion and sedimentation and to properly manage

[6] *See,* Florida Stormwater Erosion and Sedimentation Control Inspector's Manual, July 2008. Available at: <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf>. Last accessed on March 21, 2010.

runoff for both stormwater quantity and quality. BMPs are control practices that are used for a given set of conditions to achieve satisfactory water quality and quantity enhancement at a minimal cost. Each BMP has specific application, installation, and maintenance requirements that should be followed to control erosion and sedimentation effectively. Accepted engineering methods must be used in the design of these control measures, such as those established by the DEP, the Department of Transportation, the U.S. Department of Agriculture's, the Natural Resources Conservation Service, the International Erosion Control Association, the American Society of Civil Engineers, the U.S. Army Corps of Engineers, or other recognized organizations.[7]

Part IV of ch. 373, F.S., governs the management and storage of surface waters. Section 373.403(10), F.S., defines "Stormwater management system" to mean:

> a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

Section 373.413, F.S., provides in part:

- 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 stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto and 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.
- A person proposing to construct or alter a stormwater management system, 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:
  - Name and address of the applicant;
  - 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;
  - Location of the work;
  - Sketches of construction pending tentative approval;
  - Name and address of the person who prepared the plans and specifications of construction;
  - Name and address of the person who will construct the proposed work;
  - General purpose of the proposed work; and
  - Such other information as the governing board or department may require.

Section 373.117, F.S., addresses certification by professional engineers, and provides:

- If an application for a permit or license to conduct an activity regulated under this chapter requires the services of a professional engineer as regulated and defined by ch. 471, F.S., the

[7] *Id.*

department or governing board of a water management district may require, as a condition of granting a permit or license, that a professional engineer licensed under ch. 471, F.S., certify upon completion of the permitted or licensed activity that such activity has been completed in substantial conformance with the plans and specifications approved by the department or board.

- The cost of such certification by a professional engineer shall be borne by the permittee.
- No permitted or licensed activity which is required to be so certified shall be placed into use or operation until the professional engineer's certificate is filed with the department or board.

For purposes of part I of ch. 403, F.S., relating to pollution control, s. 403.0877, F.S., addresses certification by professionals regulated by the Department of Business and Professional Regulation. The section provides:

- Nothing in this section shall be construed as specific authority for a water management district or the department to require certification by a professional engineer licensed under ch. 471, F.S., a professional landscape architect licensed under part II of ch. 481, F.S., a professional geologist licensed under ch. 492, F.S., or a professional surveyor and mapper licensed under ch. 472, F.S., for an activity that is not within the definition or scope of practice of the regulated profession.
- If an application for a permit or license to conduct an activity regulated under this chapter, ch. 373, F.S., ch. 376, F.S., or any permitting program delegated to a water management district by a state agency, or to undertake corrective action of such activity or program ordered by the department or a water management district, requires the services of a professional as enumerated in subsection (1), the department or governing board of a water management district may require, by rule, in conjunction with such an application or any submittals required as a condition of granting a permit or license, or in conjunction with the order of corrective action, such certification by the professional as is necessary to ensure that the proposed activity or corrective action is designed, constructed, operated, and maintained in accordance with applicable law and rules of the department or district and in conformity with proper and sound design principles, or other such certification by the professional as may be necessary to ensure compliance with applicable law or rules of the department or district. The department or governing board of a water management district may further require as a condition of granting a permit or license, or in conjunction with ordering corrective action that the professional certify upon completion of the permitted or licensed activity or corrective action that such activity or corrective action has, to the best of his or her knowledge, been completed in substantial conformance with the plans and specifications approved by the department or board.
- The cost of such certifications by the professional shall be borne by the permittee or the person ordered to correct the permitted activity.
- A permitted or licensed activity or corrective action that is required to be so certified upon completion of the activity or action may not be placed into use or operation until the professional's certificate is filed with the department or board.

Finally, s. 403.0896, F.S., addresses training and assistance for stormwater management system personnel. The section provides for the Stormwater Management Assistance Consortium of the State University System, working in cooperation with the community colleges in the state, interested accredited private colleges and universities, the department, the water management districts, and local governments, shall develop training and assistance programs for persons

responsible for designing, building, inspecting, or operating and maintaining stormwater management systems.[8]

Florida Keys Area of Critical State Concern

In 1975, the Administration Commission designated the Florida Keys as an Area of Critical State Concern. The designation was challenged and, in 1978, the Florida Supreme Court declared that the designation process constituted an invalid delegation of legislative authority to an administrative agency. In response, the 1979 Florida Legislature, amended the criteria and process for designating Areas of Critical State Concern, and statutorily re-designated the Florida Keys as an Area of Critical State Concern. The City of Key West petitioned and was approved for removal from the Area of Critical State Concern in 1981.[9] The majority of the rest of Monroe County, including its municipalities, remains within the Area of Critical State Concern.[10] The Administration Commission oversees growth management provisions in areas included under the designation. Among the elements of the growth management Work Program are the planning, design and implementation of centralized wastewater management systems and upgraded onsite sewage treatment and disposal systems (septic tanks) by municipalities within Monroe County and the county itself.[11]

Chapter 99-395, L.O.F., as amended, provides requirements and standards for wastewater facilities and septic tanks in Monroe County that must be met by July 1, 2010. Ch. 99-395, L.O.F., applies to all wastewater facilities and septic tanks regardless of ownership; however, local governments or other entities are not required to build new facilities or systems.

Pursuant to the Administration Commission Work Program and the June 2000 Monroe County Sanitary Wastewater Master Plan, the plan has been for local governments to build central facilities and to require package plants and septic tank owners to connect to central systems when available.[12] Package plant and septic tank owners have generally been waiting for completion of local government facilities because chapter 99-395, L.O.F., gives local governments in the Keys the authority to mandate connection of package plants and onsite systems within 30 days of central system availability. Package plant and septic tank owners have been reluctant to invest in expensive upgrades to their systems to comply with chapter 99-395, L.O.F., only to be forced, in some cases in as little as 30 days, to pay expensive connection fees, impact fees and monthly user charges for central sewer as it becomes available. All package plants and septic tanks not upgraded by July 1, 2010, will be in violation of ch. 99-395, L.O.F., on July 1, 2010. Owners of the systems will be subject to enforcement by the DEP or the Department of Health (DOH) depending on the type of system.

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[8] The Consortium was created by s. 33, ch. 89-279, L.O.F.

[9] Department of Community Affairs, *Florida Keys Area of Critical State Concern Removal of Designation Report*, 2008. Available at: <http://www.dca.state.fl.us/fdcp/DCP/acsc/Files/RemovalofDesignationReport.pdf>. Last accessed March 21, 2010.

[10] § 380.0552, F.S. (2009).

[11] Administration Commission, Rule 28-20, F.A.C.

[12] According to the U.S. Environmental Protection Agency, package plants are pre-manufactured treatment facilities used to treat wastewater in small communities or on individual properties capable of processing up to half a million gallons per day.

As of February 2010, the cities of Key West, Key Colony Beach and Layton operate facilities in compliance with the July 1, 2010, deadline. The city of Marathon and the Key Largo Wastewater Treatment District are nearing completion of central systems for their service areas but will not meet the July 1, 2010, deadline. The Village of Islamorada and Monroe County, for its unincorporated areas, are in various stages of planning, design and construction of facilities. These facilities are years from completion.

The Florida Water Pollution Control Financing Corporation

The Florida Water Pollution Control Financing Corporation is a nonprofit public-benefit corporation for financing or refinancing water pollution control activities. The Corporation is governed by the Governor's Budget Director, the Chief Financial Officer, and the Secretary of the DEP. The executive director of the SBA directs and supervises the affairs of the corporation. The corporation's purpose is to issue bonds that increase the capacity of the State Revolving Fund to provide low-interest loans to local governments. The Clean Water State Revolving Fund has provided more than $2.2 billion in loans during the past 20 years, including more than $150 million last year to plan, design, and build wastewater and stormwater facilities across the state.

Ocean Outfall Requirements

There are six domestic wastewater facilities in Palm Beach, Broward, and Miami-Dade Counties discharging approximately 400 million gallons per day of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.[13]

Wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008 are required to install a reuse system no later than December 31, 2025. The reuse systems must be capable of providing a minimum of 60 percent of the wastewater facilities actual annual flow for beneficial reuse. The actual annual flow is calculated using the annual average flow through a wastewater facility's ocean outfall from 2003 through 2007.

Wastewater facilities operating ocean outfalls receive a significant portion of their annual average flow from other wastewater facilities located outside their direct service areas. There is a potential that flow received from outside their service areas could be diverted to other wastewater facilities that do not discharge to ocean outfalls, and therefore, would not have to comply with the 60 percent beneficial reuse requirement of ocean outfalls. Thus, diverting flow could circumvent the intent of the law to capture 60 percent of the flow currently being disposed of through ocean outfalls. Diversion may also prevent wastewater facilities discharging through ocean outfalls from meeting the 60 percent target for reuse. The reuse calculation does not consider quantities diverted from the wastewater facility, only the total average annual quantity from 2003 to 2007. In 2005, these wastewater facilities had reached approximately 94 percent of their permitted flow capacity.[14] As such, even small flow diversions have significant compliance consequences. For example, if a wastewater facility received an average of 100 million gallons per day from 2003 to 2007, it would be required to produce 60 million gallons per day of reuse

[13] Ben Koopman, et al., *Ocean Outfall Study, Final Report.* 2006. University of Florida, Gainesville. Prepared for the Florida Department of Environmental Protection. Available at: <http://www.dep.state.fl.us/water/reuse/docs/OceanOutfallStudy.pdf>. Last accessed March 21, 2010.
[14] *Id.*

by 2025 to be in compliance. If 20 million gallons per day were diverted, the facility would still be required to produce 60 million gallons of reuse per day to comply, or 75 percent of the flow. If enough flow is diverted, it is possible that wastewater facilities discharging to ocean outfalls will be required to produce greater than 100 percent of the flow they receive as reuse.

The discharge of wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system authorized by the DEP. A backup discharge may occur only during periods of reduced demand for reclaimed water, such as periods of wet weather, and must comply with the advanced wastewater treatment and management requirements of s. 403.086, F.S.

Florida Springs

Florida has more than 700 recognized springs; 33 first magnitude springs with a flow of more than 100 cubic feet per second that discharge more than 64 million gallons of water per day; 191 second magnitude springs with an average flow of 10 to 100 cubic feet per second that discharge from 6.46 to more than 64 million gallons of water per day; 151 third magnitude springs with a flow of 1 to 10 cubic feet per second that discharge 600,000 to 6.46 million gallons of water per day.[15] Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's watershed. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.

The Florida Springs Task Force was created in 1999 to recommend strategies for protecting and restoring Florida's springs. The multi-agency task force produced a report in November of 2000 entitled "*Florida's Springs, Strategies for Protection and Restoration*" which was the basis of the Florida Springs Initiative within the DEP. The report identified management strategies such as coordinated land use planning and ordinances that protect spring recharge basins, funding and implementing best management practices, and the acquisition of spring recharge basins to protect springs from land use practices that reduce water quality and quantity. The report also identified regulation strategies to protect spring flow, and a funding mechanism for implementing the strategies contained in the report. The report suggested the creation of a Springs Protection and Restoration Trust Fund funded by a 25-cent increase in automobile tags. Under the Florida Springs Initiative, the Legislature has provided at least $2.5 million each year since 2001 to support projects for springs restoration, research and protection.

The DOH conducts an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is an onsite sewage treatment and disposal function.[16] The Bureau of Onsite Sewage Programs develops statewide rules and provides training and standardization for County Health Department employees responsible for permitting the installation and repair of onsite sewage treatment and disposal systems (OSTDS) within the state. The bureau also licenses septic tank contractors, approves continuing education courses and course providers for septic tank contractors, funds a hands-on

[15] See Bulletin No. 66, *Springs of Florida*, Florida Geological Survey. Available at: <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm>. Last accessed March 21, 2010.
[16] § 381.006, F.S. (2009).

training center, and mediates OSTDS contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic tank designs.[17]

The DOH does not currently have a statewide septic system inspection program but has produced the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program."[18] According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic system inspections at a cost of $83.93 to $215 per inspection. Florida has between 2.3 and 2.7 million septic systems with the estimated failure rate during the initial round of inspections to be 9.5 percent. There is no active management of septic systems in Florida.

The Wekiva Basin

The Wekiva Basin, consisting of the Wekiva River, the St. Johns River and their tributaries along with associated lands in Central Florida, is part of a vast wildlife corridor that connects northwest Orange County with the Ocala National Forest. The Wekiva River and its tributaries have been designated an Outstanding Florida Water, a National and Scenic River, a Florida Wild and Scenic River, and a Florida Aquatic Preserve. The Wekiva Parkway is a limited access highway or expressway constructed between State Road 429 and Interstate 4, specifically incorporating the corridor alignment recommended by the Wekiva River Basin Area Task Force and the S.R. 429 Working Group. The Wekiva Parkway and related transportation facilities must follow the design criteria contained in the recommendations of the Wekiva River Area Task Force adopted by reference by the Wekiva River Basin Coordinating Committee, subject to reasonable environmental, economic and engineering considerations. In 2004, the Legislature enacted the Wekiva Parkway and Protection Act, part III, ch 369, F.S. The act implemented the recommendations of the Wekiva River Basin Coordinating Committee's Final Report of March 16, 2004, and provides legislative intent and a legal description of the Wekiva Study Area. The majority of the land within the Study Area contributes groundwater recharge to the Wekiva River and springs. The act required each local government within the Study Area to adopt a master stormwater management plan and a wastewater facility plan for joint planning areas and utility service areas where central wastewater systems are not readily available.

The act directs that funds expended by the Department of Transportation and Orlando-Orange County Expressway Authority to purchase interests in certain lands shall be eligible as environmental mitigation for road construction related impacts in the Wekiva Study Area. The act specifies the offset of road construction impacts as the only use of mitigation credits. Currently, there is a surplus of mitigation credits available to mitigate the Wekiva parkway expansion that cannot be used for other mitigation purposes within either the Wekiva Study Area or the Wekiva parkway alignment corridor.

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[17] Description of the Bureau of Onsite Sewage from the DOH website. Available at: <http://www.doh.state.fl.us/environment/ostds/OSTDSdescription.html>. Last accessed March 21, 2010.

[18] The Department of Health. Available at: <http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf>. Last accessed March 21, 2010.

University of Florida Water Institute

Although Florida's waters are some of the most highly studied and data-rich waters in the nation, there are no officially designated advisory bodies to issue scientifically-based policy recommendations to the Governor and Legislature. The University of Florida's Water Institute's core mission is to bring together talent from throughout University of Florida to address complex water issues through innovative interdisciplinary research, education, and public outreach programs. The Institute's vision is to create interdisciplinary teams, comprised of leading water researchers, educators and students; develop scientific breakthroughs; engineer creative solutions for water problems; and recommend policy and legal solutions for complex issues. The Institute is dedicated to creating strong partnerships with concerned stakeholders to identify and prioritize critical water issues requiring interdisciplinary expertise but practical solutions. The Institute held a two-day water symposium in February 2010, bringing together experts from around the country to discuss critical issues related to water resources.

The Florida Building Commission

The Florida Building Commission (Commission) is a collegial body created by s. 553.74, F.S. The Commission is comprised of 23 members, 22 of whom are required to meet statutorily described professional qualifications, and a chairperson. The Governor appoints the commissioners who are subject to confirmation by the Florida Senate. All appointments are for terms of four years, except the chair, who serves at the pleasure of the Governor.

The Florida Building Code
Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity, mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, exit systems, safe materials, energy efficiency, and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and properties, promote innovation and new technology, and help to ensure economic viability through the availability of safe and affordable buildings and structures. However, the Florida Building Code (code) does not address water conservation or products that result in water conservation.

Section 553.73, F.S., provides for the code. The code was authorized by the 1998 Florida Legislature to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. The code was developed and is updated and maintained by the Commission that works towards consistency of standards throughout the state and full accessibility to information on the standards. The law allows for differences in the standards in different locales based on compelling differences in physical conditions. However, the law establishes procedures for administration of the code at all levels that will constrain unwarranted differences and ensure the availability of information on local differences to all parties throughout the state.

The code is updated every three years by the Commission. The Commission may amend the code once each year to incorporate interpretations and update standards upon a finding that delaying the application of the amendment would be contrary to the health, safety, and welfare of the public or the amendment provides an economic advantage to the consumer. A proposed

amendment must include a fiscal impact statement which documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement are established by rule and must include the impact to local government relative to enforcement, the impact to property and building owners, as well as to industry, relative to the cost of compliance. The latest revisions to the code occurred in 2008.[19]

The commission is also authorized to hear appeals from decisions of local boards regarding the interpretation of the code, issue declaratory statements relating to the code, determine the types of products requiring approval for local or statewide use and provide for the evaluation and approval of such products, materials, devices, and method of construction for statewide use and develop a Building Code Training Program.

Product Approval
Product performance standards are integral to the scheme used by building codes to establish minimum building safety and performance standards. Traditionally, products are evaluated for compliance by engineering groups, which are independent of the manufacturers, then their evaluations are provided to the authority having jurisdiction for general approval or acceptance of the product.

Alternative Dispute Resolution by Water Management Districts

Currently, disputes between governmental entities are governed by ch. 164, F.S., the Florida Governmental Conflict Resolution Act (act). The act was implemented in 1999 (ch. 99-279, L.O.F.) as a mechanism for the resolution of disputes between governmental entities which must be followed prior to litigation. Under the act, before a governmental entity can file a law suit against another governmental entity, notice of intent to file suit must be given to the potential defendant, at least 45 days prior to filing suit. The party receiving notice must hold a public meeting within 30 days after receipt of this notice. At this meeting, the disputing governing bodies must discuss the proposed litigation in an effort to amicably settle the controversy.

The statute provides for an exception to the notice and public meeting requirements of this act if the governmental entity finds that an immediate danger to the health, safety, or welfare of the public requires immediate action.[20] If a governmental entity is found not to be negotiating in good faith, it will be required to pay the attorney's fees and costs of the other party in that proceeding. The act does not preclude any party to the litigation from availing itself of all available legal remedies.

Construction and Demolition Debris Landfills

Construction and demolition (C&D) debris consists of materials that are generated from residential and commercial buildings, renovations and various types of demolition. C&D materials include wood, steel, glass, brick, concrete, asphalt, wallboard, rock, soils, tree remains, and other vegetative matter. Only non-water soluble and non-hazardous materials are considered C&D. C&D constitutes 25 percent of Florida's municipal solid waste stream. Florida has 83

[19] § 140, ch. 2008-4; § 10, ch. 2008-191; and § 108, ch. 2008-227, L.O.F. (2008).
[20] § 164.1041(2), F.S. (2009).

landfills and 75 C&D disposal sites where C&D debris can be disposed, only two of which are lined. The DEP has indicated that unlined C&D landfills are environmentally problematic and may pose a threat to water resources from leachate and runoff.

Penalties for Obstructing District Structures

Section 298.66, F.S., provides for penalties for anyone who obstructs drainage canals and watercourses or other water control structures constructed by the districts. This statute predates the creation of the five WMDs or other water control districts. As currently drafted, the penalties only apply to someone who interferes with structures or watercourses constructed by any district. If a water control structure was constructed by an entity that predates either a WMD or a water control district, there would be no penalty for obstructing, damaging or destroying the structure or watercourse.

III. Effect of Proposed Changes:

Section 1 creates part VII of ch. 373. F.S., consisting of ss. 373.701, 373.703, 373.705, 373.707, 373.709, 373.711, 373.713 and 373.715, F.S., The goal of which is a non-substantive reorganization of the relevant parts of ch. 373, F.S. relating to water supply policy, planning, production and funding. The creations of the following sections comprise the reorganization:

- Section 373.701, F.S., declares the state's water supply policy.
- Section 373.703, F.S., provides powers and duties concerning water production of the water management districts.
- Section 373.705, F.S., provides direction concerning water resource and water supply development. Specific provisions describe the role of the state and local governments, enumerate legislative intent, detail funding requirements of the districts, and provide ranking criteria for funding projects.
- Section 373.707, F.S., addresses alternative water supply development. Specific provisions in this section include:
  - Provides legislative intent.
  - Calls for coordination in the development of water supply plans.
  - Directs that funding responsibilities be shared but that water suppliers shall have primary responsibility.
  - Details the role of the WMDs relative to water resource development including alternative water supply development.
  - Details the role of local governments regarding alternative water supply development, and requires that the water management districts are to separately detail budgetary expenditures for both traditional and alternative water supply development projects.
  - Provides for revenue sharing of funds deposited into the Water Protection and Sustainability Trust Fund among the water management districts.
  - Provides directions for the cost-sharing of projects among local sponsors, the water management districts and the state concerning the funding of alternative water supply projects.
  - Directs that the water management districts are to establish factors to be used in determining the eligibility and ranking of alternative water supply projects.

  - Provides administrative procedures to be used in developing the ranking list of alternative water supply projects, including whether local governments have implemented a blue belt assessment program.
  - Provides for full cost recovery for those utilities, regulated by the Public Service Commission, and that are engaged in constructing alternative water supply projects;
  - Specifies conditions that may be placed, by the water management districts, on reuse projects.
  - Allows the water management districts, through the DEP, to seek funding from the SBA for projects that have a regional benefit or will be implemented by a multi-jurisdictional entity.
- Section 373.709, F.S., provides for the development of regional water supply plans. Specifically the provisions include specific components and procedures to be used for developing the plans.
- Section 373.711, F.S., outlines the technical assistance the WMDs are to provide to local governments.
- Section 373.713, F.S., encourages the creation of regional water supply authorities. Specific provisions detail the types of agreements needed and provide the power and duties they may exercise. This section provides authority to develop and own alternative water sources, to have interest in lands, and to grant preferential rights to member parties. It also includes a prohibition against water withdrawals that could harm those areas from which the water is withdrawn.
- Section 373.715, F.S., provides specific assistance to the West Coast Regional Water Supply Authority. These provisions are similar to those provided in s. 373.713, F.S., but are altered to deal with the unique issues concerning the creation of this water supply authority which pre-dates the provisions moved to s. 373.713, F.S.

Sections 2 thru 26 provide the necessary technical and conforming changes necessary to create part VII of ch. 373, F.S. Specifically, these sections amend ss. 120.52, 163.3167, 163.3177, 163.3191, 189.404, 189.4155, 189.4156, 367.021, 373.019, 373.036, 373.0363, 373.0421, 373.0695, 373.223, 373.2234, 373.229, 373.236, 373.536, 373.59, 378.212, 378.404, 403.0891, 403.890, 403.891 and 682.02, F.S. Section 10 of this CS contains the only substantive change to these 25 sections. It expands the definition of alternative water supplies to include quantifiable water savings from water conservation projects.

Section 27 renumbers s. 373.71, F.S., as s. 373.69, F.S., to account for the new s. 373.701, F.S.

Section 28 repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962 and 373.1963, F.S., as they are redundant with the creation of part VII of ch. 373, F.S.

Section 29 amends s. 373.079, F.S., striking a provision that directed the WMD governing boards to delegate to the executive directors the authority to take final agency action on permit applications for CUPs and ERPs.

Section 30 amends s. 373.083, F.S., striking provisions that allow a WMD governing board to delegate permit decisions to the executive director and allow the executive director to delegate those decisions to district staff. Additionally, this section removes a provision that expressly prohibits any member of a governing board from intervening in any matter related to the review

of permit applications if such permit applications will be referred to the governing board for final action.

Section 31 amends s. 373.118, F.S., allowing WMD governing boards to delegate by rule the ability for executive directors to take final agency action on permit applications. This provision also grants authority for the executive director to further delegate authority to district staff.

Section 32 creates s. 373.4131, F.S., establishing criteria for the development of a statewide stormwater management rule. The provisions provide:

- Legislative intent of the need for a uniform rule to manage nutrients in stormwater.
- Definitions for "nutrient", "redevelopment", and "stormwater quality treatment requirements."
- Direction that the rule provide for geographic differences in physical and natural characteristics such as rainfall, soils, topography and vegetation.
- For adoption of a rule no later than July 1, 2011, that must be implemented by the water management districts or delegated local pollution control programs without having to adopt it pursuant to ch. 120, F.S.
- That existing rules for basin management action plans, total maximum daily loads, the Everglades Agricultural Area restoration, Northern Everglades and Lake Okeechobee restoration, and Lake Apopka restoration can continue to be modified as necessary.
- A prohibition, unless specifically authorized, on any variances from the new stormwater rule.
- That any existing stormwater rules superseded by the new rule may be repealed without further action.
- That existing rules remain fully in force until the new rule is in full force.
- Requirements that the rule shall establish treatment requirements necessary to meet water quality standards, including nutrient standards. Presumes compliance for stormwater discharged from a system meeting the requirements of the rule regardless if the standards are narrative or numerical.
- That notwithstanding general treatment requirements established by the rule, a set of alternative treatment requirements shall be created for redevelopment of sites totaling 10 acres or less and retrofitting of systems where such treatment results in a net reduction in the discharge of nutrients and other pollutants. It also provides that treatment requirements for redevelopment be based upon a feasibility assessment of stormwater best-management practices that consider certain factors.
- That the rule may also establish alternative treatment requirements for sites with legacy pollutants from past activities.

Subsequent to the adoption of the rule, the following will continue to be governed under current rules: operation and maintenance of stormwater systems legally in existence before effective date of new rule; or activities approved in a permit issued pursuant to these new provisions but prior to the rule becoming effective. However, any permit issued under the provisions of the new rule cannot be modified if it would extend construction for a period beyond four years or make changes that would substantially change stormwater quality impacts regardless of whether it lessens or increases the discharge.

This section provides that the new rule shall not apply to stormwater management systems serving agriculture.

Section 33 amends s. 403.031, F.S., modifying the definition of "pollution" to provide that nutrients become pollution in a water body when they cause an imbalance of naturally occurring aquatic flora or fauna. It also defines "first magnitude springs" and "second magnitude springs."

Section 34 amends s. 403.061, F.S., requiring the DEP to maintain a web portal listing all CUPs issued by the districts. It also provides specific authority to the DEP to establish water quality criteria to limit nutrient loading in water bodies that cause an imbalance of naturally occurring aquatic flora or fauna.

Section 35 creates s. 403.0675, F.S., allowing for the establishment and implementation of numeric nutrient standards. Specific provisions:

- Provide legislative findings of the need to develop specific numeric standards that are reflective of site specific factors. It cites the total maximum daily load program as the best mechanism for developing these standards.
- Direct that the DEP, by August 16, 2010, submit to the EPA numeric nutrient standards. The submission shall include site specific numbers, the methodology used and a schedule for developing additional numbers.
- Provide that the submission to the EPA is not subject to challenge under ch. 120, F.S.
- Detail the methodology to be used by the DEP for establishing numbers. Specific provisions require that: all streams be categorized into existing basins; a prioritization of streams be established; a planning list and schedule for the establishment of numbers be adopted; site specific numbers be adopted by rule; all numbers be expressed using certain scientific expressions; and numbers adopted for impaired waters be submitted to the EPA.
- Require the DEP adopt numeric criteria for first and second magnitude springs by January 1, 2011, and for lakes by July 31, 2011. Such criteria must be developed in accordance with the state's total maximum daily load program.
- Provide that certain existing numeric criteria shall be sufficient to meet the requirements of this section. Specifically, these are for those criteria approved by the EPA as of March 1, 2010, and those for Tampa Bay and its bay segments as already approved by the DEP. Parties shall retain their right to challenge the existing standards as provided under ch. 120, F.S.
- Allow for public comment on the proposed new numeric criteria but such criteria shall not be subject to challenge under ch. 120, F.S.
- If the EPA disapproves, approves in part, or conditions its approval of these numeric criteria, those standards shall not take effect until ratified by the Legislature.
- Condition the adoption of additional or more stringent numeric criteria for manmade lakes, canals or ditches, or streams converted to canals before 1975, on a determination by the Environmental Regulation Commission of their appropriate designated uses. In order to facilitate the adoption of numeric criteria, the DEP shall propose by rule a new designated use or classification for these waters by October 31, 2010.
- Directs the DEP at its next review of water quality criteria to review the standards adopted under this section.

Section 36 amends s. 215.619, F.S., clarifying that bonding capacity shall not exceed a total of $200 million or $50 million per year, and eliminates the restriction that all bonds must be issued within four fiscal years. This section provides the purposes for which the bond proceeds may be used within the Florida Keys Area of Critical State Concern and that proceeds shall be managed by the DEP. Technical and conforming changes are included.

Section 37 amends s. 380.0552, F.S., providing:

- Additional legislative intent concerning the importance of protecting environmentally sensitive lands and nearshore water quality in the Florida Keys, and assurances for safely evacuating the Keys' population.
- Procedures for removal of the Area of Critical State Concern designation upon a demonstration that the intent provisions have been met and all tasks identified in the rules of the Administration Commission have been completed.
- Reporting requirements beginning on November 30, 2010, by the state land planning agency. The agency must report annually to the Administration Commission the progress of the Florida Keys towards completing the tasks required by the rules. In addition, the agency shall recommend removal of the designation if it determines that all tasks have been completed, all pertinent comprehensive plans, development regulations and the administration of such are adequate to protect the Keys, and that a local government has adopted a resolution requesting the removal of the designation.
- A requirement that the Administration Commission, upon receipt of an annual report, determine whether the designation should be removed. If the commission determines that the designation should remain, it is directed to report to the local government's actions that need completion to have the designation removed.
- The Administration Commission's decision concerning the designation is subject to review under ch. 120, F.S.
- Inclusion of additional principles in comprehensive plan amendments that address the amendment to legislative intent in subsection (2) of s. 380.0552, F.S.
- Additional compliance requirements for the Florida Keys comprehensive plan amendments. The amendments shall detail construction schedules and financing plans for wastewater management improvements, and they must provide a hurricane evacuation clearance time of 24 hours for permanent residents.

This section also contains technical and conforming changes.

Section 38 amends 381.0065, F.S, incorporating the specific onsite system requirements in ch. 99-395, L.O.F., into s. 381.0065, F.S. The requirements for onsite systems of this section are as follows:

- Highlights the existing policy that local governments are responsible for upgrades and shall comply with schedules adopted by the Administration Commission.
- Requires that septic tanks must cease discharge by December 31, 2015, or comply with new discharge standards.
- Provides that septic tanks discharging to an injection well must provide basic disinfection.
- Requires that on or after July 1, 2010, all new, modified, or repaired septic tanks must comply with new discharge standards. However, if a property is scheduled for central sewer connection by December 31, 2015, and the owner has paid an assessment or connection fee,

he or she will be required to meet a set of minimum standards for the septic tank until connected to a central sewer. Septic tanks meeting the minimum levels of treatment under this provision must be monitored for nitrogen and phosphorus concentrations.
- Directs the DOH to enforce the provisions of this section.
- Allows local government entities to require properties on septic tanks to connect to central sewer within 30 days after notice of it becoming available.
- Provides a definition, guidelines, duties, and power and implementation criteria for the creation of responsible management entities.
- Bans the land application of septage after January 1, 2015.

This section also contains technical changes.

Section 39 amends s. 381.00655, F.S., requiring a RME in a jurisdiction where the local governing body requires owners of septic systems to connect to an investor-owned sewerage system to pay connection fees. Obsolete language specifying owner responsibilities for connection is stricken.

Section 40 amends s. 381.0066, F.S., requiring an operating permit for an RME of at least $10 per year. The DOH is required to complete an evaluation of RME fee schedules by January 1, 2015, and report its findings to the Legislature. The DOH must also include a justification for fees and any possible streamlining due to the implementation of the RME program.

Section 41 amends s. 403.086, F.S., requiring the DEP to submit a report on the effects of reclaimed water on the environment by February 1, 2012. The section also specifies that entities that divert wastewater from a receiving facility that discharges to an ocean outfall must meet the 60 percent reuse requirement by 2025. The amount of wastewater diverted from a receiving facility will be deducted from its actual flow on an annual basis and the quantity of reuse it is required to produce will be recalculated.

This section also incorporates the specific wastewater facility requirements in ch. 99-395, L.O.F., into s. 403.086, F.S. It provides specific legislative findings that: poorly treated effluent from small wastewater facilities and onsite systems, including septic tanks, harms the coastal environment and threatens the local economy; the only practical and cost-effective way to improve wastewater management is to implement Administration Commission rules and the 2000 Monroe County Sanitary Master Wastewater Plan; and construction and operation of a central wastewater systems is in the public interest. The requirements for domestic wastewater facilities (facilities), including privately owned systems, of this section is as follows:
- Provides provisions to conform deadlines for wastewater systems created in Section 38 of the CS for onsite systems.
- Prohibits facilities from discharging wastewater into surface waters.
- Highlights the existing policy that local governments are responsible for constructing and operating central systems by December 31, 2015, and must comply with Administration Commission rules.
- Details design requirements for all new or expanded wastewater facilities beginning December 31, 2015.

- Provides requirements for Class V injection wells along with variances for the operations of other types of injection wells.
- Provides for limited, automatic permit extensions for certain facilities.
- Creates deadlines to bring currently operating wastewater facilities into compliance with new standards.
- Provides additional requirements for discharges, even though in compliance, which are demonstrated to cause a violation of state water quality standards.
- Directs all facilities to monitor effluent for total nitrogen and phosphorus concentrations and maintain a properly certified staff to ensure compliance with DEP rules.
- Allows local government entities to require facilities owned by other entities to connect to central sewer within 30 days after notice of it becoming available.

This section includes technical and conforming changes.

Section 42 repeals the provisions of chapter 99-395, L.O.F., which are being incorporated into statutory law in section 41 of this CS.

Section 43 amends s. 11.45, F.S., providing conforming changes.

Section 44 amends s. 403.1835, F.S., providing technical and conforming changes.

Section 45 amends s. 403.1837, F.S., renaming the "Florida Water Pollution Control Financing Corporation" as the "Florida Water Pollution Control and Drinking Water Financing Corporation." This section also contains technical and conforming changes to accommodate the expanded duties of the new corporation.

Section 46 amends s. 403.8532, F.S., adding and modifying definitions to conform to the creation of the new corporation and its expanded duties; providing rulemaking authority and additional criteria concerning an existing provision that requires loan recipients' to demonstrate their ability to repay loans.

Section 47 amends s. 403.8533, F.S., providing that the Drinking Water Revolving Loan Trust Fund can be used for loans authorized under the new corporation and that the trust fund is exempt from constitutional termination provisions.

Section 48 creates part IV of ch. 369, F.S., consisting of ss. 369.401, 369.402, 369.403, 369.404, 369.405, 369.406 and 369.407, F.S. The creation of the following sections comprises "Florida Springs Protection Act":

- Section 369.401, F.S., provides a short title.
- Section 369.402, F.S., establishes legislative findings and intent.
- Section 369.403, F.S., provides definitions for: "cooperating entities," "department," "estimated sewage flow," "first magnitude spring," "karst," "onsite sewage treatment and disposal system," or "septic system," "second magnitude spring," "spring," "springshed, " and "usable property."
- Section 369.404, F.S., designates all counties and municipalities that contain a first or second magnitude spring as "spring protection zones." Directs the DEP to create a priority ranking

schedule for springs based on the extent of nitrogen impairment and creates deadlines for compliance based on those rankings. Additionally, this section:
  - Allows counties or municipalities to submit an application to the DEP to exempt certain geological areas from inclusion in a spring protection zone if they can prove that the exempted areas will not lead to new or continued degradation of a spring.
  - Directs the DEP to develop standards and rules that provide the minimum scientific methodologies, data or tools for use by counties and municipalities for their applications for exemptions.
  - Allows the department to deny or modify an exemption application by a county or municipality, subject to ch. 120, F.S., review.
- Section 369.405, F.S., requires agricultural operations to implement best-management practices including nutrient management. This section also requires local governments, in cooperation with the department and the WMDs, to create remediation plan for nitrogen loading to groundwater by the deadlines and priority rankings in s. 369.404, F.S.
- Section 369.406, F.S., provides for additional requirements that apply to all spring protection zones. The specific provisions include:
  - All new septic systems installed on or after January 1, 2011, on properties abutting a water body or water segment that is listed as impaired or within a designated spring protection zone must meet of standard of 3 milligrams per liter total nitrogen at the property line. Compliance does not require groundwater monitoring. The DOH is directed to develop by rule the necessary septic system design standards to meet this requirement.
  - Provides setback requirements for new systems or those needing repair.
  - Bans the land application of septage and residuals, except for class AA marketed and distributed as fertilizer by dates certain.
  - Directs the DEP, in cooperation with affected entities, to develop revised rules for animal feeding operations in order to address nutrient pollution issues.
- Section 369.407, F.S., establishes rules:
  - The department, the Department of Health, and the Department of Agriculture and Consumer Services are provided rule making authority to administer the provisions of this part.
  - The Department of Agriculture and Consumer Services shall:
    - Be the lead agency in coordinating the reduction of agriculture nonpoint sources of pollution for springs protection;
    - Study and if necessary , initiate rule making with cooperating entities and stakeholders to implement new or revised best-management practices; and
    - As needed, revise its best-management practices rules to require implementation of the modified practice within a reasonable time.
  - The Department of Health is authorized to grant hardship variances.

Section 49 amends s. 259.105, F.S., directing the Acquisition and Restoration Council to give priority to projects that fall within a spring protection zone created pursuant to s. 369.404, F.S.

Section 50 amends s. 369.317, F.S., providing that if certain lands within the Wekiva Study Area or the Wekiva parkway alignment corridor are used as environmental mitigation to offset certain impacts, then the activity is considered to meet the cumulative impact upon surface water and

wetlands requirements in s. 373.414(8)(a), F.S. This change will allow the use of mitigation credits for other projects or developments within the study area or expansion corridor.

Section 51 creates s. 373.631, F.S., providing legislative intent to use the academic bodies of the State University System to serve as advisory bodies for science-based water recommendations. It also directs the University of Florida's Water Institute to serve as the lead entity and issue a report to the Legislature by February 1, 2011, and every two years after.

Section 52 amends s. 553.77, F.S., directing the Florida Building Commission to develop recommendations that result in the conservation of water resources. The Commission must consider products that exceed the National Energy Policy Act requirements for water use and may consider other entities certifications.

Section 53 amends s. 215.47, F.S., making up to 25 percent of all funds managed by the SBA available for potential investment in alternative water and water resource development projects.

Section 54 amends s. 373.129, F.S., reemphasizing that WMDs have a duty to negotiate conflicts in good faith before proceeding to litigation against another governmental entity, as provided in s. 164.1031, F.S.

Section 55 amends s. 403.707, F.S., requiring the lining of all new landfills constructed after July 1, 2010 that will accept construction and demolition debris.

Section 56 amends s. 298.66, F.S., providing penalties for anyone who obstructs damages or destroys any drainage watercourse or structure in any district. This section fixes a potential loophole in the law that addresses drainage watercourses or structures constructed prior to existence of the WMDs or other water control districts.

Section 57 amends s. 212.054, F.S., providing that a county designated as an area of critical state concern may levy a discretionary surtax of 1 percent to be approved by voter referendum. The proceeds from the surtax may be used to repay, refinance or construct infrastructure related to stormwater and wastewater treatment.

Section 58 provides for an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, of the State Constitution provides that the Legislature may not require a county or municipality to expend funds or take action resulting in the expenditure of funds unless certain criteria are met. This bill contains two requirements that need further scrutiny.

The bill requires Monroe County and municipalities within the Florida Keys Area of Critical State Concern to update their comprehensive plans with new elements by December 31, 2015. Monroe County and affected municipalities will be able to meet this

requirement within their normal comprehensive plan revision cycles. As such, no additional funds are required.

The creation and administration of responsible management entities will require counties and municipalities to expend funds. To that extent, it is a mandate. However, the bill creates a revenue stream that the counties and municipalities control and may raise or lower rates as they see fit to maintain proper operating capital and reserves. As such, this requirement meets the constitutional test the Legislature authorizes enactment of a funding source not available to the counties or municipalities on February 1, 1989.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The creation of responsible management entities to maintain septic systems will create an additional fee on owners of these systems where none exists today. While the actual cost will be determined by the RME and the participating local governments, preliminary estimates range from $5-30. However, the fee should be weighed against the potential benefits. Once owners of septic tanks begin paying the fee, they will not be responsible for the inspection, pumpout, maintenance, repair, replacement or upgrades necessary to comply with higher standards from either the DEP or the EPA.

B. Private Sector Impact:

There are many and varied impacts to the private sector that are indeterminate at this time. Generally, capital projects and infrastructure needed to comply with environmental regulations and supplying increased water resources will lead to higher utility rates. Those costs are indeterminate to the individual private citizen. However, there will also be indirect benefits in the form of clean water, greater economic activity, potentially higher property values, etc., which are also indeterminate. The specific provisions of this bill that affect the private sector are as follows:

- New part VII, ch. 373, F.S., the public may benefit indirectly from the streamlining process of the reorganization.
- There will be an impact on the private rate payers of water utilities and other entities availing themselves of the new funding option through the SBA for water projects. The SBA will require a guaranteed rate of return based on a revenue stream. The rate payers are the revenue stream. However, when using SBA loans for financing, there is no match requirement. The impact to the rate payer of whether utilities must match or must guarantee a rate of return is unknown.

- If a local government implements a blue belt program, landowners could take advantage of the program to reduce their taxes. Since implementation of the program is voluntary, the impact cannot be determined.
- The EPA estimates it will cost $102 to $130 million per year to implement the DEP proposed nutrient criteria rules and an additional to $10.1 million more per year to meet the EPA's enhanced nutrient criteria. These costs will likely be distributed through the private sector resulting in everything from higher utility rates to higher prices for agricultural produce. The direct costs are indeterminate.
- The private sector will have negligible additional costs to comply with the requirements of this bill related to the Florida Keys Area as the bill incorporates the requirements of ch. 99-395, L.O.F. However, the bill creates some heightened standards not included in ch. 99-395, L.O.F., which will impact private owners of wastewater facilities or septic tanks. Those impacts are indeterminate and will vary based on individual circumstances that cannot be determined at this point.
- Responsible management entities are similar to insurance programs in that you pay a small fee upfront to protect against large potential loses later. See "Tax/Fee Issues" section. However, there will be a severe shortage of septic tank contractors and hundreds, if not thousands of jobs will be created to comply with the requirement that every septic tank be inspected every five years. Currently, only 17,000 septic tanks are inspected and pumped out each year. The DOH estimates there are between 2.3 and 2.7 million septic tanks in Florida. This equates to over 500,000 inspections each year. The DOH also estimates that ten percent are failing, requiring the replacement of a minimum of 50,000 systems over the next ten years.
- Agricultural operations will face some additional costs to implement the necessary best-management practices required in spring protection zones. The specific cost is unknown because the practices have not yet been developed. However, it should be noted that even without the legislation, many of these agricultural operations may still be required to implement best-management practices as a result of the state's implementation of the Total Maximum Daily Load program.
- Owners of septic systems within a spring protection zone will also face the potential for increased costs related to central sewer connection or meeting heightened standards. These costs cannot be determined at this time because of the possibility of coverage under a RME which may significantly reduce expenditures in these zones.
- The expansion of mitigation credits for use within the Wekiva Parkway alignment corridor will allow additional projects and developments to take advantage of a surplus of banked credits.
- Re-emphasizing the districts' duty to negotiate conflicts in good faith may save one taxpayer's dollar from suing another taxpayer's dollar and may save significant resources that would then be freed up for other expenditures. However, per private resident, the amount is likely to be insignificant.
- Lined landfills cost an estimated $150,000 per acres. 40 acres is the recommended minimum size for a landfill.

C. Government Sector Impact:

Governmental entities will likely be required to spend significant, but indeterminate, amounts of resources to comply with the requirements of this bill. Either the DEP or the

EPA will implement numeric nutrient criteria for the state by the end of 2010. As mentioned above, the likely yearly cost of implementation will run well into the hundreds of millions of dollars. The upfront cost will be borne by governmental entities through the issuance of debt or other methods of raising capital. However, the costs will ultimately fall on the tax and rate payers. The specific provisions of the bill that directly affect governmental entities are as follows:

- Access to SBA loans for water projects may provide entities an opportunity for large cash infusions with little upfront costs. No matching funds are required to access SBA funds. Such loans, however, may be matched with federal grants or other funds, which may lower financing charges over the life of the loan. Current rates on guaranteed loans are hovering around 3.5 percent.
- As mentioned above, the costs of remediating stormwater systems and meeting numeric nutrient criteria will be extensive. Since the numbers are not yet known, the exact costs are indeterminate.
- The estimated cost to comply with all requirements in the Florida Keys Area is over $350 million. The bill does not require any further action than what is already required by ch. 99-395, L.O.F. However, the bill extends the compliance deadline to December 31, 2015, from July 1, 2010. By extending the compliance deadline, the bill may save local governments from having to pay significant fines, penalties and litigation costs related to missing the 2010 deadline.
- Responsible management entities and participating local governments will likely have extensive setup and administrative costs in the first few years. Further, the costs of replacing and repairing septic tanks in their respective services areas will be significant based on DOH's estimate that ten percent are currently in a failing state. However, after five years, the operational costs will shift from repair and replacement to more of a maintenance role. The single greatest cause of septic tank failure is lack of routine maintenance.
- Creating the "Florida Water Pollution Control and Drinking Water Financing Corporation" will allow the corporation to access twice the amount of funds currently available.
- According to the DEP, there will be no fiscal impact if entities currently contributing flow to a facility discharging to an ocean outfall continue to send 100 percent of their flow to these facilities. However, if an entity diverts flow, it would be responsible for the costs of complying with the 60 percent beneficial reuse requirement in this bill for the diverted flow. The facility discharging through an ocean outfall would get credit toward its reuse requirement for the quantity diverted from its facility and may have reduced compliance costs. If the bill does not pass and if significant flow is diverted from facilities operating ocean outfalls, those facilities would have significantly higher compliance costs. It is also possible that if enough flow was diverted, compliance with the 60 percent requirement would be technically infeasible.
- The compliance costs for government agencies and entities within spring protection zones are likely extensive, but indeterminate. It is not known what nutrient criteria will be adopted.
- The proposed change will allow state agencies and the St. Johns River Water Management District additional flexibility in determining how mitigation credits may

be applied within the Wekiva Study Area and the Wekiva parkway alignment corridor. The benefit of this flexibility is unknown.

- Neither the University of Florida Water Institute nor the Florida Building Commission will have any significant costs associated with the requirements of the bill.
- Water management districts may realize a decrease in litigation expenses by submitting to alternative dispute resolution. The savings, if any, are indeterminate.

Department of Health

- Establishment of RMEs by local governments will eventually bring all 2.6 million onsite sewage systems in Florida under an operation and maintenance program.
- Estimated expenditures for Year 1 are $25.1 million, and $28.1 million in Year 2.
- Revenue from operating and repair fees is estimated to generate $17.6 million in Year 1 and $34.7 million in Year 2.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 23, 2010:
There are no changes between the proposed committee substitute and the committee substitute. The change in designation of the legislation is a procedural requirement.

CS by Governmental Oversight and Accountability on April 6, 2010:
The CS provides that management costs for onsite sewage treatment and disposal systems shall be based on the size and types of systems. Responsible management entities are not subject to the jurisdiction of the Public Service Commission. Implementation will take effect in designated counties in four named regions by July 1, 2012. Changes to style and formatting were made to correct cross-references and directory lines. The Board of Administration may invest assets under its control in projects under s. 373.707, F.S., consistent with its fiduciary duties. Interagency guidelines of the Departments of Health, Environmental Protection, and Community Affairs will address the equitable allocation of administrative and management costs for responsible management entities.

B. Amendments:

None.

COMMITTEE AMENDMENT

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LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Part VII of chapter 373, Florida Statutes, consisting of sections 373.701, 373.703, 373.705, 373.707, 373.709, 373.711, 373.713, and 373.715, is created to read:

PART VII

WATER SUPPLY POLICY, PLANNING, PRODUCTION, AND FUNDING

373.701 Declaration of policy.—It is declared to be the policy of the Legislature:

(1) To promote the availability of sufficient water for all

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13 existing and future reasonable-beneficial uses and natural
14 systems.
15 (2)(a) Because water constitutes a public resource
16 benefiting the entire state, it is the policy of the Legislature
17 that the waters in the state be managed on a state and regional
18 basis. Consistent with this directive, the Legislature
19 recognizes the need to allocate water throughout the state so as
20 to meet all reasonable-beneficial uses. However, the Legislature
21 acknowledges that such allocations have in the past adversely
22 affected the water resources of certain areas in this state. To
23 protect such water resources and to meet the current and future
24 needs of those areas with abundant water, the Legislature
25 directs the department and the water management districts to
26 encourage the use of water from sources nearest the area of use
27 or application whenever practicable. Such sources shall include
28 all naturally occurring water sources and all alternative water
29 sources, including, but not limited to, desalination,
30 conservation, reuse of nonpotable reclaimed water and
31 stormwater, and aquifer storage and recovery. Reuse of potable
32 reclaimed water and stormwater shall not be subject to the
33 evaluation described in s. 373.223(3)(a)-(g). However, this
34 directive to encourage the use of water, whenever practicable,
35 from sources nearest the area of use or application shall not
36 apply to the transport and direct and indirect use of water
37 within the area encompassed by the Central and Southern Florida
38 Flood Control Project, nor shall it apply anywhere in the state
39 to the transport and use of water supplied exclusively for
40 bottled water as defined in s. 500.03(1)(d), nor shall it apply
41 to the transport and use of reclaimed water for electrical power

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42 production by an electric utility as defined in s. 366.02(2).
43 (b) In establishing the policy outlined in paragraph (a),
44 the Legislature realizes that under certain circumstances the
45 need to transport water from distant sources may be necessary
46 for environmental, technical, or economic reasons.
47 (3) Cooperative efforts between municipalities, counties,
48 water management districts, and the department are mandatory in
49 order to meet the water needs of rapidly urbanizing areas in a
50 manner that will supply adequate and dependable supplies of
51 water where needed without resulting in adverse effects upon the
52 areas from which such water is withdrawn. Such efforts should
53 use all practical means of obtaining water, including, but not
54 limited to, withdrawals of surface water and ground water,
55 reuse, and desalination and will necessitate not only
56 cooperation but also well-coordinated activities.
57 Municipalities, counties, and special districts are encouraged
58 to create regional water supply authorities as authorized in s.
59 373.713 or multijurisdictional water supply entities.
60 373.703 Water production; general powers and duties.—In the
61 performance of, and in conjunction with, its other powers and
62 duties, the governing board of a water management district
63 existing pursuant to this chapter:
64 (1) Shall engage in planning to assist counties,
65 municipalities, special districts, publicly owned and privately
66 owned water utilities, multijurisdictional water supply
67 entities, or regional water supply authorities in meeting water
68 supply needs in such manner as will give priority to encouraging
69 conservation and reducing adverse environmental effects of
70 improper or excessive withdrawals of water from concentrated

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71 areas. As used in this section and s. 373.707, regional water
72 supply authorities are regional water authorities created under
73 s. 373.713 or other laws of this state.
74 (2) Shall assist counties, municipalities, special
75 districts, publicly owned or privately owned water utilities,
76 multijurisdictional water supply entities, or regional water
77 supply authorities in meeting water supply needs in such manner
78 as will give priority to encouraging conservation and reducing
79 adverse environmental effects of improper or excessive
80 withdrawals of water from concentrated areas.
81 (3) May establish, design, construct, operate, and maintain
82 water production and transmission facilities for the purpose of
83 supplying water to counties, municipalities, special districts,
84 publicly owned and privately owned water utilities,
85 multijurisdictional water supply entities, or regional water
86 supply authorities. The permit required by part II of this
87 chapter for a water management district engaged in water
88 production and transmission shall be granted, denied, or granted
89 with conditions by the department.
90 (4) Shall not engage in local water supply distribution.
91 (5) Shall not deprive, directly or indirectly, any county
92 wherein water is withdrawn of the prior right to the reasonable
93 and beneficial use of water which is required to supply
94 adequately the reasonable and beneficial needs of the county or
95 any of the inhabitants or property owners therein.
96 (6) May provide water and financial assistance to regional
97 water supply authorities, but may not provide water to counties
98 and municipalities which are located within the area of such
99 authority without the specific approval of the authority or, in

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100 the event of the authority's disapproval, the approval of the
101 Governor and Cabinet sitting as the Land and Water Adjudicatory
102 Commission. The district may supply water at rates and upon
103 terms mutually agreed to by the parties or, if they do not
104 agree, as set by the governing board and specifically approved
105 by the Governor and Cabinet sitting as the Land and Water
106 Adjudicatory Commission.
107 (7) May acquire title to such interest as is necessary in
108 real property, by purchase, gift, devise, lease, eminent domain,
109 or otherwise, for water production and transmission consistent
110 with this section and s. 373.707. However, the district shall
111 not use any of the eminent domain powers herein granted to
112 acquire water and water rights already devoted to reasonable and
113 beneficial use or any water production or transmission
114 facilities owned by any county, municipality, or regional water
115 supply authority. The district may exercise eminent domain
116 powers outside of its district boundaries for the acquisition of
117 pumpage facilities, storage areas, transmission facilities, and
118 the normal appurtenances thereto, provided that at least 45 days
119 prior to the exercise of eminent domain, the district notifies
120 the district where the property is located after public notice
121 and the district where the property is located does not object
122 within 45 days after notification of such exercise of eminent
123 domain authority.
124 (8) In addition to the power to issue revenue bonds
125 pursuant to s. 373.584, may issue revenue bonds for the purposes
126 of paying the costs and expenses incurred in carrying out the
127 purposes of this chapter or refunding obligations of the
128 district issued pursuant to this section. Such revenue bonds

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129 shall be secured by, and be payable from, revenues derived from
130 the operation, lease, or use of its water production and
131 transmission facilities and other water-related facilities and
132 from the sale of water or services relating thereto. Such
133 revenue bonds may not be secured by, or be payable from, moneys
134 derived by the district from the Water Management Lands Trust
135 Fund or from ad valorem taxes received by the district. All
136 provisions of s. 373.584 relating to the issuance of revenue
137 bonds which are not inconsistent with this section shall apply
138 to the issuance of revenue bonds pursuant to this section. The
139 district may also issue bond anticipation notes in accordance
140 with the provisions of s. 373.584.
141 (9) May join with one or more other water management
142 districts, counties, municipalities, special districts, publicly
143 owned or privately owned water utilities, multijurisdictional
144 water supply entities, or regional water supply authorities for
145 the purpose of carrying out any of its powers, and may contract
146 with such other entities to finance acquisitions, construction,
147 operation, and maintenance. The contract may provide for
148 contributions to be made by each party thereto, for the division
149 and apportionment of the expenses of acquisitions, construction,
150 operation, and maintenance, and for the division and
151 apportionment of the benefits, services, and products therefrom.
152 The contracts may contain other covenants and agreements
153 necessary and appropriate to accomplish their purposes.
154 373.705 Water resource development; water supply
155 development.—
156 (1) The Legislature finds that:
157 (a) The proper role of the water management districts in

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158 water supply is primarily planning and water resource
159 development, but this does not preclude them from providing
160 assistance with water supply development.
161 (b) The proper role of local government, regional water
162 supply authorities, and government-owned and privately owned
163 water utilities in water supply is primarily water supply
164 development, but this does not preclude them from providing
165 assistance with water resource development.
166 (c) Water resource development and water supply development
167 must receive priority attention, where needed, to increase the
168 availability of sufficient water for all existing and future
169 reasonable-beneficial uses and natural systems.
170 (2) It is the intent of the Legislature that:
171 (a) Sufficient water be available for all existing and
172 future reasonable-beneficial uses and the natural systems, and
173 that the adverse effects of competition for water supplies be
174 avoided.
175 (b) Water management districts take the lead in identifying
176 and implementing water resource development projects, and be
177 responsible for securing necessary funding for regionally
178 significant water resource development projects.
179 (c) Local governments, regional water supply authorities,
180 and government-owned and privately owned water utilities take
181 the lead in securing funds for and implementing water supply
182 development projects. Generally, direct beneficiaries of water
183 supply development projects should pay the costs of the projects
184 from which they benefit, and water supply development projects
185 should continue to be paid for through local funding sources.
186 (d) Water supply development be conducted in coordination

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187 with water management district regional water supply planning
188 and water resource development.
189 (3) The water management districts shall fund and implement
190 water resource development as defined in s. 373.019. The water
191 management districts are encouraged to implement water resource
192 development as expeditiously as possible in areas subject to
193 regional water supply plans. Each governing board shall include
194 in its annual budget the amount needed for the fiscal year to
195 implement water resource development projects, as prioritized in
196 its regional water supply plans.
197 (4)(a) Water supply development projects that are
198 consistent with the relevant regional water supply plans and
199 that meet one or more of the following criteria shall receive
200 priority consideration for state or water management district
201 funding assistance:
202 1. The project supports establishment of a dependable,
203 sustainable supply of water which is not otherwise financially
204 feasible;
205 2. The project provides substantial environmental benefits
206 by preventing or limiting adverse water resource impacts, but
207 requires funding assistance to be economically competitive with
208 other options; or
209 3. The project significantly implements reuse, storage,
210 recharge, or conservation of water in a manner that contributes
211 to the sustainability of regional water sources.
212 (b) Water supply development projects that meet the
213 criteria in paragraph (a) and that meet one or more of the
214 following additional criteria shall be given first consideration
215 for state or water management district funding assistance:

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216 1. The project brings about replacement of existing sources
217 in order to help implement a minimum flow or level; or
218 2. The project implements reuse that assists in the
219 elimination of domestic wastewater ocean outfalls as provided in
220 s. 403.086(9).
221 373.707 Alternative water supply development.—
222 (1) The purpose of this section is to encourage cooperation
223 in the development of water supplies and to provide for
224 alternative water supply development.
225 (a) Demands on natural supplies of fresh water to meet the
226 needs of a rapidly growing population and the needs of the
227 environment, agriculture, industry, and mining will continue to
228 increase.
229 (b) There is a need for the development of alternative
230 water supplies for Florida to sustain its economic growth,
231 economic viability, and natural resources.
232 (c) Cooperative efforts between municipalities, counties,
233 special districts, water management districts, and the
234 Department of Environmental Protection are mandatory in order to
235 meet the water needs of rapidly urbanizing areas in a manner
236 that will supply adequate and dependable supplies of water where
237 needed without resulting in adverse effects upon the areas from
238 which such water is withdrawn. Such efforts should use all
239 practical means of obtaining water, including, but not limited
240 to, withdrawals of surface water and ground water, reuse, and
241 desalinization, and will necessitate not only cooperation but
242 also well-coordinated activities. Municipalities, counties, and
243 special districts are encouraged to create regional water supply
244 authorities as authorized in s. 373.713 or multijurisdictional

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245 water supply entities.
246 (d) Alternative water supply development must receive
247 priority funding attention to increase the available supplies of
248 water to meet all existing and future reasonable-beneficial uses
249 and to benefit the natural systems.
250 (e) Cooperation between counties, municipalities, regional
251 water supply authorities, multijurisdictional water supply
252 entities, special districts, and publicly owned and privately
253 owned water utilities in the development of countywide and
254 multicountywide alternative water supply projects will allow for
255 necessary economies of scale and efficiencies to be achieved in
256 order to accelerate the development of new, dependable, and
257 sustainable alternative water supplies.
258 (f) It is in the public interest that county, municipal,
259 industrial, agricultural, and other public and private water
260 users, the Department of Environmental Protection, and the water
261 management districts cooperate and work together in the
262 development of alternative water supplies to avoid the adverse
263 effects of competition for limited supplies of water. Public
264 moneys or services provided to private entities for alternative
265 water supply development may constitute public purposes that
266 also are in the public interest.
267 (2)(a) Sufficient water must be available for all existing
268 and future reasonable-beneficial uses and the natural systems,
269 and the adverse effects of competition for water supplies must
270 be avoided.
271 (b) Water supply development and alternative water supply
272 development must be conducted in coordination with water
273 management district regional water supply planning.

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274 (c) Funding for the development of alternative water
275 supplies shall be a shared responsibility of water suppliers and
276 users, the State of Florida, and the water management districts,
277 with water suppliers and users having the primary responsibility
278 and the State of Florida and the water management districts
279 being responsible for providing funding assistance.
280 (3) The primary roles of the water management districts in
281 water resource development as it relates to supporting
282 alternative water supply development are:
283 (a) The formulation and implementation of regional water
284 resource management strategies that support alternative water
285 supply development;
286 (b) The collection and evaluation of surface water and
287 groundwater data to be used for a planning level assessment of
288 the feasibility of alternative water supply development
289 projects;
290 (c) The construction, operation, and maintenance of major
291 public works facilities for flood control, surface and
292 underground water storage, and groundwater recharge augmentation
293 to support alternative water supply development;
294 (d) Planning for alternative water supply development as
295 provided in regional water supply plans in coordination with
296 local governments, regional water supply authorities,
297 multijurisdictional water supply entities, special districts,
298 and publicly owned and privately owned water utilities and self-
299 suppliers;
300 (e) The formulation and implementation of structural and
301 nonstructural programs to protect and manage water resources in
302 support of alternative water supply projects; and

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303 (f) The provision of technical and financial assistance to
304 local governments and publicly owned and privately owned water
305 utilities for alternative water supply projects.
306 (4) The primary roles of local government, regional water
307 supply authorities, multijurisdictional water supply entities,
308 special districts, and publicly owned and privately owned water
309 utilities in alternative water supply development shall be:
310 (a) The planning, design, construction, operation, and
311 maintenance of alternative water supply development projects;
312 (b) The formulation and implementation of alternative water
313 supply development strategies and programs;
314 (c) The planning, design, construction, operation, and
315 maintenance of facilities to collect, divert, produce, treat,
316 transmit, and distribute water for sale, resale, or end use; and
317 (d) The coordination of alternative water supply
318 development activities with the appropriate water management
319 district having jurisdiction over the activity.
320 (5) Nothing in this section shall be construed to preclude
321 the various special districts, municipalities, and counties from
322 continuing to operate existing water production and transmission
323 facilities or to enter into cooperative agreements with other
324 special districts, municipalities, and counties for the purpose
325 of meeting their respective needs for dependable and adequate
326 supplies of water; however, the obtaining of water through such
327 operations shall not be done in a manner that results in adverse
328 effects upon the areas from which such water is withdrawn.
329 (6)(a) The statewide funds provided pursuant to the Water
330 Protection and Sustainability Program serve to supplement
331 existing water management district or basin board funding for

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332 alternative water supply development assistance and should not
333 result in a reduction of such funding. Therefore, the water
334 management districts shall include in the annual tentative and
335 adopted budget submittals required under this chapter the amount
336 of funds allocated for water resource development that supports
337 alternative water supply development and the funds allocated for
338 alternative water supply projects selected for inclusion in the
339 Water Protection and Sustainability Program. It shall be the
340 goal of each water management district and basin boards that the
341 combined funds allocated annually for these purposes be, at a
342 minimum, the equivalent of 100 percent of the state funding
343 provided to the water management district for alternative water
344 supply development. If this goal is not achieved, the water
345 management district shall provide in the budget submittal an
346 explanation of the reasons or constraints that prevent this goal
347 from being met, an explanation of how the goal will be met in
348 future years, and affirmation of match is required during the
349 budget review process as established under s. 373.536(5). The
350 Suwannee River Water Management District and the Northwest
351 Florida Water Management District shall not be required to meet
352 the match requirements of this paragraph; however, they shall
353 try to achieve the match requirement to the greatest extent
354 practicable.
355 (b) State funds from the Water Protection and
356 Sustainability Program created in s. 403.890 shall be made
357 available for financial assistance for the project construction
358 costs of alternative water supply development projects selected
359 by a water management district governing board for inclusion in
360 the program.

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361 (7) The water management district shall implement its
362 responsibilities as expeditiously as possible in areas subject
363 to regional water supply plans. Each district's governing board
364 shall include in its annual budget the amount needed for the
365 fiscal year to assist in implementing alternative water supply
366 development projects.
367 (8)(a) The water management districts and the state shall
368 share a percentage of revenues with water providers and users,
369 including local governments, water, wastewater, and reuse
370 utilities, municipal, special district, industrial, and
371 agricultural water users, and other public and private water
372 users, to be used to supplement other funding sources in the
373 development of alternative water supplies.
374 (b) Beginning in the 2005-2006 fiscal year, the state shall
375 annually provide a portion of those revenues deposited into the
376 Water Protection and Sustainability Program Trust Fund for the
377 purpose of providing funding assistance for the development of
378 alternative water supplies pursuant to the Water Protection and
379 Sustainability Program. At the beginning of each fiscal year,
380 beginning with the 2005-2006 fiscal year, such revenues shall be
381 distributed by the department into the alternative water supply
382 trust fund accounts created by each district for the purpose of
383 alternative water supply development under the following funding
384 formula:
385 1. Thirty percent to the South Florida Water Management
386 District;
387 2. Twenty-five percent to the Southwest Florida Water
388 Management District;
389 3. Twenty-five percent to the St. Johns River Water

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390 Management District;
391 4. Ten percent to the Suwannee River Water Management
392 District; and
393 5. Ten percent to the Northwest Florida Water Management
394 District.
395 (c) The financial assistance for alternative water supply
396 projects allocated in each district's budget as required in
397 subsection (6) shall be combined with the state funds and used
398 to assist in funding the project construction costs of
399 alternative water supply projects selected by the governing
400 board. If the district has not completed any regional water
401 supply plan, or the regional water supply plan does not identify
402 the need for any alternative water supply projects, funds
403 deposited in that district's trust fund may be used for water
404 resource development projects, including, but not limited to,
405 springs protection.
406 (d) All projects submitted to the governing board for
407 consideration shall reflect the total capital cost for
408 implementation. The costs shall be segregated pursuant to the
409 categories described in the definition of capital costs.
410 (e) Applicants for projects that may receive funding
411 assistance pursuant to the Water Protection and Sustainability
412 Program shall, at a minimum, be required to pay 60 percent of
413 the project's construction costs. The water management districts
414 may, at their discretion, totally or partially waive this
415 requirement for projects sponsored by financially disadvantaged
416 small local governments as defined in former s. 403.885(5). The
417 water management districts or basin boards may, at their
418 discretion, use ad valorem or federal revenues to assist a

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419 project applicant in meeting the requirements of this paragraph.
420 (f) The governing boards shall determine those projects
421 that will be selected for financial assistance. The governing
422 boards may establish factors to determine project funding;
423 however, significant weight shall be given to the following
424 factors:
425 1. Whether the project provides substantial environmental
426 benefits by preventing or limiting adverse water resource
427 impacts.
428 2. Whether the project reduces competition for water
429 supplies.
430 3. Whether the project brings about replacement of
431 traditional sources in order to help implement a minimum flow or
432 level or a reservation.
433 4. Whether the project will be implemented by a consumptive
434 use permittee that has achieved the targets contained in a goal-
435 based water conservation program approved pursuant to s.
436 373.227.
437 5. The quantity of water supplied by the project as
438 compared to its cost.
439 6. Projects in which the construction and delivery to end
440 users of reuse water is a major component.
441 7. Whether the project will be implemented by a
442 multijurisdictional water supply entity or regional water supply
443 authority.
444 8. Whether the project implements reuse that assists in the
445 elimination of domestic wastewater ocean outfalls as provided in
446 s. 403.086(9).
447 (g) Additional factors to be considered in determining

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448 project funding shall include:
449 1. Whether the project is part of a plan to implement two
450 or more alternative water supply projects, all of which will be
451 operated to produce water at a uniform rate for the participants
452 in a multijurisdictional water supply entity or regional water
453 supply authority.
454 2. The percentage of project costs to be funded by the
455 water supplier or water user.
456 3. Whether the project proposal includes sufficient
457 preliminary planning and engineering to demonstrate that the
458 project can reasonably be implemented within the timeframes
459 provided in the regional water supply plan.
460 4. Whether the project is a subsequent phase of an
461 alternative water supply project that is underway.
462 5. Whether and in what percentage a local government or
463 local government utility is transferring water supply system
464 revenues to the local government general fund in excess of
465 reimbursements for services received from the general fund,
466 including direct and indirect costs and legitimate payments in
467 lieu of taxes.
468 (h) After conducting one or more meetings to solicit public
469 input on eligible projects, including input from those entities
470 identified pursuant to s. 373.709(2)(a)3.d. for implementation
471 of alternative water supply projects, the governing board of
472 each water management district shall select projects for funding
473 assistance based upon the criteria set forth in paragraphs (f)
474 and (g). The governing board may select a project identified or
475 listed as an alternative water supply development project in the
476 regional water supply plan, or allocate up to 20 percent of the

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477 funding for alternative water supply projects that are not
478 identified or listed in the regional water supply plan but are
479 consistent with the goals of the plan.
480 (i) Without diminishing amounts available through other
481 means described in this paragraph, the governing boards are
482 encouraged to consider establishing revolving loan funds to
483 expand the total funds available to accomplish the objectives of
484 this section. A revolving loan fund created under this paragraph
485 must be a nonlapsing fund from which the water management
486 district may make loans with interest rates below prevailing
487 market rates to public or private entities for the purposes
488 described in this section. The governing board may adopt
489 resolutions to establish revolving loan funds which must specify
490 the details of the administration of the fund, the procedures
491 for applying for loans from the fund, the criteria for awarding
492 loans from the fund, the initial capitalization of the fund, and
493 the goals for future capitalization of the fund in subsequent
494 budget years. Revolving loan funds created under this paragraph
495 must be used to expand the total sums and sources of cooperative
496 funding available for the development of alternative water
497 supplies. The Legislature does not intend for the creation of
498 revolving loan funds to supplant or otherwise reduce existing
499 sources or amounts of funds currently available through other
500 means.
501 (j) For each utility that receives financial assistance
502 from the state or a water management district for an alternative
503 water supply project, the water management district shall
504 require the appropriate rate-setting authority to develop rate
505 structures for water customers in the service area of the funded

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506 utility that will:
507 1. Promote the conservation of water; and
508 2. Promote the use of water from alternative water
509 supplies.
510 (k) The governing boards shall establish a process for the
511 disbursal of revenues pursuant to this subsection.
512 (l) All revenues made available pursuant to this subsection
513 must be encumbered annually by the governing board when it
514 approves projects sufficient to expend the available revenues.
515 (m) This subsection is not subject to the rulemaking
516 requirements of chapter 120.
517 (n) By March 1 of each year, as part of the consolidated
518 annual report required by s. 373.036(7), each water management
519 district shall submit a report on the disbursal of all budgeted
520 amounts pursuant to this section. Such report shall describe all
521 alternative water supply projects funded as well as the quantity
522 of new water to be created as a result of such projects and
523 shall account separately for any other moneys provided through
524 grants, matching grants, revolving loans, and the use of
525 district lands or facilities to implement regional water supply
526 plans.
527 (o) The Florida Public Service Commission shall allow
528 entities under its jurisdiction constructing or participating in
529 constructing facilities that provide alternative water supplies
530 to recover their full, prudently incurred cost of constructing
531 such facilities through their rate structure. If construction of
532 a facility or participation in construction is pursuant to or in
533 furtherance of a regional water supply plan, the cost shall be
534 deemed to be prudently incurred. Every component of an

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535 alternative water supply facility constructed by an investor-
536 owned utility shall be recovered in current rates. Any state or
537 water management district cost-share is not subject to the
538 recovery provisions allowed in this paragraph.
539 (9) Funding assistance provided by the water management
540 districts for a water reuse system may include the following
541 conditions for that project if a water management district
542 determines that such conditions will encourage water use
543 efficiency:
544 (a) Metering of reclaimed water use for residential
545 irrigation, agricultural irrigation, industrial uses, except for
546 electric utilities as defined in s. 366.02(2), landscape
547 irrigation, golf course irrigation, irrigation of other public
548 access areas, commercial and institutional uses such as toilet
549 flushing, and transfers to other reclaimed water utilities;
550 (b) Implementation of reclaimed water rate structures based
551 on actual use of reclaimed water for the reuse activities listed
552 in paragraph (a);
553 (c) Implementation of education programs to inform the
554 public about water issues, water conservation, and the
555 importance and proper use of reclaimed water; or
556 (d) Development of location data for key reuse facilities.
557 373.709 Regional water supply planning.—
558 (1) The governing board of each water management district
559 shall conduct water supply planning for any water supply
560 planning region within the district identified in the
561 appropriate district water supply plan under s. 373.036, where
562 it determines that existing sources of water are not adequate to
563 supply water for all existing and future reasonable-beneficial

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564 uses and to sustain the water resources and related natural
565 systems for the planning period. The planning must be conducted
566 in an open public process, in coordination and cooperation with
567 local governments, regional water supply authorities,
568 government-owned and privately owned water utilities,
569 multijurisdictional water supply entities, self-suppliers, and
570 other affected and interested parties. The districts shall
571 actively engage in public education and outreach to all affected
572 local entities and their officials, as well as members of the
573 public, in the planning process and in seeking input. During
574 preparation, but prior to completion of the regional water
575 supply plan, the district must conduct at least one public
576 workshop to discuss the technical data and modeling tools
577 anticipated to be used to support the regional water supply
578 plan. The district shall also hold several public meetings to
579 communicate the status, overall conceptual intent, and impacts
580 of the plan on existing and future reasonable-beneficial uses
581 and related natural systems. During the planning process, a
582 local government may choose to prepare its own water supply
583 assessment to determine if existing water sources are adequate
584 to meet existing and projected reasonable-beneficial needs of
585 the local government while sustaining water resources and
586 related natural systems. The local government shall submit such
587 assessment, including the data and methodology used, to the
588 district. The district shall consider the local government's
589 assessment during the formation of the plan. A determination by
590 the governing board that initiation of a regional water supply
591 plan for a specific planning region is not needed pursuant to
592 this section shall be subject to s. 120.569. The governing board

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593 shall reevaluate such a determination at least once every 5
594 years and shall initiate a regional water supply plan, if
595 needed, pursuant to this subsection.
596 (2) Each regional water supply plan shall be based on at
597 least a 20-year planning period and shall include, but need not
598 be limited to:
599 (a) A water supply development component for each water
600 supply planning region identified by the district which
601 includes:
602 1. A quantification of the water supply needs for all
603 existing and future reasonable-beneficial uses within the
604 planning horizon. The level-of-certainty planning goal
605 associated with identifying the water supply needs of existing
606 and future reasonable-beneficial uses shall be based upon
607 meeting those needs for a 1-in-10-year drought event. Population
608 projections used for determining public water supply needs must
609 be based upon the best available data. In determining the best
610 available data, the district shall consider the University of
611 Florida's Bureau of Economic and Business Research (BEBR) medium
612 population projections and any population projection data and
613 analysis submitted by a local government pursuant to the public
614 workshop described in subsection (1) if the data and analysis
615 support the local government's comprehensive plan. Any
616 adjustment of or deviation from the BEBR projections must be
617 fully described, and the original BEBR data must be presented
618 along with the adjusted data.
619 2. A list of water supply development project options,
620 including traditional and alternative water supply project
621 options, from which local government, government-owned and

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622 privately owned utilities, regional water supply authorities,
623 multijurisdictional water supply entities, self-suppliers, and
624 others may choose for water supply development. In addition to
625 projects listed by the district, such users may propose specific
626 projects for inclusion in the list of alternative water supply
627 projects. If such users propose a project to be listed as an
628 alternative water supply project, the district shall determine
629 whether it meets the goals of the plan, and, if so, it shall be
630 included in the list. The total capacity of the projects
631 included in the plan shall exceed the needs identified in
632 subparagraph 1. and shall take into account water conservation
633 and other demand management measures, as well as water resources
634 constraints, including adopted minimum flows and levels and
635 water reservations. Where the district determines it is
636 appropriate, the plan should specifically identify the need for
637 multijurisdictional approaches to project options that, based on
638 planning level analysis, are appropriate to supply the intended
639 uses and that, based on such analysis, appear to be permittable
640 and financially and technically feasible. The list of water
641 supply development options must contain provisions that
642 recognize that alternative water supply options for agricultural
643 self-suppliers are limited.
644 3. For each project option identified in subparagraph 2.,
645 the following shall be provided:
646 a. An estimate of the amount of water to become available
647 through the project.
648 b. The timeframe in which the project option should be
649 implemented and the estimated planning-level costs for capital
650 investment and operating and maintaining the project.

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651 c. An analysis of funding needs and sources of possible
652 funding options. For alternative water supply projects the water
653 management districts shall provide funding assistance in
654 accordance with s. 373.707(8).
655 d. Identification of the entity that should implement each
656 project option and the current status of project implementation.
657 (b) A water resource development component that includes:
658 1. A listing of those water resource development projects
659 that support water supply development.
660 2. For each water resource development project listed:
661 a. An estimate of the amount of water to become available
662 through the project.
663 b. The timeframe in which the project option should be
664 implemented and the estimated planning-level costs for capital
665 investment and for operating and maintaining the project.
666 c. An analysis of funding needs and sources of possible
667 funding options.
668 d. Identification of the entity that should implement each
669 project option and the current status of project implementation.
670 (c) The recovery and prevention strategy described in s.
671 373.0421(2).
672 (d) A funding strategy for water resource development
673 projects, which shall be reasonable and sufficient to pay the
674 cost of constructing or implementing all of the listed projects.
675 (e) Consideration of how the project options addressed in
676 paragraph (a) serve the public interest or save costs overall by
677 preventing the loss of natural resources or avoiding greater
678 future expenditures for water resource development or water
679 supply development. However, unless adopted by rule, these

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680 considerations do not constitute final agency action.
681 (f) The technical data and information applicable to each
682 planning region which are necessary to support the regional
683 water supply plan.
684 (g) The minimum flows and levels established for water
685 resources within each planning region.
686 (h) Reservations of water adopted by rule pursuant to s.
687 373.223(4) within each planning region.
688 (i) Identification of surface waters or aquifers for which
689 minimum flows and levels are scheduled to be adopted.
690 (j) An analysis, developed in cooperation with the
691 department, of areas or instances in which the variance
692 provisions of s. 378.212(1)(g) or s. 378.404(9) may be used to
693 create water supply development or water resource development
694 projects.
695 (3) The water supply development component of a regional
696 water supply plan which deals with or affects public utilities
697 and public water supply for those areas served by a regional
698 water supply authority and its member governments within the
699 boundary of the Southwest Florida Water Management District
700 shall be developed jointly by the authority and the district. In
701 areas not served by regional water supply authorities, or other
702 multijurisdictional water supply entities, and where
703 opportunities exist to meet water supply needs more efficiently
704 through multijurisdictional projects identified pursuant to
705 paragraph (2)(a), water management districts are directed to
706 assist in developing multijurisdictional approaches to water
707 supply project development jointly with affected water
708 utilities, special districts, and local governments.

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709 (4) The South Florida Water Management District shall
710 include in its regional water supply plan water resource and
711 water supply development projects that promote the elimination
712 of wastewater ocean outfalls as provided in s. 403.086(9).
713 (5) Governing board approval of a regional water supply
714 plan shall not be subject to the rulemaking requirements of
715 chapter 120. However, any portion of an approved regional water
716 supply plan which affects the substantial interests of a party
717 shall be subject to s. 120.569.
718 (6) Annually and in conjunction with the reporting
719 requirements of s. 373.536(6)(a)4., the department shall submit
720 to the Governor and the Legislature a report on the status of
721 regional water supply planning in each district. The report
722 shall include:
723 (a) A compilation of the estimated costs of and potential
724 sources of funding for water resource development and water
725 supply development projects as identified in the water
726 management district regional water supply plans.
727 (b) The percentage and amount, by district, of district ad
728 valorem tax revenues or other district funds made available to
729 develop alternative water supplies.
730 (c) A description of each district's progress toward
731 achieving its water resource development objectives, including
732 the district's implementation of its 5-year water resource
733 development work program.
734 (d) An assessment of the specific progress being made to
735 implement each alternative water supply project option chosen by
736 the entities and identified for implementation in the plan.
737 (e) An overall assessment of the progress being made to

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738 develop water supply in each district, including, but not
739 limited to, an explanation of how each project, either
740 alternative or traditional, will produce, contribute to, or
741 account for additional water being made available for
742 consumptive uses, an estimate of the quantity of water to be
743 produced by each project, and an assessment of the contribution
744 of the district's regional water supply plan in providing
745 sufficient water to meet the needs of existing and future
746 reasonable-beneficial uses for a 1-in-10 year drought event, as
747 well as the needs of the natural systems.
748 (7) Nothing contained in the water supply development
749 component of a regional water supply plan shall be construed to
750 require local governments, government-owned or privately owned
751 water utilities, special districts, self-suppliers, regional
752 water supply authorities, multijurisdictional water supply
753 entities, or other water suppliers to select a water supply
754 development project identified in the component merely because
755 it is identified in the plan. Except as provided in s.
756 373.223(3) and (5), the plan may not be used in the review of
757 permits under part II of this chapter unless the plan or an
758 applicable portion thereof has been adopted by rule. However,
759 this subsection does not prohibit a water management district
760 from employing the data or other information used to establish
761 the plan in reviewing permits under part II, nor does it limit
762 the authority of the department or governing board under part
763 II.
764 (8) Where the water supply component of a water supply
765 planning region shows the need for one or more alternative water
766 supply projects, the district shall notify the affected local

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767 governments and make every reasonable effort to educate and
768 involve local public officials in working toward solutions in
769 conjunction with the districts and, where appropriate, other
770 local and regional water supply entities.
771 (a) Within 6 months following approval or amendment of its
772 regional water supply plan, each water management district shall
773 notify by certified mail each entity identified in sub-
774 subparagraph (2)(a)3.d. of that portion of the plan relevant to
775 the entity. Upon request of such an entity, the water management
776 district shall appear before and present its findings and
777 recommendations to the entity.
778 (b) Within 1 year after the notification by a water
779 management district pursuant to paragraph (a), each entity
780 identified in sub-subparagraph (2)(a)3.d. shall provide to the
781 water management district written notification of the following:
782 the alternative water supply projects or options identified in
783 paragraph (2)(a) which it has developed or intends to develop,
784 if any; an estimate of the quantity of water to be produced by
785 each project; and the status of project implementation,
786 including development of the financial plan, facilities master
787 planning, permitting, and efforts in coordinating
788 multijurisdictional projects, if applicable. The information
789 provided in the notification shall be updated annually, and a
790 progress report shall be provided by November 15 of each year to
791 the water management district. If an entity does not intend to
792 develop one or more of the alternative water supply project
793 options identified in the regional water supply plan, the entity
794 shall propose, within 1 year after notification by a water
795 management district pursuant to paragraph (a), another

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796 alternative water supply project option sufficient to address
797 the needs identified in paragraph (2)(a) within the entity's
798 jurisdiction and shall provide an estimate of the quantity of
799 water to be produced by the project and the status of project
800 implementation as described in this paragraph. The entity may
801 request that the water management district consider the other
802 project for inclusion in the regional water supply plan.
803 (9) For any regional water supply plan that is scheduled to
804 be updated before December 31, 2005, the deadline for such
805 update shall be extended by 1 year.
806 373.711 Technical assistance to local governments.—
807 (1) The water management districts shall assist local
808 governments in the development and future revision of local
809 government comprehensive plan elements or public facilities
810 report as required by s. 189.415, related to water resource
811 issues.
812 (2) By July 1, 1991, each water management district shall
813 prepare and provide information and data to assist local
814 governments in the preparation and implementation of their local
815 government comprehensive plans or public facilities report as
816 required by s. 189.415, whichever is applicable. Such
817 information and data shall include, but not be limited to:
818 (a) All information and data required in a public
819 facilities report pursuant to s. 189.415.
820 (b) A description of regulations, programs, and schedules
821 implemented by the district.
822 (c) Identification of regulations, programs, and schedules
823 undertaken or proposed by the district to further the State
824 Comprehensive Plan.

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825 (d) A description of surface water basins, including
826 regulatory jurisdictions, flood-prone areas, existing and
827 projected water quality in water management district operated
828 facilities, as well as surface water runoff characteristics and
829 topography regarding flood plains, wetlands, and recharge areas.
830 (e) A description of groundwater characteristics, including
831 existing and planned wellfield sites, existing and anticipated
832 cones of influence, highly productive groundwater areas, aquifer
833 recharge areas, deep well injection zones, contaminated areas,
834 an assessment of regional water resource needs and sources for
835 the next 20 years, and water quality.
836 (f) The identification of existing and potential water
837 management district land acquisitions.
838 (g) Information reflecting the minimum flows for surface
839 watercourses to avoid harm to water resources or the ecosystem
840 and information reflecting the minimum water levels for aquifers
841 to avoid harm to water resources or the ecosystem.
842 373.713 Regional water supply authorities.—
843 (1) By interlocal agreement between counties,
844 municipalities, or special districts, as applicable, pursuant to
845 the Florida Interlocal Cooperation Act of 1969, s. 163.01, and
846 upon the approval of the Secretary of Environmental Protection
847 to ensure that such agreement will be in the public interest and
848 complies with the intent and purposes of this act, regional
849 water supply authorities may be created for the purpose of
850 developing, recovering, storing, and supplying water for county
851 or municipal purposes in such a manner as will give priority to
852 reducing adverse environmental effects of excessive or improper
853 withdrawals of water from concentrated areas. In approving said

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854 agreement the Secretary of Environmental Protection shall
855 consider, but not be limited to, the following:
856 (a) Whether the geographic territory of the proposed
857 authority is of sufficient size and character to reduce the
858 environmental effects of improper or excessive withdrawals of
859 water from concentrated areas.
860 (b) The maximization of economic development of the water
861 resources within the territory of the proposed authority.
862 (c) The availability of a dependable and adequate water
863 supply.
864 (d) The ability of any proposed authority to design,
865 construct, operate, and maintain water supply facilities in the
866 locations, and at the times necessary, to ensure that an
867 adequate water supply will be available to all citizens within
868 the authority.
869 (e) The effect or impact of any proposed authority on any
870 municipality, county, or existing authority or authorities.
871 (f) The existing needs of the water users within the area
872 of the authority.
873 (2) In addition to other powers and duties agreed upon, and
874 notwithstanding the provisions of s. 163.01, such authority may:
875 (a) Upon approval of the electors residing in each county
876 or municipality within the territory to be included in any
877 authority, levy ad valorem taxes, not to exceed 0.5 mill,
878 pursuant to s. 9(b), Art. VII of the State Constitution. No tax
879 authorized by this paragraph shall be levied in any county or
880 municipality without an affirmative vote of the electors
881 residing in such county or municipality.
882 (b) Acquire water and water rights; develop, store, and

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883 transport water; provide, sell, and deliver water for county or
884 municipal uses and purposes; and provide for the furnishing of
885 such water and water service upon terms and conditions and at
886 rates which will apportion to parties and nonparties an
887 equitable share of the capital cost and operating expense of the
888 authority's work to the purchaser.
889 (c) Collect, treat, and recover wastewater.
890 (d) Not engage in local distribution.
891 (e) Exercise the power of eminent domain in the manner
892 provided by law for the condemnation of private property for
893 public use to acquire title to such interest in real property as
894 is necessary to the exercise of the powers herein granted,
895 except water and water rights already devoted to reasonable and
896 beneficial use or any water production or transmission
897 facilities owned by any county or municipality.
898 (f) Issue revenue bonds in the manner prescribed by the
899 Revenue Bond Act of 1953, as amended, part I, chapter 159, to be
900 payable solely from funds derived from the sale of water by the
901 authority to any county or municipality. Such bonds may be
902 additionally secured by the full faith and credit of any county
903 or municipality, as provided by s. 159.16 or by a pledge of
904 excise taxes, as provided by s. 159.19. For the purpose of
905 issuing revenue bonds, an authority shall be considered a "unit"
906 as defined in s. 159.02(2) and as that term is used in the
907 Revenue Bond Act of 1953, as amended. Such bonds may be issued
908 to finance the cost of acquiring properties and facilities for
909 the production and transmission of water by the authority to any
910 county or municipality, which cost shall include the acquisition
911 of real property and easements therein for such purposes. Such

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912 bonds may be in the form of refunding bonds to take up any
913 outstanding bonds of the authority or of any county or
914 municipality where such outstanding bonds are secured by
915 properties and facilities for production and transmission of
916 water, which properties and facilities are being acquired by the
917 authority. Refunding bonds may be issued to take up and refund
918 all outstanding bonds of said authority that are subject to call
919 and termination, and all bonds of said authority that are not
920 subject to call or redemption, when the surrender of said bonds
921 can be procured from the holder thereof at prices satisfactory
922 to the authority. Such refunding bonds may be issued at any time
923 when, in the judgment of the authority, it will be to the best
924 interest of the authority financially or economically by
925 securing a lower rate of interest on said bonds or by extending
926 the time of maturity of said bonds or, for any other reason, in
927 the judgment of the authority, advantageous to said authority.
928 (g) Sue and be sued in its own name.
929 (h) Borrow money and incur indebtedness and issue bonds or
930 other evidence of such indebtedness.
931 (i) Join with one or more other public corporations for the
932 purpose of carrying out any of its powers and for that purpose
933 to contract with such other public corporation or corporations
934 for the purpose of financing such acquisitions, construction,
935 and operations. Such contracts may provide for contributions to
936 be made by each party thereto, for the division and
937 apportionment of the expenses of such acquisitions and
938 operations, and for the division and apportionment of the
939 benefits, services, and products therefrom. Such contract may
940 contain such other and further covenants and agreements as may

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941 be necessary and convenient to accomplish the purposes hereof.
942 (3) A regional water supply authority is authorized to
943 develop, construct, operate, maintain, or contract for
944 alternative sources of potable water, including desalinated
945 water, and pipelines to interconnect authority sources and
946 facilities, either by itself or jointly with a water management
947 district; however, such alternative potable water sources,
948 facilities, and pipelines may also be privately developed,
949 constructed, owned, operated, and maintained, in which event an
950 authority and a water management district are authorized to
951 pledge and contribute their funds to reduce the wholesale cost
952 of water from such alternative sources of potable water supplied
953 by an authority to its member governments.
954 (4) When it is found to be in the public interest, for the
955 public convenience and welfare, for a public benefit, and
956 necessary for carrying out the purpose of any regional water
957 supply authority, any state agency, county, water control
958 district existing pursuant to chapter 298, water management
959 district existing pursuant to this chapter, municipality,
960 governmental agency, or public corporation in this state holding
961 title to any interest in land is hereby authorized, in its
962 discretion, to convey the title to or dedicate land, title to
963 which is in such entity, including tax-reverted land, or to
964 grant use-rights therein, to any regional water supply authority
965 created pursuant to this section. Land granted or conveyed to
966 such authority shall be for the public purposes of such
967 authority and may be made subject to the condition that in the
968 event said land is not so used, or if used and subsequently its
969 use for said purpose is abandoned, the interest granted shall

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970 cease as to such authority and shall automatically revert to the
971 granting entity.
972 (5) Each county, special district, or municipality that is
973 a party to an agreement pursuant to subsection (1) shall have a
974 preferential right to purchase water from the regional water
975 supply authority for use by such county, special district, or
976 municipality.
977 (6) In carrying out the provisions of this section, any
978 county wherein water is withdrawn by the authority shall not be
979 deprived, directly or indirectly, of the prior right to the
980 reasonable and beneficial use of water which is required
981 adequately to supply the reasonable and beneficial needs of the
982 county or any of the inhabitants or property owners therein.
983 (7) Upon a resolution adopted by the governing body of any
984 county or municipality, the authority may, subject to a majority
985 vote of its voting members, include such county or municipality
986 in its regional water supply authority upon such terms and
987 conditions as may be prescribed.
988 (8) The authority shall design, construct, operate, and
989 maintain facilities in the locations and at the times necessary
990 to ensure that an adequate water supply will be available to all
991 citizens within the authority.
992 (9) Where a water supply authority exists pursuant to this
993 section or s. 373.715 under a voluntary interlocal agreement
994 that is consistent with requirements in s. 373.715(1)(b) and
995 receives or maintains consumptive use permits under this
996 voluntary agreement consistent with the water supply plan, if
997 any, adopted by the governing board, such authority shall be
998 exempt from consideration by the governing board or department

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999 of the factors specified in s. 373.223(3)(a)-(g) and the
1000 submissions required by s. 373.229(3). Such exemptions shall
1001 apply only to water sources within the jurisdictional areas of
1002 such voluntary water supply interlocal agreements.
1003 373.715 Assistance to West Coast Regional Water Supply
1004 Authority.—
1005 (1) It is the intent of the Legislature to authorize the
1006 implementation of changes in governance recommended by the West
1007 Coast Regional Water Supply Authority in its reports to the
1008 Legislature dated February 1, 1997, and January 5, 1998. The
1009 authority and its member governments may reconstitute the
1010 authority's governance and rename the authority under a
1011 voluntary interlocal agreement with a term of not less than 20
1012 years. The interlocal agreement must comply with this subsection
1013 as follows:
1014 (a) The authority and its member governments agree that
1015 cooperative efforts are mandatory to meet their water needs in a
1016 manner that will provide adequate and dependable supplies of
1017 water where needed without resulting in adverse environmental
1018 effects upon the areas from which the water is withdrawn or
1019 otherwise produced.
1020 (b) In accordance with s. 4, Art. VIII of the State
1021 Constitution and notwithstanding s. 163.01, the interlocal
1022 agreement may include the following terms, which are considered
1023 approved by the parties without a vote of their electors, upon
1024 execution of the interlocal agreement by all member governments
1025 and upon satisfaction of all conditions precedent in the
1026 interlocal agreement:
1027 1. All member governments shall relinquish to the authority

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1028 their individual rights to develop potable water supply sources,
1029 except as otherwise provided in the interlocal agreement;
1030 2. The authority shall be the sole and exclusive wholesale
1031 potable water supplier for all member governments; and
1032 3. The authority shall have the absolute and unequivocal
1033 obligation to meet the wholesale needs of the member governments
1034 for potable water.
1035 4. A member government may not restrict or prohibit the use
1036 of land within a member's jurisdictional boundaries by the
1037 authority for water supply purposes through use of zoning, land
1038 use, comprehensive planning, or other form of regulation.
1039 5. A member government may not impose any tax, fee, or
1040 charge upon the authority in conjunction with the production or
1041 supply of water not otherwise provided for in the interlocal
1042 agreement.
1043 6. The authority may use the powers provided in part II of
1044 chapter 159 for financing and refinancing water treatment,
1045 production, or transmission facilities, including, but not
1046 limited to, desalinization facilities. All such water treatment,
1047 production, or transmission facilities are considered a
1048 "manufacturing plant" for purposes of s. 159.27(5) and serve a
1049 paramount public purpose by providing water to citizens of the
1050 state.
1051 7. A member government and any governmental or quasi-
1052 judicial board or commission established by local ordinance or
1053 general or special law where the governing membership of such
1054 board or commission is shared, in whole or in part, or appointed
1055 by a member government agreeing to be bound by the interlocal
1056 agreement shall be limited to the procedures set forth therein

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1057 regarding actions that directly or indirectly restrict or
1058 prohibit the use of lands or other activities related to the
1059 production or supply of water.
1060 (c) The authority shall acquire full or lesser interests in
1061 all regionally significant member government wholesale water
1062 supply facilities and tangible assets and each member government
1063 shall convey such interests in the facilities and assets to the
1064 authority, at an agreed value.
1065 (d) The authority shall charge a uniform per gallon
1066 wholesale rate to member governments for the wholesale supply of
1067 potable water. All capital, operation, maintenance, and
1068 administrative costs for existing facilities and acquired
1069 facilities, authority master water plan facilities, and other
1070 future projects must be allocated to member governments based on
1071 water usage at the uniform per gallon wholesale rate.
1072 (e) The interlocal agreement may include procedures for
1073 resolving the parties' differences regarding water management
1074 district proposed agency action in the water use permitting
1075 process within the authority. Such procedures should minimize
1076 the potential for litigation and include alternative dispute
1077 resolution. Any governmental or quasi-judicial board or
1078 commission established by local ordinance or general or special
1079 law where the governing members of such board or commission is
1080 shared, in whole or in part, or appointed by a member
1081 government, may agree to be bound by the dispute resolution
1082 procedures set forth in the interlocal agreement.
1083 (f) Upon execution of the voluntary interlocal agreement
1084 provided for herein, the authority shall jointly develop with
1085 the Southwest Florida Water Management District alternative

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1086 sources of potable water and transmission pipelines to
1087 interconnect regionally significant water supply sources and
1088 facilities of the authority in amounts sufficient to meet the
1089 needs of all member governments for a period of at least 20
1090 years and for natural systems. Nothing herein, however, shall
1091 preclude the authority and its member governments from
1092 developing traditional water sources pursuant to the voluntary
1093 interlocal agreement. Development and construction costs for
1094 alternative source facilities, which may include a desalination
1095 facility and significant regional interconnects, must be borne
1096 as mutually agreed to by both the authority and the Southwest
1097 Florida Water Management District. Nothing herein shall preclude
1098 authority or district cost sharing with private entities for the
1099 construction or ownership of alternative source facilities. By
1100 December 31, 1997, the authority and the Southwest Florida Water
1101 Management District shall enter into a mutually acceptable
1102 agreement detailing the development and implementation of
1103 directives contained in this paragraph. Nothing in this section
1104 shall be construed to modify the rights or responsibilities of
1105 the authority or its member governments, except as otherwise
1106 provided herein, or of the Southwest Florida Water Management
1107 District or the department pursuant to this chapter or chapter
1108 403 and as otherwise set forth by statutes.
1109 (g) Unless otherwise provided in the interlocal agreement,
1110 the authority shall be governed by a board of commissioners
1111 consisting of nine voting members, all of whom must be elected
1112 officers, as follows:
1113 1. Three members from Hillsborough County who must be
1114 selected by the county commission; provided, however, that one

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1115 member shall be selected by the Mayor of Tampa in the event that
1116 the City of Tampa elects to be a member of the authority;
1117 2. Three members from Pasco County, two of whom must be
1118 selected by the county commission and one of whom must be
1119 selected by the City Council of New Port Richey; and
1120 3. Three members from Pinellas County, two of whom must be
1121 selected by the county commission and one of whom must be
1122 selected by the City Council of St. Petersburg.
1123
1124 Except as otherwise provided in this section or in the
1125 voluntary interlocal agreement between the member governments, a
1126 majority vote shall bind the authority and its member
1127 governments in all matters relating to the funding of wholesale
1128 water supply, production, delivery, and related activities.
1129 (2) The provisions of this section supersede any
1130 conflicting provisions contained in all other general or special
1131 laws or provisions thereof as they may apply directly or
1132 indirectly to the exclusivity of water supply or withdrawal of
1133 water, including provisions relating to the environmental
1134 effects, if any, in conjunction with the production and supply
1135 of potable water, and the provisions of this section are
1136 intended to be a complete revision of all laws related to a
1137 regional water supply authority created under s. 373.713 and
1138 this section.
1139 (3) In lieu of the provisions in s. 373.713(2)(a), the
1140 Southwest Florida Water Management District shall assist the
1141 West Coast Regional Water Supply Authority for a period of 5
1142 years, terminating December 31, 1981, by levying an ad valorem
1143 tax, upon request of the authority, of not more than 0.05 mill

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1144 on all taxable property within the limits of the authority.
1145 During such period the corresponding basin board ad valorem tax
1146 levies shall be reduced accordingly.
1147 (4) The authority shall prepare its annual budget in the
1148 same manner as prescribed for the preparation of basin budgets,
1149 but such authority budget shall not be subject to review by the
1150 respective basin boards or by the governing board of the
1151 district.
1152 (5) The annual millage for the authority shall be the
1153 amount required to raise the amount called for by the annual
1154 budget when applied to the total assessment on all taxable
1155 property within the limits of the authority, as determined for
1156 county taxing purposes.
1157 (6) The authority may, by resolution, request the governing
1158 board of the district to levy ad valorem taxes within the
1159 boundaries of the authority. Upon receipt of such request,
1160 together with formal certification of the adoption of its annual
1161 budget and of the required tax levy, the authority tax levy
1162 shall be made by the governing board of the district to finance
1163 authority functions.
1164 (7) The taxes provided for in this section shall be
1165 extended by the property appraiser on the county tax roll in
1166 each county within, or partly within, the authority boundaries
1167 and shall be collected by the tax collector in the same manner
1168 and time as county taxes, and the proceeds therefrom paid to the
1169 district which shall forthwith pay them over to the authority.
1170 Until paid, such taxes shall be a lien on the property against
1171 which assessed and enforceable in like manner as county taxes.
1172 The property appraisers, tax collectors, and clerks of the

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1173 circuit court of the respective counties shall be entitled to
1174 compensation for services performed in connection with such
1175 taxes at the same rates as apply to county taxes.
1176 (8) The governing board of the district shall not be
1177 responsible for any actions or lack of actions by the authority.
1178 Section 2. Subsection (13) of section 120.52, Florida
1179 Statutes, is amended to read:
1180 120.52 Definitions.—As used in this act:
1181 (13) "Party" means:
1182 (a) Specifically named persons whose substantial interests
1183 are being determined in the proceeding.
1184 (b) Any other person who, as a matter of constitutional
1185 right, provision of statute, or provision of agency regulation,
1186 is entitled to participate in whole or in part in the
1187 proceeding, or whose substantial interests will be affected by
1188 proposed agency action, and who makes an appearance as a party.
1189 (c) Any other person, including an agency staff member,
1190 allowed by the agency to intervene or participate in the
1191 proceeding as a party. An agency may by rule authorize limited
1192 forms of participation in agency proceedings for persons who are
1193 not eligible to become parties.
1194 (d) Any county representative, agency, department, or unit
1195 funded and authorized by state statute or county ordinance to
1196 represent the interests of the consumers of a county, when the
1197 proceeding involves the substantial interests of a significant
1198 number of residents of the county and the board of county
1199 commissioners has, by resolution, authorized the representative,
1200 agency, department, or unit to represent the class of interested
1201 persons. The authorizing resolution shall apply to a specific

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1202 proceeding and to appeals and ancillary proceedings thereto, and
1203 it shall not be required to state the names of the persons whose
1204 interests are to be represented.
1205
1206 The term "party" does not include a member government of a
1207 regional water supply authority or a governmental or quasi-
1208 judicial board or commission established by local ordinance or
1209 special or general law where the governing membership of such
1210 board or commission is shared with, in whole or in part, or
1211 appointed by a member government of a regional water supply
1212 authority in proceedings under s. 120.569, s. 120.57, or s.
1213 120.68, to the extent that an interlocal agreement under ss.
1214 163.01 and 373.713 ~~373.1962~~ exists in which the member
1215 government has agreed that its substantial interests are not
1216 affected by the proceedings or that it is to be bound by
1217 alternative dispute resolution in lieu of participating in the
1218 proceedings. This exclusion applies only to those particular
1219 types of disputes or controversies, if any, identified in an
1220 interlocal agreement.
1221 Section 3. Subsection (13) of section 163.3167, Florida
1222 Statutes, is amended to read:
1223 163.3167 Scope of act.—
1224 (13) Each local government shall address in its
1225 comprehensive plan, as enumerated in this chapter, the water
1226 supply sources necessary to meet and achieve the existing and
1227 projected water use demand for the established planning period,
1228 considering the applicable plan developed pursuant to s. 373.709
1229 ~~373.0361~~.
1230 Section 4. Paragraph (a) of subsection (4) and paragraphs

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1231 (c), (d), and (h) of subsection (6) of section 163.3177, Florida
1232 Statutes, are amended to read:
1233 163.3177 Required and optional elements of comprehensive
1234 plan; studies and surveys.—
1235 (4)(a) Coordination of the local comprehensive plan with
1236 the comprehensive plans of adjacent municipalities, the county,
1237 adjacent counties, or the region; with the appropriate water
1238 management district's regional water supply plans approved
1239 pursuant to s. 373.709 ~~373.0361~~; with adopted rules pertaining
1240 to designated areas of critical state concern; and with the
1241 state comprehensive plan shall be a major objective of the local
1242 comprehensive planning process. To that end, in the preparation
1243 of a comprehensive plan or element thereof, and in the
1244 comprehensive plan or element as adopted, the governing body
1245 shall include a specific policy statement indicating the
1246 relationship of the proposed development of the area to the
1247 comprehensive plans of adjacent municipalities, the county,
1248 adjacent counties, or the region and to the state comprehensive
1249 plan, as the case may require and as such adopted plans or plans
1250 in preparation may exist.
1251 (6) In addition to the requirements of subsections (1)-(5)
1252 and (12), the comprehensive plan shall include the following
1253 elements:
1254 (c) A general sanitary sewer, solid waste, drainage,
1255 potable water, and natural groundwater aquifer recharge element
1256 correlated to principles and guidelines for future land use,
1257 indicating ways to provide for future potable water, drainage,
1258 sanitary sewer, solid waste, and aquifer recharge protection
1259 requirements for the area. The element may be a detailed

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1260 engineering plan including a topographic map depicting areas of
1261 prime groundwater recharge. The element shall describe the
1262 problems and needs and the general facilities that will be
1263 required for solution of the problems and needs. The element
1264 shall also include a topographic map depicting any areas adopted
1265 by a regional water management district as prime groundwater
1266 recharge areas for the Floridan or Biscayne aquifers. These
1267 areas shall be given special consideration when the local
1268 government is engaged in zoning or considering future land use
1269 for said designated areas. For areas served by septic tanks,
1270 soil surveys shall be provided which indicate the suitability of
1271 soils for septic tanks. Within 18 months after the governing
1272 board approves an updated regional water supply plan, the
1273 element must incorporate the alternative water supply project or
1274 projects selected by the local government from those identified
1275 in the regional water supply plan pursuant to s. 373.709(2)(a)
1276 ~~373.0361(2)(a)~~ or proposed by the local government under s.
1277 373.709(8)(b) ~~373.0361(8)(b)~~. If a local government is located
1278 within two water management districts, the local government
1279 shall adopt its comprehensive plan amendment within 18 months
1280 after the later updated regional water supply plan. The element
1281 must identify such alternative water supply projects and
1282 traditional water supply projects and conservation and reuse
1283 necessary to meet the water needs identified in s. 373.709(2)(a)
1284 ~~373.0361(2)(a)~~ within the local government's jurisdiction and
1285 include a work plan, covering at least a 10 year planning
1286 period, for building public, private, and regional water supply
1287 facilities, including development of alternative water supplies,
1288 which are identified in the element as necessary to serve

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1289 existing and new development. The work plan shall be updated, at
1290 a minimum, every 5 years within 18 months after the governing
1291 board of a water management district approves an updated
1292 regional water supply plan. Amendments to incorporate the work
1293 plan do not count toward the limitation on the frequency of
1294 adoption of amendments to the comprehensive plan. Local
1295 governments, public and private utilities, regional water supply
1296 authorities, special districts, and water management districts
1297 are encouraged to cooperatively plan for the development of
1298 multijurisdictional water supply facilities that are sufficient
1299 to meet projected demands for established planning periods,
1300 including the development of alternative water sources to
1301 supplement traditional sources of groundwater and surface water
1302 supplies.
1303 (d) A conservation element for the conservation, use, and
1304 protection of natural resources in the area, including air,
1305 water, water recharge areas, wetlands, waterwells, estuarine
1306 marshes, soils, beaches, shores, flood plains, rivers, bays,
1307 lakes, harbors, forests, fisheries and wildlife, marine habitat,
1308 minerals, and other natural and environmental resources,
1309 including factors that affect energy conservation. Local
1310 governments shall assess their current, as well as projected,
1311 water needs and sources for at least a 10-year period,
1312 considering the appropriate regional water supply plan approved
1313 pursuant to s. 373.709 ~~373.0361~~, or, in the absence of an
1314 approved regional water supply plan, the district water
1315 management plan approved pursuant to s. 373.036(2). This
1316 information shall be submitted to the appropriate agencies. The
1317 land use map or map series contained in the future land use

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1318 element shall generally identify and depict the following:
1319 1. Existing and planned waterwells and cones of influence
1320 where applicable.
1321 2. Beaches and shores, including estuarine systems.
1322 3. Rivers, bays, lakes, flood plains, and harbors.
1323 4. Wetlands.
1324 5. Minerals and soils.
1325 6. Energy conservation.
1326
1327 The land uses identified on such maps shall be consistent
1328 with applicable state law and rules.
1329 (h)1. An intergovernmental coordination element showing
1330 relationships and stating principles and guidelines to be used
1331 in the accomplishment of coordination of the adopted
1332 comprehensive plan with the plans of school boards, regional
1333 water supply authorities, and other units of local government
1334 providing services but not having regulatory authority over the
1335 use of land, with the comprehensive plans of adjacent
1336 municipalities, the county, adjacent counties, or the region,
1337 with the state comprehensive plan and with the applicable
1338 regional water supply plan approved pursuant to s. 373.709
1339 ~~373.0361~~, as the case may require and as such adopted plans or
1340 plans in preparation may exist. This element of the local
1341 comprehensive plan shall demonstrate consideration of the
1342 particular effects of the local plan, when adopted, upon the
1343 development of adjacent municipalities, the county, adjacent
1344 counties, or the region, or upon the state comprehensive plan,
1345 as the case may require.
1346 a. The intergovernmental coordination element shall provide

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1347 procedures to identify and implement joint planning areas,
1348 especially for the purpose of annexation, municipal
1349 incorporation, and joint infrastructure service areas.
1350 b. The intergovernmental coordination element shall provide
1351 for recognition of campus master plans prepared pursuant to s.
1352 1013.30 and airport master plans under paragraph(k).
1353 c. The intergovernmental coordination element shall provide
1354 for a dispute resolution process as established pursuant to s.
1355 186.509 for bringing to closure in a timely manner
1356 intergovernmental disputes.
1357 d. The intergovernmental coordination element shall provide
1358 for interlocal agreements as established pursuant to s.
1359 333.03(1)(b).
1360 2. The intergovernmental coordination element shall further
1361 state principles and guidelines to be used in the accomplishment
1362 of coordination of the adopted comprehensive plan with the plans
1363 of school boards and other units of local government providing
1364 facilities and services but not having regulatory authority over
1365 the use of land. In addition, the intergovernmental coordination
1366 element shall describe joint processes for collaborative
1367 planning and decisionmaking on population projections and public
1368 school siting, the location and extension of public facilities
1369 subject to concurrency, and siting facilities with countywide
1370 significance, including locally unwanted land uses whose nature
1371 and identity are established in an agreement. Within 1 year of
1372 adopting their intergovernmental coordination elements, each
1373 county, all the municipalities within that county, the district
1374 school board, and any unit of local government service providers
1375 in that county shall establish by interlocal or other formal

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1376 agreement executed by all affected entities, the joint processes
1377 described in this subparagraph consistent with their adopted
1378 intergovernmental coordination elements.
1379 3. To foster coordination between special districts and
1380 local general-purpose governments as local general-purpose
1381 governments implement local comprehensive plans, each
1382 independent special district must submit a public facilities
1383 report to the appropriate local government as required by s.
1384 189.415.
1385 4.a. Local governments shall execute an interlocal
1386 agreement with the district school board, the county, and
1387 nonexempt municipalities pursuant to s. 163.31777. The local
1388 government shall amend the intergovernmental coordination
1389 element to provide that coordination between the local
1390 government and school board is pursuant to the agreement and
1391 shall state the obligations of the local government under the
1392 agreement.
1393 b. Plan amendments that comply with this subparagraph are
1394 exempt from the provisions of s. 163.3187(1).
1395 5. The state land planning agency shall establish a
1396 schedule for phased completion and transmittal of plan
1397 amendments to implement subparagraphs 1., 2., and 3. from all
1398 jurisdictions so as to accomplish their adoption by December 31,
1399 1999. A local government may complete and transmit its plan
1400 amendments to carry out these provisions prior to the scheduled
1401 date established by the state land planning agency. The plan
1402 amendments are exempt from the provisions of s. 163.3187(1).
1403 6. By January 1, 2004, any county having a population
1404 greater than 100,000, and the municipalities and special

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1405 districts within that county, shall submit a report to the
1406 Department of Community Affairs which:
1407 a. Identifies all existing or proposed interlocal service
1408 delivery agreements regarding the following: education; sanitary
1409 sewer; public safety; solid waste; drainage; potable water;
1410 parks and recreation; and transportation facilities.
1411 b. Identifies any deficits or duplication in the provision
1412 of services within its jurisdiction, whether capital or
1413 operational. Upon request, the Department of Community Affairs
1414 shall provide technical assistance to the local governments in
1415 identifying deficits or duplication.
1416 7. Within 6 months after submission of the report, the
1417 Department of Community Affairs shall, through the appropriate
1418 regional planning council, coordinate a meeting of all local
1419 governments within the regional planning area to discuss the
1420 reports and potential strategies to remedy any identified
1421 deficiencies or duplications.
1422 8. Each local government shall update its intergovernmental
1423 coordination element based upon the findings in the report
1424 submitted pursuant to subparagraph 6. The report may be used as
1425 supporting data and analysis for the intergovernmental
1426 coordination element.
1427 Section 5. Paragraph (l) of subsection (2) of section
1428 163.3191, Florida Statutes, is amended to read:
1429 163.3191 Evaluation and appraisal of comprehensive plan.—
1430 (2) The report shall present an evaluation and assessment
1431 of the comprehensive plan and shall contain appropriate
1432 statements to update the comprehensive plan, including, but not
1433 limited to, words, maps, illustrations, or other media, related

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1434 to:
1435 (l) The extent to which the local government has been
1436 successful in identifying alternative water supply projects and
1437 traditional water supply projects, including conservation and
1438 reuse, necessary to meet the water needs identified in s.
1439 373.709(2)(a) ~~373.0361(2)(a)~~ within the local government's
1440 jurisdiction. The report must evaluate the degree to which the
1441 local government has implemented the work plan for building
1442 public, private, and regional water supply facilities, including
1443 development of alternative water supplies, identified in the
1444 element as necessary to serve existing and new development.
1445 Section 6. Paragraphs (c) and (d) of subsection (4) of
1446 section 189.404, Florida Statutes, are amended to read:
1447 189.404 Legislative intent for the creation of independent
1448 special districts; special act prohibitions; model elements and
1449 other requirements; general-purpose local government/Governor
1450 and Cabinet creation authorizations.—
1451 (4) LOCAL GOVERNMENT/GOVERNOR AND CABINET CREATION
1452 AUTHORIZATIONS.—Except as otherwise authorized by general law,
1453 only the Legislature may create independent special districts.
1454 (c) The Governor and Cabinet may create an independent
1455 special district which shall be established by rule in
1456 accordance with s. 190.005 or as otherwise authorized in general
1457 law. The Governor and Cabinet may also approve the establishment
1458 of a charter for the creation of an independent special district
1459 which shall be in accordance with s. 373.713 ~~373.1962~~, or as
1460 otherwise authorized in general law.
1461 (d)1. Any combination of two or more counties may create a
1462 regional special district which shall be established in

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1463 accordance with s. 950.001, or as otherwise authorized in
1464 general law.
1465 2. Any combination of two or more counties or
1466 municipalities may create a regional special district which
1467 shall be established in accordance with s. 373.713 ~~373.1962~~, or
1468 as otherwise authorized by general law.
1469 3. Any combination of two or more counties, municipalities,
1470 or other political subdivisions may create a regional special
1471 district in accordance with s. 163.567, or as otherwise
1472 authorized in general law.
1473 Section 7. Subsection (3) of section 189.4155, Florida
1474 Statutes, is amended to read:
1475 189.4155 Activities of special districts; local government
1476 comprehensive planning.—
1477 (3) The provisions of this section shall not apply to water
1478 management districts created pursuant to s. 373.069, to regional
1479 water supply authorities created pursuant to s. 373.713
1480 ~~373.1962~~, or to spoil disposal sites owned or used by the
1481 Federal Government.
1482 Section 8. Section 189.4156, Florida Statutes, is amended
1483 to read:
1484 189.4156 Water management district technical assistance;
1485 local government comprehensive planning.—Water management
1486 districts shall assist local governments in the development of
1487 local government comprehensive plan elements related to water
1488 resource issues as required by s. 373.711 ~~373.0391~~.
1489 Section 9. Subsection (7) of section 367.021, Florida
1490 Statutes, is amended to read:
1491 367.021 Definitions.—As used in this chapter, the following

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1492 words or terms shall have the meanings indicated:
1493 (7) "Governmental authority" means a political subdivision,
1494 as defined by s. 1.01(8), a regional water supply authority
1495 created pursuant to s. 373.713 ~~373.1962~~, or a nonprofit
1496 corporation formed for the purpose of acting on behalf of a
1497 political subdivision with respect to a water or wastewater
1498 facility.
1499 Section 10. Subsections (1) and (17) of section 373.019,
1500 Florida Statutes, are amended to read:
1501 373.019 Definitions.—When appearing in this chapter or in
1502 any rule, regulation, or order adopted pursuant thereto, the
1503 term:
1504 (1) "Alternative water supplies" means salt water; brackish
1505 surface and groundwater; surface water captured predominately
1506 during wet-weather flows; sources made available through the
1507 addition of new storage capacity for surface or groundwater,
1508 water that has been reclaimed after one or more public supply,
1509 municipal, industrial, commercial, or agricultural uses; the
1510 downstream augmentation of water bodies with reclaimed water;
1511 stormwater; and any other water supply source that is designated
1512 as nontraditional for a water supply planning region in the
1513 applicable regional water supply plan.
1514 (17) "Regional water supply plan" means a detailed water
1515 supply plan developed by a governing board under s. 373.709 ~~s.~~
1516 ~~373.0361~~.
1517 Section 11. Paragraph (b) of subsection (2) and paragraph
1518 (b) of subsection (7) of section 373.036, Florida Statutes, are
1519 amended to read:
1520 373.036 Florida water plan; district water management

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1521 plans.—
1522 (2) DISTRICT WATER MANAGEMENT PLANS.—
1523 (b) The district water management plan shall include, but
1524 not be limited to:
1525 1. The scientific methodologies for establishing minimum
1526 flows and levels under s. 373.042, and all established minimum
1527 flows and levels.
1528 2. Identification of one or more water supply planning
1529 regions that singly or together encompass the entire district.
1530 3. Technical data and information prepared under s. 373.711
1531 ~~373.0391~~.
1532 4. A districtwide water supply assessment, to be completed
1533 no later than July 1, 1998, which determines for each water
1534 supply planning region:
1535 a. Existing legal uses, reasonably anticipated future
1536 needs, and existing and reasonably anticipated sources of water
1537 and conservation efforts; and
1538 b. Whether existing and reasonably anticipated sources of
1539 water and conservation efforts are adequate to supply water for
1540 all existing legal uses and reasonably anticipated future needs
1541 and to sustain the water resources and related natural systems.
1542 5. Any completed regional water supply plans.
1543 (7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—
1544 (b) The consolidated annual report shall contain the
1545 following elements, as appropriate to that water management
1546 district:
1547 1. A district water management plan annual report or the
1548 annual work plan report allowed in subparagraph (2)(e)4.
1549 2. The department-approved minimum flows and levels annual

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1550 priority list and schedule required by s. 373.042(2).
1551 3. The annual 5-year capital improvements plan required by
1552 s. 373.536(6)(a)3.
1553 4. The alternative water supplies annual report required by
1554 s. 373.707(8)(n) ~~373.1961(3)(n)~~.
1555 5. The final annual 5-year water resource development work
1556 program required by s. 373.536(6)(a)4.
1557 6. The Florida Forever Water Management District Work Plan
1558 annual report required by s. 373.199(7).
1559 7. The mitigation donation annual report required by s.
1560 373.414(1)(b)2.
1561 Section 12. Paragraphs (a) and (e) of subsection (4) of
1562 section 373.0363, Florida Statutes, are amended to read:
1563 373.0363 Southern Water Use Caution Area Recovery
1564 Strategy.—
1565 (4) The West-Central Florida Water Restoration Action Plan
1566 includes:
1567 (a) The Central West Coast Surface Water Enhancement
1568 Initiative. The purpose of this initiative is to make additional
1569 surface waters available for public supply through restoration
1570 of surface waters, natural water flows, and freshwater wetland
1571 communities. This initiative is designed to allow limits on
1572 groundwater withdrawals in order to slow the rate of saltwater
1573 intrusion. The initiative shall be an ongoing program in
1574 cooperation with the Peace River-Manasota Regional Water Supply
1575 Authority created under s. 373.713 ~~373.1962~~.
1576 (e) The Central Florida Water Resource Development
1577 Initiative. The purpose of this initiative is to create and
1578 implement a long-term plan that takes a comprehensive approach

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1579 to limit ground water withdrawals in the Southern Water Use
1580 Caution Area and to identify and develop alternative water
1581 supplies for Polk County. The project components developed
1582 pursuant to this initiative are eligible for state and regional
1583 funding under s. 373.707 ~~373.196~~ as an alternative water supply,
1584 as defined in s. 373.019, or as a supplemental water supply
1585 under the rules of the Southwest Florida Water Management
1586 District or the South Florida Water Management District. The
1587 initiative shall be implemented by the district as an ongoing
1588 program in cooperation with Polk County and the South Florida
1589 Water Management District.
1590 Section 13. Subsection (2) of section 373.0421, Florida
1591 Statutes, is amended to read:
1592 373.0421 Establishment and implementation of minimum flows
1593 and levels.—
1594 (2) If the existing flow or level in a water body is below,
1595 or is projected to fall within 20 years below, the applicable
1596 minimum flow or level established pursuant to s. 373.042, the
1597 department or governing board, as part of the regional water
1598 supply plan described in s. 373.709 ~~373.0361~~, shall
1599 expeditiously implement a recovery or prevention strategy, which
1600 includes the development of additional water supplies and other
1601 actions, consistent with the authority granted by this chapter,
1602 to:
1603 (a) Achieve recovery to the established minimum flow or
1604 level as soon as practicable; or
1605 (b) Prevent the existing flow or level from falling below
1606 the established minimum flow or level.
1607

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1608 The recovery or prevention strategy shall include phasing
1609 or a timetable which will allow for the provision of sufficient
1610 water supplies for all existing and projected reasonable-
1611 beneficial uses, including development of additional water
1612 supplies and implementation of conservation and other efficiency
1613 measures concurrent with, to the extent practical, and to
1614 offset, reductions in permitted withdrawals, consistent with the
1615 provisions of this chapter.
1616 Section 14. Subsection (4) of section 373.0695, Florida
1617 Statutes, is amended to read:
1618 373.0695 Duties of basin boards; authorized expenditures.—
1619 (4) In the exercise of the duties and powers granted
1620 herein, the basin boards shall be subject to all the limitations
1621 and restrictions imposed on the water management districts in s.
1622 373.703 ~~373.1961~~.
1623 Section 15. Subsections (3) and (5) of section 373.223,
1624 Florida Statutes, are amended to read:
1625 373.223 Conditions for a permit.—
1626 (3) Except for the transport and use of water supplied by
1627 the Central and Southern Florida Flood Control Project, and
1628 anywhere in the state when the transport and use of water is
1629 supplied exclusively for bottled water as defined in s.
1630 500.03(1)(d), any water use permit applications pending as of
1631 April 1, 1998, with the Northwest Florida Water Management
1632 District and self-suppliers of water for which the proposed
1633 water source and area of use or application are located on
1634 contiguous private properties, when evaluating whether a
1635 potential transport and use of ground or surface water across
1636 county boundaries is consistent with the public interest,

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1637 pursuant to paragraph (1)(c), the governing board or department
1638 shall consider:
1639 (a) The proximity of the proposed water source to the area
1640 of use or application.
1641 (b) All impoundments, streams, groundwater sources, or
1642 watercourses that are geographically closer to the area of use
1643 or application than the proposed source, and that are
1644 technically and economically feasible for the proposed transport
1645 and use.
1646 (c) All economically and technically feasible alternatives
1647 to the proposed source, including, but not limited to,
1648 desalination, conservation, reuse of nonpotable reclaimed water
1649 and stormwater, and aquifer storage and recovery.
1650 (d) The potential environmental impacts that may result
1651 from the transport and use of water from the proposed source,
1652 and the potential environmental impacts that may result from use
1653 of the other water sources identified in paragraphs (b) and (c).
1654 (e) Whether existing and reasonably anticipated sources of
1655 water and conservation efforts are adequate to supply water for
1656 existing legal uses and reasonably anticipated future needs of
1657 the water supply planning region in which the proposed water
1658 source is located.
1659 (f) Consultations with local governments affected by the
1660 proposed transport and use.
1661 (g) The value of the existing capital investment in water-
1662 related infrastructure made by the applicant.
1663
1664 Where districtwide water supply assessments and regional
1665 water supply plans have been prepared pursuant to ss. 373.036

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1666 and—373.709 ~~373.0361~~, the governing board or the department
1667 shall use the applicable plans and assessments as the basis for
1668 its consideration of the applicable factors in this subsection.
1669 (5) In evaluating an application for consumptive use of
1670 water which proposes the use of an alternative water supply
1671 project as described in the regional water supply plan and
1672 provides reasonable assurances of the applicant's capability to
1673 design, construct, operate, and maintain the project, the
1674 governing board or department shall presume that the alternative
1675 water supply use is consistent with the public interest under
1676 paragraph (1)(c). However, where the governing board identifies
1677 the need for a multijurisdictional water supply entity or
1678 regional water supply authority to develop the alternative water
1679 supply project pursuant to s. 373.709(2)(a)2. ~~373.0361(2)(a)2.~~,
1680 the presumption shall be accorded only to that use proposed by
1681 such entity or authority. This subsection does not effect
1682 evaluation of the use pursuant to the provisions of paragraphs
1683 (1)(a) and (b), subsections (2) and (3), and ss. 373.2295 and
1684 373.233.
1685 Section 16. Section 373.2234, Florida Statutes, is amended
1686 to read:
1687 373.2234 Preferred water supply sources.—The governing
1688 board of a water management district is authorized to adopt
1689 rules that identify preferred water supply sources for
1690 consumptive uses for which there is sufficient data to establish
1691 that a preferred source will provide a substantial new water
1692 supply to meet the existing and projected reasonable-beneficial
1693 uses of a water supply planning region identified pursuant to s.
1694 373.709(1) ~~373.0361(1)~~, while sustaining existing water

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1695 resources and natural systems. At a minimum, such rules must
1696 contain a description of the preferred water supply source and
1697 an assessment of the water the preferred source is projected to
1698 produce. If an applicant proposes to use a preferred water
1699 supply source, that applicant's proposed water use is subject to
1700 s. 373.223(1), except that the proposed use of a preferred water
1701 supply source must be considered by a water management district
1702 when determining whether a permit applicant's proposed use of
1703 water is consistent with the public interest pursuant to s.
1704 373.223(1)(c). A consumptive use permit issued for the use of a
1705 preferred water supply source must be granted, when requested by
1706 the applicant, for at least a 20-year period and may be subject
1707 to the compliance reporting provisions of s. 373.236(4). Nothing
1708 in this section shall be construed to exempt the use of
1709 preferred water supply sources from the provisions of ss.
1710 373.016(4) and 373.223(2) and (3), or be construed to provide
1711 that permits issued for the use of a nonpreferred water supply
1712 source must be issued for a duration of less than 20 years or
1713 that the use of a nonpreferred water supply source is not
1714 consistent with the public interest. Additionally, nothing in
1715 this section shall be interpreted to require the use of a
1716 preferred water supply source or to restrict or prohibit the use
1717 of a nonpreferred water supply source. Rules adopted by the
1718 governing board of a water management district to implement this
1719 section shall specify that the use of a preferred water supply
1720 source is not required and that the use of a nonpreferred water
1721 supply source is not restricted or prohibited.
1722 Section 17. Subsection (3) of section 373.229, Florida
1723 Statutes, is amended to read:

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1724 373.229 Application for permit.—
1725 (3) In addition to the information required in subsection
1726 (1), all permit applications filed with the governing board or
1727 the department which propose the transport and use of water
1728 across county boundaries shall include information pertaining to
1729 factors to be considered, pursuant to s. 373.223(3), unless
1730 exempt under s. 373.713(9) ~~373.1962(9)~~.
1731 Section 18. Paragraph (a) of subsection (6) of section
1732 373.236, Florida Statutes, is amended to read:
1733 373.236 Duration of permits; compliance reports.—
1734 (6)(a) The Legislature finds that the need for alternative
1735 water supply development projects to meet anticipated public
1736 water supply demands of the state is so important that it is
1737 essential to encourage participation in and contribution to
1738 these projects by private-rural-land owners who
1739 characteristically have relatively modest near-term water
1740 demands but substantially increasing demands after the 20-year
1741 planning period in s. 373.709 ~~373.0361~~. Therefore, where such
1742 landowners make extraordinary contributions of lands or
1743 construction funding to enable the expeditious implementation of
1744 such projects, water management districts and the department may
1745 grant permits for such projects for a period of up to 50 years
1746 to municipalities, counties, special districts, regional water
1747 supply authorities, multijurisdictional water supply entities,
1748 and publicly or privately owned utilities, with the exception of
1749 any publicly or privately owned utilities created for or by a
1750 private landowner after April 1, 2008, which have entered into
1751 an agreement with the private landowner for the purpose of more
1752 efficiently pursuing alternative public water supply development

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1753 projects identified in a district's regional water supply plan
1754 and meeting water demands of both the applicant and the
1755 landowner.
1756 Section 19. Paragraph (a) of subsection (6) of section
1757 373.536, Florida Statutes, is amended to read:
1758 373.536 District budget and hearing thereon.—
1759 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;
1760 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—
1761 (a) Each district must, by the date specified for each
1762 item, furnish copies of the following documents to the Governor,
1763 the President of the Senate, the Speaker of the House of
1764 Representatives, the chairs of all legislative committees and
1765 subcommittees having substantive or fiscal jurisdiction over the
1766 districts, as determined by the President of the Senate or the
1767 Speaker of the House of Representatives as applicable, the
1768 secretary of the department, and the governing board of each
1769 county in which the district has jurisdiction or derives any
1770 funds for the operations of the district:
1771 1. The adopted budget, to be furnished within 10 days after
1772 its adoption.
1773 2. A financial audit of its accounts and records, to be
1774 furnished within 10 days after its acceptance by the governing
1775 board. The audit must be conducted in accordance with the
1776 provisions of s. 11.45 and the rules adopted thereunder. In
1777 addition to the entities named above, the district must provide
1778 a copy of the audit to the Auditor General within 10 days after
1779 its acceptance by the governing board.
1780 3. A 5-year capital improvements plan, to be included in
1781 the consolidated annual report required by s. 373.036(7). The

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1782 plan must include expected sources of revenue for planned
1783 improvements and must be prepared in a manner comparable to the
1784 fixed capital outlay format set forth in s. 216.043.
1785 4. A 5-year water resource development work program to be
1786 furnished within 30 days after the adoption of the final budget.
1787 The program must describe the district's implementation strategy
1788 for the water resource development component of each approved
1789 regional water supply plan developed or revised under s. 373.709
1790 ~~373.0361~~. The work program must address all the elements of the
1791 water resource development component in the district's approved
1792 regional water supply plans and must identify which projects in
1793 the work program will provide water, explain how each water
1794 resource development project will produce additional water
1795 available for consumptive uses, estimate the quantity of water
1796 to be produced by each project, and provide an assessment of the
1797 contribution of the district's regional water supply plans in
1798 providing sufficient water to meet the water supply needs of
1799 existing and future reasonable-beneficial uses for a 1-in-10-
1800 year drought event. Within 30 days after its submittal, the
1801 department shall review the proposed work program and submit its
1802 findings, questions, and comments to the district. The review
1803 must include a written evaluation of the program's consistency
1804 with the furtherance of the district's approved regional water
1805 supply plans, and the adequacy of proposed expenditures. As part
1806 of the review, the department shall give interested parties the
1807 opportunity to provide written comments on each district's
1808 proposed work program. Within 45 days after receipt of the
1809 department's evaluation, the governing board shall state in
1810 writing to the department which changes recommended in the

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1811 evaluation it will incorporate into its work program submitted
1812 as part of the March 1 consolidated annual report required by s.
1813 373.036(7) or specify the reasons for not incorporating the
1814 changes. The department shall include the district's responses
1815 in a final evaluation report and shall submit a copy of the
1816 report to the Governor, the President of the Senate, and the
1817 Speaker of the House of Representatives.
1818 Section 20. Subsection (11) of section 373.59, Florida
1819 Statutes, is amended to read:
1820 373.59 Water Management Lands Trust Fund.—
1821 (11) Notwithstanding any provision of this section to the
1822 contrary, the governing board of a water management district may
1823 request, and the Secretary of Environmental Protection shall
1824 release upon such request, moneys allocated to the districts
1825 pursuant to subsection (8) for purposes consistent with the
1826 provisions of s. 373.709 ~~373.0361~~, s. 373.705 ~~373.0831~~, s.
1827 373.139, or ss. 373.451-373.4595 and for legislatively
1828 authorized land acquisition and water restoration initiatives.
1829 No funds may be used pursuant to this subsection until necessary
1830 debt service obligations, requirements for payments in lieu of
1831 taxes, and land management obligations that may be required by
1832 this chapter are provided for.
1833 Section 21. Paragraph (g) of subsection (1) of section
1834 378.212, Florida Statutes, is amended to read:
1835 378.212 Variances.—
1836 (1) Upon application, the secretary may grant a variance
1837 from the provisions of this part or the rules adopted pursuant
1838 thereto. Variances and renewals thereof may be granted for any
1839 one of the following reasons:

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1840 (g) To accommodate reclamation that provides water supply
1841 development or water resource development not inconsistent with
1842 the applicable regional water supply plan approved pursuant to
1843 s. 373.709 ~~373.0361~~, provided adverse impacts are not caused to
1844 the water resources in the basin. A variance may also be granted
1845 from the requirements of part IV of chapter 373, or the rules
1846 adopted thereunder, when a project provides an improvement in
1847 water availability in the basin and does not cause adverse
1848 impacts to water resources in the basin.
1849 Section 22. Subsection (9) of section 378.404, Florida
1850 Statutes, is amended to read:
1851 378.404 Department of Environmental Protection; powers and
1852 duties.—The department shall have the following powers and
1853 duties:
1854 (9) To grant variances from the provisions of this part to
1855 accommodate reclamation that provides for water supply
1856 development or water resource development not inconsistent with
1857 the applicable regional water supply plan approved pursuant to
1858 s. 373.709 ~~373.0361~~, appropriate stormwater management, improved
1859 wildlife habitat, recreation, or a mixture thereof, provided
1860 adverse impacts are not caused to the water resources in the
1861 basin and public health and safety are not adversely affected.
1862 Section 23. Paragraph (a) of subsection (3) of section
1863 403.0891, Florida Statutes, is amended to read:
1864 403.0891 State, regional, and local stormwater management
1865 plans and programs.—The department, the water management
1866 districts, and local governments shall have the responsibility
1867 for the development of mutually compatible stormwater management
1868 programs.

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1869 (3)(a) Each local government required by chapter 163 to
1870 submit a comprehensive plan, whose plan is submitted after July
1871 1, 1992, and the others when updated after July 1, 1992, in the
1872 development of its stormwater management program described by
1873 elements within its comprehensive plan shall consider the water
1874 resource implementation rule, district stormwater management
1875 goals, plans approved pursuant to the Surface Water Improvement
1876 and Management Act, ss. 373.451-373.4595, and technical
1877 assistance information provided by the water management
1878 districts pursuant to s. 373.711 ~~373.0391~~.
1879 Section 24. Section 403.890, Florida Statutes, is amended
1880 to read:
1881 403.890 Water Protection and Sustainability Program~~;~~
1882 ~~intent; goals; purposes.~~
1883 ~~(1) Effective July 1, 2006, revenues transferred from the~~
1884 ~~Department of Revenue pursuant to s. 201.15(1)(c)2. shall be~~
1885 ~~deposited into the Water Protection and Sustainability Program~~
1886 ~~Trust Fund in the Department of Environmental Protection. These~~
1887 ~~revenues and any other additional revenues deposited into or~~
1888 ~~appropriated to the Water Protection and Sustainability Program~~
1889 ~~Trust Fund shall be distributed by the Department of~~
1890 ~~Environmental Protection in the following manner:~~
1891 ~~(a) Sixty percent to the Department of Environmental~~
1892 ~~Protection for the implementation of an alternative water supply~~
1893 ~~program as provided in s. 373.1961.~~
1894 ~~(b) Twenty percent for the implementation of best~~
1895 ~~management practices and capital project expenditures necessary~~
1896 ~~for the implementation of the goals of the total maximum daily~~
1897 ~~load program established in s. 403.067. Of these funds, 85~~

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1898 ~~percent shall be transferred to the credit of the Department of~~
1899 ~~Environmental Protection Water Quality Assurance Trust Fund to~~
1900 ~~address water quality impacts associated with nonagricultural~~
1901 ~~nonpoint sources. Fifteen percent of these funds shall be~~
1902 ~~transferred to the Department of Agriculture and Consumer~~
1903 ~~Services General Inspection Trust Fund to address water quality~~
1904 ~~impacts associated with agricultural nonpoint sources. These~~
1905 ~~funds shall be used for research, development, demonstration,~~
1906 ~~and implementation of the total maximum daily load program under~~
1907 ~~s. 403.067, suitable best management practices or other measures~~
1908 ~~used to achieve water quality standards in surface waters and~~
1909 ~~water segments identified pursuant to s. 303(d) of the Clean~~
1910 ~~Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.~~
1911 ~~Implementation of best management practices and other measures~~
1912 ~~may include cost-share grants, technical assistance,~~
1913 ~~implementation tracking, and conservation leases or other~~
1914 ~~agreements for water quality improvement. The Department of~~
1915 ~~Environmental Protection and the Department of Agriculture and~~
1916 ~~Consumer Services may adopt rules governing the distribution of~~
1917 ~~funds for implementation of capital projects, best management~~
1918 ~~practices, and other measures. These funds shall not be used to~~
1919 ~~abrogate the financial responsibility of those point and~~
1920 ~~nonpoint sources that have contributed to the degradation of~~
1921 ~~water or land areas. Increased priority shall be given by the~~
1922 ~~department and the water management district governing boards to~~
1923 ~~those projects that have secured a cost-sharing agreement~~
1924 ~~allocating responsibility for the cleanup of point and nonpoint~~
1925 ~~sources.~~
1926 ~~(c) Ten percent shall be disbursed for the purposes of~~

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1927 ~~funding projects pursuant to ss. 373.451-373.459 or surface~~
1928 ~~water restoration activities in water-management-district-~~
1929 ~~designated priority water bodies. The Secretary of Environmental~~
1930 ~~Protection shall ensure that each water management district~~
1931 ~~receives the following percentage of funds annually:~~
1932 ~~1. Thirty-five percent to the South Florida Water~~
1933 ~~Management District;~~
1934 ~~2. Twenty-five percent to the Southwest Florida Water~~
1935 ~~Management District;~~
1936 ~~3. Twenty-five percent to the St. Johns River Water~~
1937 ~~Management District;~~
1938 ~~4. Seven and one-half percent to the Suwannee River Water~~
1939 ~~Management District; and~~
1940 ~~5. Seven and one-half percent to the Northwest Florida~~
1941 ~~Water Management District.~~
1942 ~~(d) Ten percent to the Department of Environmental~~
1943 ~~Protection for the Disadvantaged Small Community Wastewater~~
1944 ~~Grant Program as provided in s. 403.1838.~~
1945 ~~(2) Applicable beginning in the 2007-2008 fiscal year,~~
1946 ~~revenues transferred from the Department of Revenue pursuant to~~
1947 ~~s. 201.15(1)(c)2. shall be deposited into the Water Protection~~
1948 ~~and Sustainability Program Trust Fund in the Department of~~
1949 ~~Environmental Protection. These revenues and any other~~
1950 ~~additional~~ Revenues deposited into or appropriated to the Water
1951 Protection and Sustainability Program Trust Fund shall be
1952 distributed by the Department of Environmental Protection in the
1953 following manner:
1954 (1) ~~(a)~~ Sixty-five percent to the Department of
1955 Environmental Protection for the implementation of an

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1956 alternative water supply program as provided in s. 373.707
1957 ~~373.1961~~.
1958 (2)~~(b)~~ Twenty-two and five-tenths percent for the
1959 implementation of best management practices and capital project
1960 expenditures necessary for the implementation of the goals of
1961 the total maximum daily load program established in s. 403.067.
1962 Of these funds, 83.33 percent shall be transferred to the credit
1963 of the Department of Environmental Protection Water Quality
1964 Assurance Trust Fund to address water quality impacts associated
1965 with nonagricultural nonpoint sources. Sixteen and sixty-seven
1966 hundredths percent of these funds shall be transferred to the
1967 Department of Agriculture and Consumer Services General
1968 Inspection Trust Fund to address water quality impacts
1969 associated with agricultural nonpoint sources. These funds shall
1970 be used for research, development, demonstration, and
1971 implementation of the total maximum daily load program under s.
1972 403.067, suitable best management practices or other measures
1973 used to achieve water quality standards in surface waters and
1974 water segments identified pursuant to s. 303(d) of the Clean
1975 Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.
1976 Implementation of best management practices and other measures
1977 may include cost-share grants, technical assistance,
1978 implementation tracking, and conservation leases or other
1979 agreements for water quality improvement. The Department of
1980 Environmental Protection and the Department of Agriculture and
1981 Consumer Services may adopt rules governing the distribution of
1982 funds for implementation of capital projects, best management
1983 practices, and other measures. These funds shall not be used to
1984 abrogate the financial responsibility of those point and

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1985 nonpoint sources that have contributed to the degradation of
1986 water or land areas. Increased priority shall be given by the
1987 department and the water management district governing boards to
1988 those projects that have secured a cost-sharing agreement
1989 allocating responsibility for the cleanup of point and nonpoint
1990 sources.
1991 (3) ~~(c)~~ Twelve and five-tenths percent to the Department of
1992 Environmental Protection for the Disadvantaged Small Community
1993 Wastewater Grant Program as provided in s. 403.1838.
1994 (4) ~~(d)~~ On June 30, 2009, and every 24 months thereafter,
1995 the Department of Environmental Protection shall request the
1996 return of all unencumbered funds distributed pursuant to this
1997 section. These funds shall be deposited into the Water
1998 Protection and Sustainability Program Trust Fund and
1999 redistributed pursuant to the provisions of this section.
2000 ~~(3) For the 2008-2009 fiscal year only, moneys in the Water~~
2001 ~~Protection and Sustainability Program Trust Fund shall be~~
2002 ~~transferred to the Ecosystem Management and Restoration Trust~~
2003 ~~Fund for grants and aids to local governments for water projects~~
2004 ~~as provided in the General Appropriations Act. This subsection~~
2005 ~~expires July 1, 2009.~~
2006 ~~(4) For fiscal year 2005-2006, funds deposited or~~
2007 ~~appropriated into the Water Protection and Sustainability~~
2008 ~~Program Trust Fund shall be distributed as follows:~~
2009 ~~(a) One hundred million dollars to the Department of~~
2010 ~~Environmental Protection for the implementation of an~~
2011 ~~alternative water supply program as provided in s. 373.1961.~~
2012 ~~(b) Funds remaining after the distribution provided for in~~
2013 ~~subsection (1) shall be distributed as follows:~~

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2014 ~~1. Fifty percent for the implementation of best management~~
2015 ~~practices and capital project expenditures necessary for the~~
2016 ~~implementation of the goals of the total maximum daily load~~
2017 ~~program established in s. 403.067. Of these funds, 85 percent~~
2018 ~~shall be transferred to the credit of the Department of~~
2019 ~~Environmental Protection Water Quality Assurance Trust Fund to~~
2020 ~~address water quality impacts associated with nonagricultural~~
2021 ~~nonpoint sources. Fifteen percent of these funds shall be~~
2022 ~~transferred to the Department of Agriculture and Consumer~~
2023 ~~Services General Inspection Trust Fund to address water quality~~
2024 ~~impacts associated with agricultural nonpoint sources. These~~
2025 ~~funds shall be used for research, development, demonstration,~~
2026 ~~and implementation of suitable best management practices or~~
2027 ~~other measures used to achieve water quality standards in~~
2028 ~~surface waters and water segments identified pursuant to s.~~
2029 ~~303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss.~~
2030 ~~1251 et seq. Implementation of best management practices and~~
2031 ~~other measures may include cost-share grants, technical~~
2032 ~~assistance, implementation tracking, and conservation leases or~~
2033 ~~other agreements for water quality improvement. The Department~~
2034 ~~of Environmental Protection and the Department of Agriculture~~
2035 ~~and Consumer Services may adopt rules governing the distribution~~
2036 ~~of funds for implementation of best management practices. These~~
2037 ~~funds shall not be used to abrogate the financial responsibility~~
2038 ~~of those point and nonpoint sources that have contributed to the~~
2039 ~~degradation of water or land areas. Increased priority shall be~~
2040 ~~given by the department and the water management district~~
2041 ~~governing boards to those projects that have secured a cost-~~
2042 ~~sharing agreement allocating responsibility for the cleanup of~~

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2043 ~~point and nonpoint sources.~~
2044 ~~2. Twenty-five percent for the purposes of funding projects~~
2045 ~~pursuant to ss. 373.451-373.459 or surface water restoration~~
2046 ~~activities in water-management-district-designated priority~~
2047 ~~water bodies. The Secretary of Environmental Protection shall~~
2048 ~~ensure that each water management district receives the~~
2049 ~~following percentage of funds annually:~~
2050 ~~a. Thirty-five percent to the South Florida Water~~
2051 ~~Management District;~~
2052 ~~b. Twenty-five percent to the Southwest Florida Water~~
2053 ~~Management District;~~
2054 ~~c. Twenty-five percent to the St. Johns River Water~~
2055 ~~Management District;~~
2056 ~~d. Seven and one-half percent to the Suwannee River Water~~
2057 ~~Management District; and~~
2058 ~~e. Seven and one-half percent to the Northwest Florida~~
2059 ~~Water Management District.~~
2060 ~~3. Twenty-five percent to the Department of Environmental~~
2061 ~~Protection for the Disadvantaged Small Community Wastewater~~
2062 ~~Grant Program as provided in s. 403.1838.~~
2063
2064 ~~Prior to the end of the 2008 Regular Session, the~~
2065 ~~Legislature must review the distribution of funds under the~~
2066 ~~Water Protection and Sustainability Program to determine if~~
2067 ~~revisions to the funding formula are required. At the discretion~~
2068 ~~of the President of the Senate and the Speaker of the House of~~
2069 ~~Representatives, the appropriate substantive committees of the~~
2070 ~~Legislature may conduct an interim project to review the Water~~
2071 ~~Protection and Sustainability Program and the funding formula~~

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2072 ~~and make written recommendations to the Legislature proposing~~
2073 ~~necessary changes, if any.~~
2074 ~~(5) For the 2009-2010 fiscal year only, funds shall be~~
2075 ~~distributed as follows:~~
2076 ~~(a) Thirty-one and twenty-one hundredths percent to the~~
2077 ~~Department of Environmental Protection for the implementation of~~
2078 ~~an alternative water supply program as provided in s. 373.1961.~~
2079 ~~(b) Twenty-six and eighty-seven hundredths percent for the~~
2080 ~~implementation of best management practices and capital project~~
2081 ~~expenditures necessary for the implementation of the goals of~~
2082 ~~the total maximum daily load program established in s. 403.067.~~
2083 ~~Of these funds, 86 percent shall be transferred to the credit of~~
2084 ~~the Water Quality Assurance Trust Fund of the Department of~~
2085 ~~Environmental Protection to address water quality impacts~~
2086 ~~associated with nonagricultural nonpoint sources. Fourteen~~
2087 ~~percent of these funds shall be transferred to the General~~
2088 ~~Inspection Trust Fund of the Department of Agriculture and~~
2089 ~~Consumer Services to address water quality impacts associated~~
2090 ~~with agricultural nonpoint sources. These funds shall be used~~
2091 ~~for research, development, demonstration, and implementation of~~
2092 ~~the total maximum daily load program under s. 403.067, suitable~~
2093 ~~best management practices, or other measures used to achieve~~
2094 ~~water quality standards in surface waters and water segments~~
2095 ~~identified pursuant to s. 303(d) of the Clean Water Act, Pub. L.~~
2096 ~~No. 92-500, 33 U.S.C. ss. 1251 et seq. Implementation of best~~
2097 ~~management practices and other measures may include cost-share~~
2098 ~~grants, technical assistance, implementation tracking, and~~
2099 ~~conservation leases or other agreements for water quality~~
2100 ~~improvement. The Department of Environmental Protection and the~~

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2101 ~~Department of Agriculture and Consumer Services may adopt rules~~
2102 ~~governing the distribution of funds for implementation of~~
2103 ~~capital projects, best management practices, and other measures.~~
2104 ~~These funds may not be used to abrogate the financial~~
2105 ~~responsibility of those point and nonpoint sources that have~~
2106 ~~contributed to the degradation of water or land areas. Increased~~
2107 ~~priority shall be given by the department and the water~~
2108 ~~management district governing boards to those projects that have~~
2109 ~~secured a cost-sharing agreement that allocates responsibility~~
2110 ~~for the cleanup of point and nonpoint sources.~~
2111 ~~(c) Forty-one and ninety-two hundredths percent to the~~
2112 ~~Department of Environmental Protection for the Disadvantaged~~
2113 ~~Small Community Wastewater Grant Program as provided in s.~~
2114 ~~403.1838.~~
2115
2116 ~~This subsection expires July 1, 2010.~~
2117 Section 25. Subsection (1) of section 403.891, Florida
2118 Statutes, is amended to read:
2119 403.891 Water Protection and Sustainability Program Trust
2120 Fund of the Department of Environmental Protection.—
2121 (1) The Water Protection and Sustainability Program Trust
2122 Fund is created within the Department of Environmental
2123 Protection. The purpose of the trust fund is to ~~receive funds~~
2124 ~~pursuant to s. 201.15(1)(c)2., funds from other sources provided~~
2125 ~~for in law and the General Appropriations Act, and funds~~
2126 ~~received by the department in order to~~ implement the ~~provisions~~
2127 ~~of the~~ Water Sustainability and Protection Program created in s.
2128 403.890.
2129 Section 26. Section 682.02, Florida Statutes, is amended to

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2130 read:
2131 682.02 Arbitration agreements made valid, irrevocable, and
2132 enforceable; scope.—Two or more parties may agree in writing to
2133 submit to arbitration any controversy existing between them at
2134 the time of the agreement, or they may include in a written
2135 contract a provision for the settlement by arbitration of any
2136 controversy thereafter arising between them relating to such
2137 contract or the failure or refusal to perform the whole or any
2138 part thereof. This section also applies to written interlocal
2139 agreements under ss. 163.01 and 373.713 ~~373.1962~~ in which two or
2140 more parties agree to submit to arbitration any controversy
2141 between them concerning water use permit applications and other
2142 matters, regardless of whether or not the water management
2143 district with jurisdiction over the subject application is a
2144 party to the interlocal agreement or a participant in the
2145 arbitration. Such agreement or provision shall be valid,
2146 enforceable, and irrevocable without regard to the justiciable
2147 character of the controversy; provided that this act shall not
2148 apply to any such agreement or provision to arbitrate in which
2149 it is stipulated that this law shall not apply or to any
2150 arbitration or award thereunder.
2151 Section 27. Section 373.71, Florida Statutes, is renumbered
2152 as section 373.69, Florida Statutes.
2153 Section 28. Sections 373.0361, 373.0391, 373.0831, 373.196,
2154 373.1961, 373.1962, and 373.1963, Florida Statutes, are
2155 repealed.
2156 Section 29. Paragraph (f) of subsection (3) of section
2157 373.1961, Florida Statutes, is amended to read:
2158 373.1961 Water production; general powers and duties;

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2159 identification of needs; funding criteria; economic incentives;
2160 reuse funding.—
2161 (3) FUNDING.—
2162 (f) The governing boards shall determine those projects
2163 that will be selected for financial assistance. The governing
2164 boards may establish factors to determine project funding;
2165 however, significant weight shall be given to the following
2166 factors:
2167 1. Whether the project provides substantial environmental
2168 benefits by preventing or limiting adverse water resource
2169 impacts.
2170 2. Whether the project reduces competition for water
2171 supplies.
2172 3. Whether the project brings about replacement of
2173 traditional sources in order to help implement a minimum flow or
2174 level or a reservation.
2175 4. Whether the project will be implemented by a consumptive
2176 use permittee that has achieved the targets contained in a goal-
2177 based water conservation program approved pursuant to s.
2178 373.227.
2179 5. The quantity of water supplied by the project as
2180 compared to its cost.
2181 6. Projects in which the construction and delivery to end
2182 users of reuse water is a major component.
2183 7. Whether the project will be implemented by a
2184 multijurisdictional water supply entity or regional water supply
2185 authority.
2186 8. Whether the project implements reuse that assists in the
2187 elimination of domestic wastewater ocean outfalls as provided in

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2188 s. 403.086(9).
2189 9. Whether the county or municipality, or the multiple
2190 counties or municipalities, in which the project is located has
2191 implemented a high-water recharge tax protection program as
2192 provided in s. 193.625.
2193 Section 30. Subsection (1) of section 373.019, Florida
2194 Statutes, is amended to read:
2195 373.019 Definitions.—When appearing in this chapter or in
2196 any rule, regulation, or order adopted pursuant thereto, the
2197 term:
2198 (1) "Alternative water supplies" means salt water; brackish
2199 surface and groundwater; surface water captured predominately
2200 during wet-weather flows; sources made available through the
2201 addition of new storage capacity for surface or groundwater,
2202 water that has been reclaimed after one or more public supply,
2203 municipal, industrial, commercial, or agricultural uses; the
2204 downstream augmentation of water bodies with reclaimed water;
2205 stormwater; quantifiable water savings from water conservation
2206 projects; and any other water supply source that is designated
2207 as nontraditional for a water supply planning region in the
2208 applicable regional water supply plan.
2209 Section 31. Paragraph (a) of subsection (19) of section
2210 373.414, Florida Statutes, is amended to read:
2211 373.414 Additional criteria for activities in surface
2212 waters and wetlands.—
2213 (19)(a) Financial responsibility for mitigation for
2214 wetlands and other surface waters required by a permit issued
2215 pursuant to this part for activities associated with the
2216 extraction of limestone and phosphate are subject to approval by

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2217 the department as part of the permit application review.
2218 Financial responsibility for permitted activities that ~~which~~
2219 will occur over a period of 3 years or less of mining operations
2220 must be provided to the department before ~~prior to~~ the
2221 commencement of mining operations and must ~~shall be in an amount~~
2222 equal ~~to~~ 110 percent of the estimated mitigation costs for
2223 wetlands and other surface waters affected under the permit. For
2224 permitted activities that ~~which~~ will occur over a period of more
2225 than 3 years of mining operations, the initial financial
2226 responsibility demonstration must ~~shall be in an amount~~ equal ~~to~~
2227 110 percent of the estimated mitigation costs for wetlands and
2228 other surface waters affected in the first 3 years of operation
2229 under the permit.~~; and,~~ For each year thereafter, the financial
2230 responsibility demonstration must ~~shall~~ be updated, including
2231 providing ~~to provide~~ an amount equal to 110 percent of the
2232 estimated mitigation costs for the next year of operations under
2233 the permit for which financial responsibility has not already
2234 been demonstrated and to release portions of the financial
2235 responsibility mechanisms in accordance with applicable rules.
2236 Section 32. Subsection (2) of section 378.901, Florida
2237 Statutes, is amended to read:
2238 378.901 Life-of-the-mine permit.—
2239 (2) As an alternative to, and in lieu of, separate
2240 applications for permits required under ~~by~~ part IV of chapter
2241 373 and part IV of this chapter, any ~~each~~ operator who mines or
2242 extracts or proposes to mine or extract heavy minerals,
2243 limestone, or fuller's earth clay may apply to the bureau for a
2244 life-of-the-mine permit. This subsection does not limit the
2245 authority of a local government to approve, approve with

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2246 conditions, deny, or impose a permit duration that is different
2247 from the duration issued pursuant to this section.
2248 Section 33. Section 373.4131, Florida Statutes, is created
2249 to read:
2250 373.4131 Stormwater quality treatment requirements.-
2251 (1) The Legislature finds that nutrients in stormwater
2252 contribute to nutrient impairment of the state's waters. The
2253 Legislature further finds and declares that a uniform statewide
2254 rule that is consistent with the state's strategy to reduce the
2255 adverse effects of nutrients on water quality as outlined in
2256 chapter 403 will provide a scientifically and technically sound
2257 method to assist permitholders in their efforts to meet state
2258 water quality standards.
2259 (2) As used in this section, the term:
2260 (a) "Nutrient" means total nitrogen and total phosphorus.
2261 (b) "Public roads" means paved roadways within incorporated
2262 city limits, with urban curb and gutter sections, maintained by
2263 a governmental entity and used by the general public for motor
2264 vehicle traffic.
2265 (c) "Redevelopment" means construction of a surface water
2266 management system on sites with existing commercial, industrial,
2267 institutional, or multifamily land uses where the existing
2268 impervious surface will be removed as part of the proposed
2269 activity.
2270 (d) "Stormwater quality treatment requirements" means the
2271 minimum level of stormwater treatment and design criteria for
2272 the construction, operation, and maintenance of stormwater
2273 management systems.
2274 (3) The department, in coordination with the water

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2275 management districts, shall develop a uniform statewide
2276 stormwater quality treatment rule for stormwater management
2277 systems. The rule must provide for geographic differences in
2278 physical and natural characteristics, such as rainfall patterns,
2279 topography, soil type, and vegetation. The department shall
2280 adopt the rule no sooner than July 1, 2011. The water management
2281 districts and any delegated local program under this part shall
2282 implement the rule without having to adopt it pursuant to s.
2283 120.54. However, the department, water management districts, and
2284 local governments may adopt, amend, or retain rules designed to
2285 implement a basin management action plan for a total maximum
2286 daily load and rules established pursuant to s. 373.4592, s.
2287 373.4595, s. 373.461, or s. 403.067.
2288 (a) Except as otherwise provided in this section,
2289 variations from the rule adopted pursuant to this section are
2290 prohibited under this part.
2291 (b) Existing stormwater quality treatment rules that are
2292 superseded by the rule adopted pursuant to this section may be
2293 repealed without further rulemaking pursuant to s. 120.54 by
2294 publication of a notice of repeal in the Florida Administrative
2295 Weekly and subsequent filing of a list of the rules repealed
2296 with the Department of State.
2297 (c) Until the rule adopted pursuant to this section
2298 becomes effective, existing stormwater quality treatment rules
2299 adopted pursuant to this part are deemed authorized under this
2300 part and remain in full force and effect.
2301 (4) The rule adopted pursuant to this section shall
2302 establish the stormwater quality treatment requirements
2303 necessary to meet the applicable state water quality standards,

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2304 including nutrient standards. Compliance with the stormwater
2305 quality treatment requirements creates a presumption that
2306 stormwater discharged from the system will meet the applicable
2307 state water quality standards, whether expressed in narrative or
2308 numeric form, in the receiving waters.
2309 (5) Notwithstanding subsection (4), the rule adopted
2310 pursuant to this section may establish alternative stormwater
2311 quality treatment requirements for the redevelopment of sites,
2312 the widening of public roads, and the development of sites with
2313 legacy pollutants from past activities. Such requirements must
2314 be based upon a feasibility assessment of stormwater best
2315 management practices that considers factors such as site size,
2316 availability of offsite regional stormwater treatment systems,
2317 and physical site characteristics. In addition, the rule adopted
2318 pursuant to this section shall establish alternative stormwater
2319 quality treatment requirements for the retrofitting of existing
2320 stormwater management systems where such retrofitting results in
2321 a net reduction in the discharge of nutrients and other
2322 pollutants to the receiving waters.
2323 (6) After the adoption of the rule pursuant to this
2324 section, the following shall continue to be governed by the
2325 stormwater quality treatment rules adopted by the department,
2326 the water management districts, and any delegated local program
2327 under this part in effect before the effective date of the rule
2328 adopted pursuant to this section, unless the applicant elects to
2329 have an application reviewed in accordance with the rule adopted
2330 pursuant to this section:
2331 (a) The operation and maintenance of stormwater management
2332 systems legally in existence before the effective date of the

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2333 rule adopted pursuant to this section if the terms and
2334 conditions of the permit, exemption, or other authorization for
2335 such systems continue to be met; or
2336 (b) The activities approved in a permit issued pursuant to
2337 this part and the review of activities proposed in applications
2338 received and completed before the effective date of the rule
2339 adopted pursuant to this section. This paragraph also applies to
2340 any modification of the plans, terms, and conditions of the
2341 permit, including new activities, within the geographical area
2342 to which the permit applies. However, this paragraph does not
2343 apply to a modification that would extend the permitted time
2344 limit for construction beyond 4 additional years or to any
2345 modification that is reasonably expected to lead to additional
2346 or substantially different stormwater quality impacts. This
2347 paragraph also applies to any modification that lessens or does
2348 not increase stormwater quality impacts.
2349 (c) Department of Transportation projects that have
2350 completed the project development and environment phase; the
2351 design phase; or for which bids have been advertised.
2352 (7) This section does not apply to stormwater management
2353 systems serving agriculture.
2354 Section 34. Subsections (2), (5), and (9) of section
2355 373.41492, Florida Statutes, are amended to read:
2356 373.41492 Miami-Dade County Lake Belt Mitigation Plan;
2357 mitigation for mining activities within the Miami-Dade County
2358 Lake Belt.—
2359 (2) To provide for the mitigation of wetland resources lost
2360 to mining activities within the Miami-Dade County Lake Belt
2361 Plan, effective October 1, 1999, a mitigation fee is imposed on

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2362 each ton of limerock and sand extracted by any person who
2363 engages in the business of extracting limerock or sand from
2364 within the Miami-Dade County Lake Belt Area and the east one-
2365 half of sections 24 and 25 and all of sections 35 and 36,
2366 Township 53 South, Range 39 East. The mitigation fee is imposed
2367 for each ton of limerock and sand sold from within the
2368 properties where the fee applies in raw, processed, or
2369 manufactured form, including, but not limited to, sized
2370 aggregate, asphalt, cement, concrete, and other limerock and
2371 concrete products. The mitigation fee imposed by this subsection
2372 for each ton of limerock and sand sold shall be 12 cents per ton
2373 beginning January 1, 2007; 18 cents per ton beginning January 1,
2374 2008; ~~and~~ 24 cents per ton beginning January 1, 2009, and 45
2375 cents per ton beginning January 1, 2011. To upgrade a water
2376 treatment plant that treats water coming from the Northwest
2377 Wellfield in Miami-Dade County, a water treatment plant upgrade
2378 fee is imposed within the same Lake Belt Area subject to the
2379 mitigation fee and upon the same kind of mined limerock and sand
2380 subject to the mitigation fee. The water treatment plant upgrade
2381 fee imposed by this subsection for each ton of limerock and sand
2382 sold shall be 15 cents per ton beginning on January 1, 2007, and
2383 the collection of this fee shall cease once the total amount of
2384 proceeds collected for this fee reaches the amount of the actual
2385 moneys necessary to design and construct the water treatment
2386 plant upgrade, as determined in an open, public solicitation
2387 process. Any limerock or sand that is used within the mine from
2388 which the limerock or sand is extracted is exempt from the fees.
2389 The amount of the mitigation fee and the water treatment plant
2390 upgrade fee imposed under this section must be stated separately

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2391 on the invoice provided to the purchaser of the limerock or sand
2392 product from the limerock or sand miner, or its subsidiary or
2393 affiliate, for which the fee or fees apply. The limerock or sand
2394 miner, or its subsidiary or affiliate, who sells the limerock or
2395 sand product shall collect the mitigation fee and the water
2396 treatment plant upgrade fee and forward the proceeds of the fees
2397 to the Department of Revenue on or before the 20th day of the
2398 month following the calendar month in which the sale occurs.
2399 (5) ~~Beginning~~ Each January 1, beginning January 1, 2010,
2400 through December 31, 2011, ~~January 1, 2010, and each January 1~~
2401 ~~thereafter,~~ the per-ton mitigation fee shall be increased by 2.1
2402 percentage points, plus a cost growth index. The cost growth
2403 index shall be the percentage change in the weighted average of
2404 the Employment Cost Index for All Civilian Workers (ecu 10001I),
2405 issued by the United States Department of Labor for the most
2406 recent 12-month period ending on September 30, and the
2407 percentage change in the Producer Price Index for All
2408 Commodities (WPU 00000000), issued by the United States
2409 Department of Labor for the most recent 12-month period ending
2410 on September 30, compared to the weighted average of these
2411 indices for the previous year. The weighted average shall be
2412 calculated as 0.6 times the percentage change in the Employment
2413 Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times
2414 the percentage change in the Producer Price Index for All
2415 Commodities (WPU 00000000). If either index is discontinued, it
2416 shall be replaced by its successor index, as identified by the
2417 United States Department of Labor.
2418 (9)(a) The interagency committee established in this
2419 section shall annually prepare and submit to the governing board

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2420 of the South Florida Water Management District a report
2421 evaluating the mitigation costs and revenues generated by the
2422 mitigation fee.
2423 (b) No sooner than January 31, 2010, and no more frequently
2424 than every 5 years thereafter, the interagency committee shall
2425 submit to the Legislature a report recommending any needed
2426 adjustments to the mitigation fee, including the annual
2427 escalator provided for in s. 373.41492(5), to ensure that the
2428 revenue generated reflects the actual costs of the mitigation.
2429 Section 35. Subsection (7) of section 403.031, Florida
2430 Statutes, is amended, and subsections (22) and (23) are added to
2431 that section, to read:
2432 403.031 Definitions.—In construing this chapter, or rules
2433 and regulations adopted pursuant hereto, the following words,
2434 phrases, or terms, unless the context otherwise indicates, have
2435 the following meanings:
2436 (7) "Pollution" is the presence in the outdoor atmosphere
2437 or waters of the state of any substances, contaminants, noise,
2438 or manmade or human-induced impairment of air or waters or
2439 alteration of the chemical, physical, biological, or
2440 radiological integrity of air or water in quantities or at
2441 levels which are or may be potentially harmful or injurious to
2442 human health or welfare, animal or plant life, or property or
2443 which unreasonably interfere with the enjoyment of life or
2444 property, including outdoor recreation unless authorized by
2445 applicable law. Nutrients become pollution in a water body at a
2446 level determined by the department to cause in an imbalance of
2447 naturally occurring aquatic flora or fauna in that water body.
2448 (22) "First magnitude spring" means a spring that has a

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2449 median discharge of greater than or equal to 100 cubic feet per
2450 second for the period of record, as determined by the
2451 department.
2452 (23) "Second magnitude spring" means a spring that has a
2453 median discharge of 10 to 100 cubic feet per second for the
2454 period of record, as determined by the department.
2455 Section 36. Subsection (11) of section 403.061, Florida
2456 Statutes, is amended to read:
2457 403.061 Department; powers and duties.—The department shall
2458 have the power and the duty to control and prohibit pollution of
2459 air and water in accordance with the law and rules adopted and
2460 promulgated by it and, for this purpose, to:
2461 (11) Establish ambient air quality and water quality
2462 standards for the state as a whole or for any part thereof, and
2463 also standards for the abatement of excessive and unnecessary
2464 noise. The department is authorized to establish reasonable
2465 zones of mixing for discharges into waters. Water quality
2466 criteria for nutrients shall limit loadings or concentrations to
2467 those that will not cause an imbalance of naturally occurring
2468 populations of aquatic flora or fauna.
2469 (a) When a receiving body of water fails to meet a water
2470 quality standard for pollutants set forth in department rules, a
2471 steam electric generating plant discharge of pollutants that is
2472 existing or licensed under this chapter on July 1, 1984, may
2473 nevertheless be granted a mixing zone, provided that:
2474 1. The standard would not be met in the water body in the
2475 absence of the discharge;
2476 2. The discharge is in compliance with all applicable
2477 technology-based effluent limitations;

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2478 3. The discharge does not cause a measurable increase in
2479 the degree of noncompliance with the standard at the boundary of
2480 the mixing zone; and
2481 4. The discharge otherwise complies with the mixing zone
2482 provisions specified in department rules.
2483 (b) No mixing zone for point source discharges shall be
2484 permitted in Outstanding Florida Waters except for:
2485 1. Sources that have received permits from the department
2486 prior to April 1, 1982, or the date of designation, whichever is
2487 later;
2488 2. Blowdown from new power plants certified pursuant to the
2489 Florida Electrical Power Plant Siting Act;
2490 3. Discharges of water necessary for water management
2491 purposes which have been approved by the governing board of a
2492 water management district and, if required by law, by the
2493 secretary; and
2494 4. The discharge of demineralization concentrate which has
2495 been determined permittable under s. 403.0882 and which meets
2496 the specific provisions of s. 403.0882(4)(a) and (b), if the
2497 proposed discharge is clearly in the public interest.
2498 (c) The department, by rule, shall establish water quality
2499 criteria for wetlands which criteria give appropriate
2500 recognition to the water quality of such wetlands in their
2501 natural state.
2502
2503 Nothing in this act shall be construed to invalidate any
2504 existing department rule relating to mixing zones. The
2505 department shall cooperate with the Department of Highway Safety
2506 and Motor Vehicles in the development of regulations required by

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2507 s. 316.272(1).
2508 The department shall implement such programs in conjunction
2509 with its other powers and duties and shall place special
2510 emphasis on reducing and eliminating contamination that presents
2511 a threat to humans, animals or plants, or to the environment.
2512 Section 37. Section 403.0675, Florida Statutes, is created
2513 to read:
2514 403.0675 Establishment and implementation of numeric
2515 nutrient standards.—
2516 (1) The Legislature finds the following: nutrients are
2517 essential for the biological health and productivity of Florida
2518 waters; a delicate relationship exists between the concentration
2519 and loading of nutrients in a water body which reflects its
2520 health and productivity; the improper combination of nutrients
2521 with site-specific factors may cause adverse effects on water
2522 quality; when establishing numeric nutrient standards, the
2523 failure to take into account site-specific factors and ensure
2524 scientific validity may result in standards that lack adequate
2525 scientific support and cause unintended environmental and
2526 economic consequences; the total maximum daily load program is
2527 the best mechanism for establishing numeric nutrient standards
2528 for nutrient impaired water bodies and restoring nutrient
2529 impaired water bodies; and consistent with the Congressional
2530 intent expressed in the Clean Water Act, any numeric nutrient
2531 standards established pursuant to s. 303(c) of the Clean Water
2532 Act should work in concert with the total maximum daily load
2533 program and other water quality programs.
2534 (2) As provided in this section, by August 16, 2010, the
2535 Department of Environmental Protection shall submit to the

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2536 United States Environmental Protection Agency the following
2537 numeric nutrient standards in fulfillment of the Environmental
2538 Protection Agency's mandate to adopt numeric nutrient criteria
2539 under s. 303(c)(4)(B) of the Clean Water Act:
2540 (a) All site-specific numeric nutrient criteria established
2541 pursuant to subsection (5).
2542 (b) The site-specific numeric nutrient criteria
2543 methodology, planning list, and schedule developed in accordance
2544 with subsection (3).
2545 (c) The schedule for developing site-specific numeric
2546 nutrient criteria in accordance with paragraph (4) of this
2547 section.
2548
2549 The submission of these standards to the Environmental
2550 Protection Agency shall be a ministerial act that is not subject
2551 to challenge under section 120.
2552 (3) The department shall use the following methodology for
2553 developing site-specific numeric nutrient criteria for Florida
2554 streams:
2555 (a) Categorize all streams into the basins established
2556 pursuant to s. 403.067.
2557 (b) Prioritize all streams for establishing numeric
2558 nutrient criteria with highest priority given to nutrient-
2559 impaired waters, followed by unimpaired nutrient-sensitive
2560 waters, and waters that flow into nutrient-sensitive waters. The
2561 department may also consider the nutrient concentrations of the
2562 waters and level of potential anthropogenic influence on the
2563 waters.
2564 (c) Develop a planning list and schedule for adopting site-

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2565 specific numeric nutrient criteria in accordance with paragraphs
2566 (3)(a) and (b).
2567 (d) Adopt by rule site-specific numeric nutrient criteria
2568 for identified water bodies at the nutrient levels at which the
2569 water bodies will exhibit imbalances of naturally occurring
2570 populations of flora and fauna.
2571 (e) Nutrient criteria may be expressed in terms of
2572 concentration, mass loading, load allocation, or surrogate
2573 standards, such as chlorophyll-a, and may be supplemented by
2574 narrative statements.
2575 (f) For any waters identified as impaired pursuant to the
2576 department's impaired waters rule, any nutrient total maximum
2577 daily loads established in accordance with s. 403.067 shall be
2578 submitted to the Environmental Protection Agency in accordance
2579 with ss. 303(c) and 303(d) of the Clean Water Act, subject to
2580 the conditions of s. 403.067 and paragraph (d).
2581 (4) The department shall use the following methodology for
2582 developing site-specific numeric nutrient criteria for Florida
2583 lakes and springs:
2584 (a) The department shall propose for adoption by rule site-
2585 specific numeric nutrient criteria for all first and second
2586 magnitude Florida springs by January 31, 2011.
2587 (b) The department shall propose for adoption by rule site-
2588 specific numeric nutrient criteria for Florida lakes by July 31,
2589 2011.
2590 (c) Criteria developed in accordance with this paragraph
2591 shall be subject to paragraphs (3)(d)-(f) and paragraph (5)(a).
2592 (5) The following nutrient standards shall constitute site-
2593 specific numeric nutrient water quality criteria:

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2594 (a) All nutrient total maximum daily loads and associated
2595 numeric interpretations of the narrative nutrient criterion,
2596 whether total nitrogen, total phosphorus, or a surrogate
2597 nutrient standard, such as chlorophyll-a, biological demand, or
2598 specific biological metric, developed by the department and
2599 approved by the Environmental Protection Agency as of March 1,
2600 2010, subject to the requirements of s. 403.067.
2601 (b) The total nitrogen load allocations for Tampa Bay and
2602 its bay segments, as defined in the Reasonable Assurance
2603 demonstration submitted by the Nitrogen Management Consortium of
2604 Tampa Bay, as approved by the department.
2605 (c) The establishment of these standards shall not affect a
2606 person's right to challenge the standards as an existing rule
2607 pursuant to s. 120.56.
2608 (6) The site-specific numeric nutrient criteria established
2609 in subsection (5), the methodology for developing site-specific
2610 numeric nutrient criteria for Florida streams as delineated in
2611 subsection (3), the planning list and schedule developed in
2612 accordance with paragraph (3)(c), and the schedule for
2613 developing site-specific numeric nutrient criteria for Florida
2614 springs and lakes in subsection (4) prepared by the department
2615 under this subsection shall be made available for public comment
2616 prior to the department's submission of these standards to the
2617 Environmental Protection Agency, but shall not be subject to
2618 challenge under chapter 120.
2619 (7) If the Environmental Protection Agency disapproves,
2620 approves in part, or conditions its approval of the site-
2621 specific numeric nutrient criteria established in subsection
2622 (5), the methodology for developing site-specific numeric

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2623 nutrient criteria for Florida streams as delineated in paragraph
2624 (3), the planning list developed in accordance with paragraph
2625 (3)(c), or the schedule for developing site-specific numeric
2626 nutrient criteria for Florida springs and lakes in subsection
2627 (4) as satisfying s. 303(c)(4)(B) of the Clean Water Act, those
2628 numeric nutrient standards shall not be effective until ratified
2629 by the Legislature.
2630 (8) Prior to adopting additional or more stringent water
2631 quality standards or criteria applicable to manmade lakes,
2632 canals or ditches, or streams converted to canals before 1975,
2633 the Environmental Regulation Commission shall determine the
2634 aquatic life support and habitat limitations of these waters and
2635 adopt appropriate classifications or sub-classifications for
2636 them, together with appropriate designated uses based upon their
2637 physical and hydrologic characteristics. Any new standards or
2638 criteria for these waters so classified shall be based upon a
2639 determination that the standards or criteria are necessary for
2640 the control of pollution and needed to protect against adverse
2641 effects of pollution on aquatic life reasonably anticipated in
2642 these manmade or modified waters. In order to facilitate the
2643 adoption of site-specific numeric nutrient criteria for these
2644 waters, the department shall propose for adoption by rule a new
2645 designated use classification or classifications for these
2646 waters by October 31, 2010.
2647 (9) The department shall, when conducting its next
2648 triennial review of water quality criteria after the effective
2649 date of this Act, review the numeric nutrient criteria
2650 established pursuant to paragraph (5)(a) to verify compliance
2651 with paragraph (3)(d).

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2652 Section 38. Subsection (1) of section 215.619, Florida
2653 Statutes, is amended to read:
2654 215.619 Bonds for Everglades restoration.—
2655 (1) The issuance of Everglades restoration bonds to finance
2656 or refinance the cost of the acquisition and improvement of
2657 land, water areas, and related property interests and resources
2658 for the purpose of implementing the Comprehensive Everglades
2659 Restoration Plan under s. 373.470, the Lake Okeechobee Watershed
2660 Protection Plan under s. 373.4595, the Caloosahatchee River
2661 Watershed Protection Plan under s. 373.4595, the St. Lucie River
2662 Watershed Protection Plan under s. 373.4595, and the Florida
2663 Keys Area of Critical State Concern protection program under ss.
2664 380.05 and 380.0552 in order to restore and conserve natural
2665 systems through the implementation of water management projects,
2666 including wastewater management projects identified in the "Keys
2667 Wastewater Plan," dated November 2007, and submitted to the
2668 Florida House of Representatives on December 4, 2007, is
2669 authorized in accordance with s. 11(e), Art. VII of the State
2670 Constitution.
2671 (a) Everglades restoration bonds, except refunding bonds,
2672 may be issued only in fiscal years 2002-2003 through 2019-2020
2673 and may not be issued in an amount exceeding $100 million per
2674 fiscal year unless:
2675 1. ~~(a)~~ The Department of Environmental Protection has
2676 requested additional amounts in order to achieve cost savings or
2677 accelerate the purchase of land; or
2678 2. ~~(b)~~ The Legislature authorizes an additional amount of
2679 bonds not to exceed $200 and limited to $50 million per fiscal
2680 year, ~~for no more than 4 fiscal years,~~ specifically for the

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2681 purpose of funding the Florida Keys Area of Critical State
2682 Concern protection program. Proceeds from the bonds shall be
2683 managed by the Department of Environmental Protection for the
2684 purpose of entering into financial assistance agreements with
2685 local governments located in the Florida Keys Area of Critical
2686 State Concern to finance or refinance the cost of constructing
2687 sewage collection, treatment, and disposal facilities.
2688 (b) The duration of Everglades restoration bonds may not
2689 exceed 20 annual maturities~~,~~ and ~~those bonds~~ must mature by
2690 December 31, 2040. Except for refunding bonds, a series of bonds
2691 may not be issued unless an amount equal to the debt service
2692 coming due in the year of issuance has been appropriated by the
2693 Legislature. Beginning July 1, 2010, the Legislature shall
2694 analyze the ratio of the state's debt to projected revenues
2695 before authorizing the issuance of ~~prior to the authorization to~~
2696 ~~issue any~~ bonds under this section.
2697 Section 39. Subsections (2), (4), (7), and (9) of section
2698 380.0552, Florida Statutes, are amended to read:
2699 380.0552 Florida Keys Area; protection and designation as
2700 area of critical state concern.—
2701 (2) LEGISLATIVE INTENT.—It is ~~hereby declared that~~ the
2702 intent of the Legislature to ~~is~~:
2703 (a) ~~To~~ Establish a land use management system that protects
2704 the natural environment of the Florida Keys.
2705 (b) ~~To~~ Establish a land use management system that
2706 conserves and promotes the community character of the Florida
2707 Keys.
2708 (c) ~~To~~ Establish a land use management system that promotes
2709 orderly and balanced growth in accordance with the capacity of

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2710 available and planned public facilities and services.
2711 (d) ~~To~~ Provide ~~for~~ affordable housing in close proximity to
2712 places of employment in the Florida Keys.
2713 (e) ~~To~~ Establish a land use management system that promotes
2714 and supports a diverse and sound economic base.
2715 (f) ~~To~~ Protect the constitutional rights of property owners
2716 to own, use, and dispose of their real property.
2717 (g) ~~To~~ Promote coordination and efficiency among
2718 governmental agencies that have ~~with~~ permitting jurisdiction
2719 over land use activities in the Florida Keys.
2720 (h) Promote an appropriate land acquisition and protection
2721 strategy for environmentally sensitive lands within the Florida
2722 Keys.
2723 (i) Protect and improve the nearshore water quality of the
2724 Florida Keys through the construction and operation of
2725 wastewater management facilities that meet the requirements of
2726 ss. 381.0065(4)(l) and 403.086(10), as applicable.
2727 (j) Ensure that the population of the Florida Keys can be
2728 safely evacuated.
2729 (4) REMOVAL OF DESIGNATION.—
2730 (a) ~~Between July 12, 2008, and August 30, 2008, the state~~
2731 ~~land planning agency shall submit a written report to the~~
2732 ~~Administration Commission describing in detail the progress of~~
2733 ~~the Florida Keys Area toward accomplishing the tasks of the work~~
2734 ~~program as defined in paragraph (c) and providing a~~
2735 ~~recommendation as to whether substantial progress toward~~
2736 ~~accomplishing the tasks of the work program has been achieved.~~
2737 ~~Subsequent to receipt of the report, the Administration~~
2738 ~~Commission shall determine, prior to October 1, 2008, whether~~

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2739 ~~substantial progress has been achieved toward accomplishing the~~
2740 ~~tasks of the work program.~~ The designation of the Florida Keys
2741 Area as an area of critical state concern under this section may
2742 be recommended for removal upon fulfilling the legislative
2743 intent under subsection (2) and completion of all the work
2744 program tasks specified in rules of the Administration
2745 Commission ~~shall be removed October 1, 2009, unless the~~
2746 ~~Administration Commission finds, after receipt of the state land~~
2747 ~~planning agency report, that substantial progress has not been~~
2748 ~~achieved toward accomplishing the tasks of the work program~~. ~~If~~
2749 ~~the designation of the Florida Keys Area as an area of critical~~
2750 ~~state concern is removed, the Administration Commission, within~~
2751 ~~60 days after removal of the designation, shall initiate~~
2752 ~~rulemaking pursuant to chapter 120 to repeal any rules relating~~
2753 ~~to the designation of the Florida Keys Area as an area of~~
2754 ~~critical state concern. If, after receipt of the state land~~
2755 ~~planning agency's report, the Administration Commission finds~~
2756 ~~that substantial progress toward accomplishing the tasks of the~~
2757 ~~work program has not been achieved, the Administration~~
2758 ~~Commission shall provide a written report to the Monroe County~~
2759 ~~Commission within 30 days after making such finding detailing~~
2760 ~~the tasks under the work program that must be accomplished in~~
2761 ~~order for substantial progress to be achieved within the next 12~~
2762 ~~months.~~
2763 (b) Beginning November 30, 2010, the state land planning
2764 agency shall annually submit a written report to the
2765 Administration Commission describing the progress of the Florida
2766 Keys Area toward completing the work program tasks specified in
2767 commission rules. The land planning agency shall recommend

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2768 removing the Florida Keys Area from being designated as an area
2769 of critical state concern to the commission if it determines
2770 that:
2771 1. All of the work program tasks have been completed,
2772 including construction of, operation of, and connection to
2773 central wastewater management facilities pursuant to s.
2774 403.086(10) and upgrade of onsite sewage treatment and disposal
2775 systems pursuant to s. 381.0065(4)(l);
2776 2. All local comprehensive plans and land development
2777 regulations and the administration of such plans and regulations
2778 are adequate to protect the Florida Keys Area, fulfill the
2779 legislative intent specified in subsection (2), and are
2780 consistent with and further the principles guiding development;
2781 and
2782 3. A local government has adopted a resolution at a public
2783 hearing recommending the removal of the designation.
2784 ~~(b) If the designation of the Florida Keys Area as an area~~
2785 ~~of critical state concern is not removed in accordance with~~
2786 ~~paragraph (a), the state land planning agency shall submit a~~
2787 ~~written annual report to the Administration Commission on~~
2788 ~~November 1 of each year, until such time as the designation is~~
2789 ~~removed, describing the progress of the Florida Keys Area toward~~
2790 ~~accomplishing remaining tasks under the work program and~~
2791 ~~providing a recommendation as to whether substantial progress~~
2792 ~~toward accomplishing the tasks of the work program has been~~
2793 ~~achieved. The Administration Commission shall determine, within~~
2794 ~~45 days after receipt of the annual report, whether substantial~~
2795 ~~progress has been achieved toward accomplishing the remaining~~
2796 ~~tasks of the work program. The designation of the Florida Keys~~

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2797 ~~Area as an area of critical state concern under this section~~
2798 ~~shall be removed unless the Administration Commission finds that~~
2799 ~~substantial progress has not been achieved toward accomplishing~~
2800 ~~the tasks of the work program. If the designation of the Florida~~
2801 ~~Keys Area as an area of critical state concern is removed, the~~
2802 ~~Administration Commission, within 60 days after removal of the~~
2803 ~~designation, shall initiate rulemaking pursuant to chapter 120~~
2804 ~~to repeal any rules relating to the designation of the Florida~~
2805 ~~Keys Area as an area of critical state concern. If the~~
2806 ~~Administration Commission finds that substantial progress has~~
2807 ~~not been achieved, the Administration Commission shall provide~~
2808 ~~to the Monroe County Commission, within 30 days after making its~~
2809 ~~finding, a report detailing the tasks under the work program~~
2810 ~~that must be accomplished in order for substantial progress to~~
2811 ~~be achieved within the next 12 months.~~
2812 (c) After receipt of the state land planning agency report
2813 and recommendation, the Administration Commission shall
2814 determine whether the requirements have been fulfilled and may
2815 remove the designation of the Florida Keys as an area of
2816 critical state concern. If the commission removes the
2817 designation, it shall initiate rulemaking to repeal any rules
2818 relating such designation within 60 days. If, after receipt of
2819 the state land planning agency's report and recommendation, the
2820 commission finds that the requirements for recommending removal
2821 of designation have not been met, the commission shall provide a
2822 written report to the local governments within 30 days after
2823 making such a finding detailing the tasks that must be completed
2824 by the local government.
2825 ~~(c) For purposes of this subsection, the term "work~~

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2826 ~~program" means the 10-year work program as set forth in rule 28-~~
2827 ~~20.110, Florida Administrative Code, on January 1, 2006,~~
2828 ~~excluding amendments to the work program that take effect after~~
2829 ~~January 1, 2006.~~
2830 (d) The ~~determination of the~~ Administration Commission's
2831 determination concerning the removal of the designation of the
2832 Florida Keys as an area of critical state concern ~~Commission as~~
2833 ~~to whether substantial progress has been made toward~~
2834 ~~accomplishing the tasks of the work program~~ may be ~~judicially~~
2835 reviewed pursuant to chapter 120 ~~86~~. All proceedings shall be
2836 conducted by the Division of Administrative Hearings and must be
2837 initiated within 30 days after the commission issues its
2838 determination ~~in the circuit court of the judicial circuit where~~
2839 ~~the Administration Commission maintains its headquarters and~~
2840 ~~shall be initiated within 30 days after rendition of the~~
2841 ~~Administration Commission's determination~~. ~~The Administration~~
2842 ~~Commission's determination as to whether substantial progress~~
2843 ~~has been made toward accomplishing the tasks of the work program~~
2844 ~~shall be upheld if it is supported by competent and substantial~~
2845 ~~evidence and shall not be subject to administrative review under~~
2846 ~~chapter 120.~~
2847 (e) After removal of the designation of the Florida Keys as
2848 an area of critical state concern, the state land planning
2849 agency shall review proposed local comprehensive plans, and any
2850 amendments to existing comprehensive plans, which are applicable
2851 to the Florida Keys Area, the boundaries of which were described
2852 in chapter 28-29, Florida Administrative Code, as of January 1,
2853 2006, for compliance ~~with subparagraphs 1. and 2., in addition~~
2854 ~~to reviewing proposed local comprehensive plans and amendments~~

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2855 ~~for compliance~~ as defined in s. 163.3184. All procedures and
2856 penalties described in s. 163.3184 apply to the review conducted
2857 pursuant to this paragraph.
2858 ~~1. Adoption of construction schedules for wastewater~~
2859 ~~facilities improvements in the annually adopted capital~~
2860 ~~improvements element and adoption of standards for the~~
2861 ~~construction of wastewater treatment facilities which meet or~~
2862 ~~exceed the criteria of chapter 99-395, Laws of Florida.~~
2863 ~~2. Adoption of goals, objectives, and policies to protect~~
2864 ~~public safety and welfare in the event of a natural disaster by~~
2865 ~~maintaining a hurricane evacuation clearance time for permanent~~
2866 ~~residents of no more than 24 hours. The hurricane evacuation~~
2867 ~~clearance time shall be determined by a hurricane evacuation~~
2868 ~~study conducted in accordance with a professionally accepted~~
2869 ~~methodology and approved by the state land planning agency.~~
2870 (f) The Administration Commission may adopt rules or revise
2871 existing rules as necessary to administer this subsection.
2872 (7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional,
2873 and local agencies and units of government in the Florida Keys
2874 Area shall coordinate their plans and conduct their programs and
2875 regulatory activities consistent with the principles for guiding
2876 development as specified ~~set forth~~ in chapter 27F-8, Florida
2877 Administrative Code, as amended effective August 23, 1984, which
2878 ~~chapter~~ is ~~hereby~~ adopted and incorporated herein by reference.
2879 For the purposes of reviewing the consistency of the adopted
2880 plan, or any amendments to that plan, with the principles for
2881 guiding development, and any amendments to the principles, the
2882 principles shall be construed as a whole and ~~no~~ specific
2883 provisions may not ~~provision shall~~ be construed or applied in

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2884 isolation from the other provisions. However, the principles for
2885 guiding development ~~as set forth in chapter 27F-8, Florida~~
2886 ~~Administrative Code, as amended effective August 23, 1984,~~ are
2887 repealed 18 months from July 1, 1986. After repeal, ~~the~~
2888 ~~following shall be the principles with which~~ any plan amendments
2889 must be consistent with the following principles:
2890 (a) Strengthening ~~To strengthen~~ local government
2891 capabilities for managing land use and development so that local
2892 government is able to achieve these objectives without
2893 continuing ~~the continuation of~~ the area of critical state
2894 concern designation.
2895 (b) Protecting ~~To protect~~ shoreline and marine resources,
2896 including mangroves, coral reef formations, seagrass beds,
2897 wetlands, fish and wildlife, and their habitat.
2898 (c) Protecting ~~To protect~~ upland resources, tropical
2899 biological communities, freshwater wetlands, native tropical
2900 vegetation (for example, hardwood hammocks and pinelands), dune
2901 ridges and beaches, wildlife, and their habitat.
2902 (d) Ensuring ~~To ensure~~ the maximum well-being of the
2903 Florida Keys and its citizens through sound economic
2904 development.
2905 (e) Limiting ~~To limit~~ the adverse impacts of development on
2906 the quality of water throughout the Florida Keys.
2907 (f) Enhancing ~~To enhance~~ natural scenic resources,
2908 promoting ~~promote~~ the aesthetic benefits of the natural
2909 environment, and ensuring ~~ensure~~ that development is compatible
2910 with the unique historic character of the Florida Keys.
2911 (g) Protecting ~~To protect~~ the historical heritage of the
2912 Florida Keys.

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2913 (h) Protecting ~~To protect~~ the value, efficiency, cost-
2914 effectiveness, and amortized life of existing and proposed major
2915 public investments, including:
2916 1. The Florida Keys Aqueduct and water supply facilities;
2917 2. Sewage collection, treatment, and disposal facilities;
2918 3. Solid waste treatment, collection, and disposal
2919 facilities;
2920 4. Key West Naval Air Station and other military
2921 facilities;
2922 5. Transportation facilities;
2923 6. Federal parks, wildlife refuges, and marine sanctuaries;
2924 7. State parks, recreation facilities, aquatic preserves,
2925 and other publicly owned properties;
2926 8. City electric service and the Florida Keys Electric Co-
2927 op; and
2928 9. Other utilities, as appropriate.
2929 (i) Protecting and improving water quality by providing for
2930 the construction, operation, maintenance, and replacement of
2931 stormwater management facilities; central sewage collection;
2932 treatment and disposal facilities; and the installation and
2933 proper operation and maintenance of onsite sewage treatment and
2934 disposal systems.
2935 (j) Ensuring the improvement of nearshore water quality by
2936 requiring the construction and operation of wastewater
2937 management facilities that meet the requirements of s.
2938 381.0065(4)(l) and s. 403.086(10), as applicable, and by
2939 directing growth to areas served by central wastewater treatment
2940 facilities through permit allocation systems.
2941 (k) ~~(i)~~ Limiting ~~To limit~~ the adverse impacts of public

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2942 investments on the environmental resources of the Florida Keys.
2943 (l) ~~(j)~~ Making ~~To make~~ available adequate affordable housing
2944 for all sectors of the population of the Florida Keys.
2945 (m) ~~(k)~~ Providing ~~To provide~~ adequate alternatives for the
2946 protection of public safety and welfare in the event of a
2947 natural or manmade disaster and for a postdisaster
2948 reconstruction plan.
2949 (n) ~~(l)~~ Protecting ~~To protect~~ the public health, safety, and
2950 welfare of the citizens of the Florida Keys and maintain the
2951 Florida Keys as a unique Florida resource.
2952 (9) MODIFICATION TO PLANS AND REGULATIONS.—
2953 (a) Any land development regulation or element of a local
2954 comprehensive plan in the Florida Keys Area may be enacted,
2955 amended, or rescinded by a local government, but the enactment,
2956 amendment, or rescission becomes ~~shall become~~ effective only
2957 upon ~~the~~ approval ~~thereof~~ by the state land planning agency. The
2958 state land planning agency shall review the proposed change to
2959 determine if it is in compliance with the principles for guiding
2960 development specified ~~set forth~~ in chapter 27F-8, Florida
2961 Administrative Code, as amended effective August 23, 1984, and
2962 must ~~shall either~~ approve or reject the requested changes within
2963 60 days after ~~of~~ receipt ~~thereof~~. Amendments to local
2964 comprehensive plans in the Florida Keys Area must also be
2965 reviewed for compliance with the following:
2966 1. Construction schedules and detailed capital financing
2967 plans for wastewater management improvements in the annually
2968 adopted capital improvements element, and standards for the
2969 construction of wastewater treatment and disposal facilities or
2970 collection systems that meet or exceed the criteria in s.

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2971 403.086(10) for wastewater treatment and disposal facilities or
2972 s. 381.0065(4)(l) for onsite sewage treatment and disposal
2973 systems.
2974 2. Goals, objectives, and policies to protect public safety
2975 and welfare in the event of a natural disaster by maintaining a
2976 hurricane evacuation clearance time for permanent residents of
2977 no more than 24 hours. The hurricane evacuation clearance time
2978 shall be determined by a hurricane evacuation study conducted in
2979 accordance with a professionally accepted methodology and
2980 approved by the state land planning agency.
2981 (b) ~~Further,~~ The state land planning agency, after
2982 consulting with the appropriate local government, may, no more
2983 ~~often~~ than once per ~~a~~ year, recommend to the Administration
2984 Commission the enactment, amendment, or rescission of a land
2985 development regulation or element of a local comprehensive plan.
2986 Within 45 days following the receipt of such recommendation ~~by~~
2987 ~~the state land planning agency~~, the commission shall reject the
2988 recommendation, or accept it with or without modification and
2989 adopt it~~,~~ by rule, including any changes. ~~Any~~ Such local
2990 development regulation or plan must ~~shall~~ be in compliance with
2991 the principles for guiding development.
2992 Section 40. Subsection (1), paragraph (l) of subsection
2993 (4), of section 381.0065, Florida Statutes, is amended present
2994 subsection (5) is renumbered as subsection (6) and new
2995 subsections (5) and (7) are created to read:
2996 381.0065 Onsite sewage treatment and disposal systems;
2997 regulation.—
2998 (1) LEGISLATIVE INTENT.—
2999 (a) It is the intent of the Legislature that proper

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3000 management of onsite sewage treatment and disposal systems is
3001 paramount to the health, safety and welfare of the public. It is
3002 further the intent of the Legislature that the department shall
3003 administer an evaluation program to ensure the operational
3004 condition of the system, and identify any failure with the
3005 system.
3006 (b) It is the intent of the Legislature that where a
3007 publicly owned or investor-owned sewerage system is not
3008 available, the department shall issue permits for the
3009 construction, installation, modification, abandonment, or repair
3010 of onsite sewage treatment and disposal systems under conditions
3011 as described in this section and rules adopted under this
3012 section. It is further the intent of the Legislature that the
3013 installation and use of onsite sewage treatment and disposal
3014 systems not adversely affect the public health or significantly
3015 degrade the groundwater or surface water.
3016 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not
3017 construct, repair, modify, abandon, or operate an onsite sewage
3018 treatment and disposal system without first obtaining a permit
3019 approved by the department. The department may issue permits to
3020 carry out this section, but shall not make the issuance of such
3021 permits contingent upon prior approval by the Department of
3022 Environmental Protection, except that the issuance of a permit
3023 for work seaward of the coastal construction control line
3024 established under s. 161.053 shall be contingent upon receipt of
3025 any required coastal construction control line permit from the
3026 Department of Environmental Protection. A construction permit is
3027 valid for 18 months from the issuance date and may be extended
3028 by the department for one 90-day period under rules adopted by

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3029 the department. A repair permit is valid for 90 days from the
3030 date of issuance. An operating permit must be obtained prior to
3031 the use of any aerobic treatment unit or if the establishment
3032 generates commercial waste. Buildings or establishments that use
3033 an aerobic treatment unit or generate commercial waste shall be
3034 inspected by the department at least annually to assure
3035 compliance with the terms of the operating permit. The operating
3036 permit for a commercial wastewater system is valid for 1 year
3037 from the date of issuance and must be renewed annually. The
3038 operating permit for an aerobic treatment unit is valid for 2
3039 years from the date of issuance and must be renewed every 2
3040 years. If all information pertaining to the siting, location,
3041 and installation conditions or repair of an onsite sewage
3042 treatment and disposal system remains the same, a construction
3043 or repair permit for the onsite sewage treatment and disposal
3044 system may be transferred to another person, if the transferee
3045 files, within 60 days after the transfer of ownership, an
3046 amended application providing all corrected information and
3047 proof of ownership of the property. There is no fee associated
3048 with the processing of this supplemental information. A person
3049 may not contract to construct, modify, alter, repair, service,
3050 abandon, or maintain any portion of an onsite sewage treatment
3051 and disposal system without being registered under part III of
3052 chapter 489. A property owner who personally performs
3053 construction, maintenance, or repairs to a system serving his or
3054 her own owner-occupied single-family residence is exempt from
3055 registration requirements for performing such construction,
3056 maintenance, or repairs on that residence, but is subject to all
3057 permitting requirements. A municipality or political subdivision

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3058 of the state may not issue a building or plumbing permit for any
3059 building that requires the use of an onsite sewage treatment and
3060 disposal system unless the owner or builder has received a
3061 construction permit for such system from the department. A
3062 building or structure may not be occupied and a municipality,
3063 political subdivision, or any state or federal agency may not
3064 authorize occupancy until the department approves the final
3065 installation of the onsite sewage treatment and disposal system.
3066 A municipality or political subdivision of the state may not
3067 approve any change in occupancy or tenancy of a building that
3068 uses an onsite sewage treatment and disposal system until the
3069 department has reviewed the use of the system with the proposed
3070 change, approved the change, and amended the operating permit.
3071 (l) For the Florida Keys, the department shall adopt a
3072 special rule for the construction, installation, modification,
3073 operation, repair, maintenance, and performance of onsite sewage
3074 treatment and disposal systems which considers the unique soil
3075 conditions and ~~which considers~~ water table elevations,
3076 densities, and setback requirements. On lots where a setback
3077 distance of 75 feet from surface waters, saltmarsh, and
3078 buttonwood association habitat areas cannot be met, an injection
3079 well, approved and permitted by the department, may be used for
3080 disposal of effluent from onsite sewage treatment and disposal
3081 systems. The following additional requirements apply to onsite
3082 sewage treatment and disposal systems in Monroe County:
3083 1. The county, each municipality, and those special
3084 districts established for the purpose of the collection,
3085 transmission, treatment, or disposal of sewage shall ensure, in
3086 accordance with the specific schedules adopted by the

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3087 Administration Commission under s. 380.0552, the completion of
3088 onsite sewage treatment and disposal system upgrades to meet the
3089 requirements of this paragraph.
3090 2. Onsite sewage treatment and disposal systems must cease
3091 discharge by December 31, 2015, or must comply with department
3092 rules and provide the level of treatment which, on a permitted
3093 annual average basis, produces an effluent that contains no more
3094 than the following concentrations:
3095 a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
3096 b. Suspended Solids of 10 mg/l.
3097 c. Total Nitrogen, expressed as N, of 10 mg/l.
3098 d. Total Phosphorus, expressed as P, of 1 mg/l.
3099
3100 In addition, onsite sewage treatment and disposal systems
3101 discharging to an injection well must provide basic disinfection
3102 as defined by department rule.
3103 3. On or after July 1, 2010, all new, modified, and
3104 repaired onsite sewage treatment and disposal systems must
3105 provide the level of treatment described in subparagraph 2.
3106 However, in areas scheduled to be served by central sewer by
3107 December 31, 2015, if the property owner has paid a connection
3108 fee or assessment for connection to the central sewer system, an
3109 onsite sewage treatment and disposal system may be repaired to
3110 the following minimum standards:
3111 a. The existing tanks must be pumped and inspected and
3112 certified as being watertight and free of defects in accordance
3113 with department rule; and
3114 b. A sand-lined drainfield or injection well in accordance
3115 with department rule must be installed.

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3116 4. Onsite sewage treatment and disposal systems must be
3117 monitored for total nitrogen and total phosphorus concentrations
3118 as required by department rule.
3119 5. The department shall enforce proper installation,
3120 operation, and maintenance of onsite sewage treatment and
3121 disposal systems pursuant to this chapter, including ensuring
3122 that the appropriate level of treatment described in
3123 subparagraph 2. is met.
3124 6. The county, each municipality, and those special
3125 districts established for the purpose of collection,
3126 transmission, treatment, or disposal of sewage may require
3127 connecting onsite sewage treatment and disposal systems to a
3128 central sewer system within 30 days after notice of availability
3129 of service.
3130 (5) EVALUATION AND ASSESSMENT.—
3131 (a) Beginning January 1, 2011, the department shall
3132 administer an onsite sewage treatment and disposal system
3133 evaluation program for the purpose of assessing the fundamental
3134 operational condition of systems and identifying any failures
3135 within the systems. The department shall adopt rules
3136 implementing the program standards, procedures, and
3137 requirements, including, but not limited to, a schedule for a 5-
3138 year evaluation cycle, requirements for the pump-out of a system
3139 or repair of a failing system, enforcement procedures for
3140 failure of a system owner to obtain an evaluation of the system,
3141 and failure of a contractor to timely submit evaluation results
3142 to the department and the system owner. The department shall
3143 ensure statewide implementation of the evaluation and assessment
3144 program by January 1, 2016.

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3145 (b) Owners of an onsite sewage treatment and disposal
3146 system, excluding a system that is required to obtain an
3147 operating permit, shall have the system evaluated at least once
3148 every 5 years to assess the fundamental operational condition of
3149 the system, and identify any failure within the system.
3150 (c) All evaluation procedures must be documented and
3151 nothing in this subsection limits the amount of detail an
3152 evaluator may provide at his or her professional discretion. The
3153 evaluation must include a tank and drainfield evaluation, a
3154 written assessment of the condition of the system, and, if
3155 necessary, a disclosure statement pursuant to the department's
3156 procedure.
3157 (d) Systems being evaluated are required to meet at least a
3158 12-inch separation from the bottom of the drainfield to the
3159 wettest season water table elevation as defined by department
3160 rule. All drainfield repairs, replacements or modifications
3161 shall meet a 24-inch separation from the bottom of the
3162 drainfield to the wettest season water table elevation as
3163 defined by department rule. Where a system repair or
3164 modification to a site developed prior to January 1, 1983,
3165 exceeds the lot size requirements for installation, or will not
3166 meet the required well setbacks, a system meeting the maximum
3167 separation from the bottom of the drainfield to the wettest
3168 season water table possible shall be installed. In no case shall
3169 well setbacks be less than those required of the existing system
3170 being repaired or modified.
3171 (e) If documentation of a tank pump-out or a permitted new
3172 installation, repair, or modification of the system within the
3173 previous 3 years is provided, and states the capacity of the

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3174 tank and indicates that the condition of the tank is not a
3175 sanitary or public health nuisance pursuant to department rule,
3176 a pump-out of the system is not required.
3177 (f) Owners are responsible for paying the cost of any
3178 required pump-out, repair or replacement pursuant to department
3179 rule and may not request partial evaluation or the omission of
3180 portions of the evaluation.
3181 (g) Each evaluation or pump-out required under this
3182 subsection must be performed by a septic tank contractor or
3183 master septic tank contractor registered under part III of
3184 chapter 489, a professional engineer with wastewater treatment
3185 system experience licensed pursuant to chapter 471, or an
3186 environmental health professional certified under chapter 381 in
3187 the area of onsite sewage treatment and disposal system
3188 evaluation.
3189 (h) The evaluation report fee collected pursuant to s.
3190 381.0066(2)(b) shall be remitted to the department by the
3191 evaluator at the time the report is submitted.
3192 (i) Prior to any evaluation deadline, the department must
3193 provide a minimum of 60 days' notice to owners that their
3194 systems must be evaluated by that deadline. The department may
3195 include a copy of any homeowner educational materials developed
3196 pursuant to this section that provides information on the proper
3197 maintenance of onsite sewage treatment and disposal systems.
3198 (6) ~~(5)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—
3199 (a) Department personnel who have reason to believe
3200 noncompliance exists, may at any reasonable time, enter the
3201 premises permitted under ss. 381.0065-381.0066, or the business
3202 premises of any septic tank contractor or master septic tank

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3203 contractor registered under part III of chapter 489, or any
3204 premises that the department has reason to believe is being
3205 operated or maintained not in compliance, to determine
3206 compliance with the provisions of this section, part I of
3207 chapter 386, or part III of chapter 489 or rules or standards
3208 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
3209 part III of chapter 489. As used in this paragraph, the term
3210 "premises" does not include a residence or private building. To
3211 gain entry to a residence or private building, the department
3212 must obtain permission from the owner or occupant or secure an
3213 inspection warrant from a court of competent jurisdiction.
3214 (b)1. The department may issue citations that may contain
3215 an order of correction or an order to pay a fine, or both, for
3216 violations of ss. 381.0065-381.0067, part I of chapter 386, or
3217 part III of chapter 489 or the rules adopted by the department,
3218 when a violation of these sections or rules is enforceable by an
3219 administrative or civil remedy, or when a violation of these
3220 sections or rules is a misdemeanor of the second degree. A
3221 citation issued under ss. 381.0065-381.0067, part I of chapter
3222 386, or part III of chapter 489 constitutes a notice of proposed
3223 agency action.
3224 2. A citation must be in writing and must describe the
3225 particular nature of the violation, including specific reference
3226 to the provisions of law or rule allegedly violated.
3227 3. The fines imposed by a citation issued by the department
3228 may not exceed $500 for each violation. Each day the violation
3229 exists constitutes a separate violation for which a citation may
3230 be issued.
3231 4. The department shall inform the recipient, by written

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3232 notice pursuant to ss. 120.569 and 120.57, of the right to an
3233 administrative hearing to contest the citation within 21 days
3234 after the date the citation is received. The citation must
3235 contain a conspicuous statement that if the recipient fails to
3236 pay the fine within the time allowed, or fails to appear to
3237 contest the citation after having requested a hearing, the
3238 recipient has waived the recipient's right to contest the
3239 citation and must pay an amount up to the maximum fine.
3240 5. The department may reduce or waive the fine imposed by
3241 the citation. In determining whether to reduce or waive the
3242 fine, the department must consider the gravity of the violation,
3243 the person's attempts at correcting the violation, and the
3244 person's history of previous violations including violations for
3245 which enforcement actions were taken under ss. 381.0065-
3246 381.0067, part I of chapter 386, part III of chapter 489, or
3247 other provisions of law or rule.
3248 6. Any person who willfully refuses to sign and accept a
3249 citation issued by the department commits a misdemeanor of the
3250 second degree, punishable as provided in s. 775.082 or s.
3251 775.083.
3252 7. The department, pursuant to ss. 381.0065-381.0067, part
3253 I of chapter 386, or part III of chapter 489, shall deposit any
3254 fines it collects in the county health department trust fund for
3255 use in providing services specified in those sections.
3256 8. This section provides an alternative means of enforcing
3257 ss. 381.0065-381.0067, part I of chapter 386, and part III of
3258 chapter 489. This section does not prohibit the department from
3259 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
3260 III of chapter 489, or its rules, by any other means. However,

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3261 the department must elect to use only a single method of
3262 enforcement for each violation.
3263 (7) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective
3264 January 1, 2016, the land application of septage from onsite
3265 sewage treatment and disposal systems is prohibited. The
3266 department, in consultation with the Department of Environmental
3267 Protection shall initiate rulemaking and develop enforcement
3268 mechanisms and penalties to implement the provisions of this
3269 subsection.
3270 Section 41. Section 381.00656, Florida Statutes, is created
3271 to read:
3272 381.00656 . Grant program for repair of onsite sewage
3273 treatment disposal systems.— Effective January 1, 2012, the
3274 department shall administer a grant program to assist owners of
3275 onsite sewage treatment and disposal systems identified pursuant
3276 to s. 381.0065 or the rules adopted there under. A grant under
3277 the program may be awarded to an owner only for the purpose of
3278 inspecting, pumping, repairing or replacing a system serving a
3279 single-family residence occupied by an owner with a family
3280 income of less than or equal to 133 percent of the federal
3281 poverty level at the time of application. The department may
3282 prioritize applications for an award of grant funds based upon
3283 the severity of a system's failure, its relative environmental
3284 impact, the income of the family, or any combination thereof.
3285 The department shall adopt rules establishing the grant
3286 application and award process, including an application form.
3287 The department shall seek to make grants in each fiscal year
3288 equal to the total amount of grant funds available, with any
3289 excess funds used for grant awards in subsequent fiscal years.

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3290 Section 42. Subsection (2) of section 381.0066, Florida
3291 Statutes, is amended to read:
3292 381.0066 Onsite sewage treatment and disposal systems;
3293 fees.—
3294 (2) The minimum fees in the following fee schedule apply
3295 until changed by rule by the department within the following
3296 limits:
3297 (a) Application review, permit issuance, or system
3298 inspection, including repair of a subsurface, mound, filled, or
3299 other alternative system or permitting of an abandoned system: a
3300 fee of not less than $25, or more than $125.
3301 (b) A 5-year evaluation report submitted pursuant to s.
3302 381.0065(5): a fee not less than $15, or more than $30. At least
3303 $1 and no more than $5 collected pursuant to this paragraph
3304 shall be used to fund a grant program established under s.
3305 381.00656.
3306 (c) ~~(b)~~ Site evaluation, site reevaluation, evaluation of a
3307 system previously in use, or a per annum septage disposal site
3308 evaluation: a fee of not less than $40, or more than $115.
3309 (d) ~~(c)~~ Biennial Operating permit for aerobic treatment
3310 units or performance-based treatment systems: a fee of not more
3311 than $100.
3312 (e) ~~(d)~~ Annual operating permit for systems located in areas
3313 zoned for industrial manufacturing or equivalent uses or where
3314 the system is expected to receive wastewater which is not
3315 domestic in nature: a fee of not less than $150, or more than
3316 $300.
3317 (f) ~~(e)~~ Innovative technology: a fee not to exceed $25,000.
3318 (g) ~~(f)~~ Septage disposal service, septage stabilization

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3319 facility, portable or temporary toilet service, tank
3320 manufacturer inspection: a fee of not less than $25, or more
3321 than $200, per year.
3322 (h) ~~(g)~~ Application for variance: a fee of not less than
3323 $150, or more than $300.
3324 (i) ~~(h)~~ Annual operating permit for waterless, incinerating,
3325 or organic waste composting toilets: a fee of not less than $50,
3326 or more than $150.
3327 (j) ~~(i)~~ Aerobic treatment unit or performance-based
3328 treatment system maintenance entity permit: a fee of not less
3329 than $25, or more than $150, per year.
3330 (k) ~~(j)~~ Reinspection fee per visit for site inspection after
3331 system construction approval or for noncompliant system
3332 installation per site visit: a fee of not less than $25, or more
3333 than $100.
3334 (l) ~~(k)~~ Research: An additional $5 fee shall be added to
3335 each new system construction permit issued to be used to fund
3336 onsite sewage treatment and disposal system research,
3337 demonstration, and training projects. Five dollars from any
3338 repair permit fee collected under this section shall be used for
3339 funding the hands-on training centers described in s.
3340 381.0065(3)(j).
3341 (m) ~~(l)~~ Annual operating permit, including annual inspection
3342 and any required sampling and laboratory analysis of effluent,
3343 for an engineer-designed performance-based system: a fee of not
3344 less than $150, or more than $300.
3345
3346 On or before January 1, 2011, the Surgeon General, after
3347 consultation with the Revenue Estimating Conference, shall

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3348 determine a revenue neutral fee schedule for services provided
3349 pursuant to s. 381.0065(5) within the parameters set in
3350 paragraph (b). Such determination is not subject to the
3351 provisions of chapter 120.
3352
3353 The funds collected pursuant to this subsection must be
3354 deposited in a trust fund administered by the department, to be
3355 used for the purposes stated in this section and ss. 381.0065
3356 and 381.00655.
3357 Section 43. Subsection (9) of section 403.086, Florida
3358 Statutes, is amended, and subsections (10) and (11) are added to
3359 that section, to read:
3360 403.086 Sewage disposal facilities; advanced and secondary
3361 waste treatment.—
3362 (9) The Legislature finds that the discharge of domestic
3363 wastewater through ocean outfalls wastes valuable water supplies
3364 that should be reclaimed for beneficial purposes to meet public
3365 and natural systems demands. The Legislature also finds that
3366 discharge of domestic wastewater through ocean outfalls
3367 compromises the coastal environment, quality of life, and local
3368 economies that depend on those resources. The Legislature
3369 declares that more stringent treatment and management
3370 requirements for such domestic wastewater and the subsequent,
3371 timely elimination of ocean outfalls as a primary means of
3372 domestic wastewater discharge are in the public interest.
3373 (a) The construction of new ocean outfalls for domestic
3374 wastewater discharge and the expansion of existing ocean
3375 outfalls for this purpose, along with associated pumping and
3376 piping systems, are prohibited. Each domestic wastewater ocean

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3377 outfall shall be limited to the discharge capacity specified in
3378 the department permit authorizing the outfall in effect on July
3379 1, 2008, which discharge capacity shall not be increased.
3380 Maintenance of existing, department-authorized domestic
3381 wastewater ocean outfalls and associated pumping and piping
3382 systems is allowed, subject to the requirements of this section.
3383 The department is directed to work with the United States
3384 Environmental Protection Agency to ensure that the requirements
3385 of this subsection are implemented consistently for all domestic
3386 wastewater facilities in Florida which discharge through ocean
3387 outfalls.
3388 (b) The discharge of domestic wastewater through ocean
3389 outfalls shall meet advanced wastewater treatment and management
3390 requirements no later than December 31, 2018. For purposes of
3391 this subsection, the term "advanced wastewater treatment and
3392 management requirements" means the advanced waste treatment
3393 requirements set forth in subsection (4), a reduction in outfall
3394 baseline loadings of total nitrogen and total phosphorus which
3395 is equivalent to that which would be achieved by the advanced
3396 waste treatment requirements in subsection (4), or a reduction
3397 in cumulative outfall loadings of total nitrogen and total
3398 phosphorus occurring between December 31, 2008, and December 31,
3399 2025, which is equivalent to that which would be achieved if the
3400 advanced waste treatment requirements in subsection (4) were
3401 fully implemented beginning December 31, 2018, and continued
3402 through December 31, 2025. The department shall establish the
3403 average baseline loadings of total nitrogen and total phosphorus
3404 for each outfall using monitoring data available for calendar
3405 years 2003 through 2007 and shall establish required loading

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3406 reductions based on this baseline. The baseline loadings and
3407 required loading reductions of total nitrogen and total
3408 phosphorus shall be expressed as an average annual daily loading
3409 value. The advanced wastewater treatment and management
3410 requirements of this paragraph shall be deemed to be met for any
3411 domestic wastewater facility discharging through an ocean
3412 outfall on July 1, 2008, which has installed no later than
3413 December 31, 2018, a fully operational reuse system comprising
3414 100 percent of the facility's annual average daily flow for
3415 reuse activities authorized by the department.
3416 (c) Each domestic wastewater facility that discharges
3417 through an ocean outfall on July 1, 2008, shall install a
3418 functioning reuse system no later than December 31, 2025. For
3419 purposes of this subsection, a "functioning reuse system" means
3420 an environmentally, economically, and technically feasible
3421 system that provides a minimum of 60 percent of the facility's
3422 actual flow on an annual basis for irrigation of public access
3423 areas, residential properties, or agricultural crops; aquifer
3424 recharge; groundwater recharge; industrial cooling; or other
3425 acceptable reuse purposes authorized by the department. For
3426 purposes of this subsection, the term "facility's actual flow on
3427 an annual basis" means the annual average flow of domestic
3428 wastewater discharging through the facility's ocean outfall, as
3429 determined by the department, using monitoring data available
3430 for calendar years 2003 through 2007. Flows diverted ~~Diversion~~
3431 ~~of flows~~ from ~~these~~ facilities to other facilities that provide
3432 100 percent reuse of the diverted flows prior to December 31,
3433 2025, shall be considered to contribute to meeting the 60
3434 percent ~~60-percent~~ reuse requirement. For utilities operating

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3435 more than one outfall, the reuse requirement can be met if the
3436 combined actual reuse flows from facilities served by the
3437 outfalls is at least 60 percent of the sum of the total actual
3438 flows from the ~~these~~ facilities, including flows diverted to
3439 other facilities for 100 percent reuse prior to December 31,
3440 2025. In the event treatment in addition to the advanced
3441 wastewater treatment and management requirements described in
3442 paragraph (b) is needed in order to support a functioning reuse
3443 system, such treatment shall be fully operational no later than
3444 December 31, 2025.
3445 (d) The discharge of domestic wastewater through ocean
3446 outfalls is prohibited after December 31, 2025, except as a
3447 backup discharge that is part of a functioning reuse system
3448 authorized by the department as provided for in paragraph (c). A
3449 backup discharge may occur only during periods of reduced demand
3450 for reclaimed water in the reuse system, such as periods of wet
3451 weather, and shall comply with the advanced wastewater treatment
3452 and management requirements of paragraph (b).
3453 (e) The holder of a department permit authorizing the
3454 discharge of domestic wastewater through an ocean outfall as of
3455 July 1, 2008, shall submit to the secretary of the department
3456 the following:
3457 1. A detailed plan to meet the requirements of this
3458 subsection, including an identification of all land acquisition
3459 and facilities necessary to provide for reuse of the domestic
3460 wastewater; an analysis of the costs to meet the requirements;
3461 and a financing plan for meeting the requirements, including
3462 identifying any actions necessary to implement the financing
3463 plan, such as bond issuance or other borrowing, assessments,

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3464 rate increases, fees, other charges, or other financing
3465 mechanisms. The plan shall include a detailed schedule for the
3466 completion of all necessary actions and shall be accompanied by
3467 supporting data and other documentation. The plan shall be
3468 submitted no later than July 1, 2013.
3469 2. No later than July 1, 2016, an update of the plan
3470 required in subparagraph 1. documenting any refinements or
3471 changes in the costs, actions, or financing necessary to
3472 eliminate the ocean outfall discharge in accordance with this
3473 subsection or a written statement that the plan is current and
3474 accurate.
3475 (f) By December 31, 2009, and by December 31 every 5 years
3476 thereafter, the holder of a department permit authorizing the
3477 discharge of domestic wastewater through an ocean outfall shall
3478 submit to the secretary of the department a report summarizing
3479 the actions accomplished to date and the actions remaining and
3480 proposed to meet the requirements of this subsection, including
3481 progress toward meeting the specific deadlines set forth in
3482 paragraphs (b) through (e). The report shall include the
3483 detailed schedule for and status of the evaluation of reuse and
3484 disposal options, preparation of preliminary design reports,
3485 preparation and submittal of permit applications, construction
3486 initiation, construction progress milestones, construction
3487 completion, initiation of operation, and continuing operation
3488 and maintenance.
3489 (g) No later than July 1, 2010, and by July 1 every 5 years
3490 thereafter, the department shall submit a report to the
3491 Governor, the President of the Senate, and the Speaker of the
3492 House of Representatives on the implementation of this

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3493 subsection. The report shall summarize progress to date,
3494 including the increased amount of reclaimed water provided and
3495 potable water offsets achieved, and identify any obstacles to
3496 continued progress, including all instances of substantial
3497 noncompliance.
3498 (h) By February 1, 2012, the department shall submit a
3499 report to the Governor and Legislature detailing the results and
3500 recommendations from phases 1 through 3 of its ongoing study on
3501 reclaimed water use.
3502 (i) ~~(h)~~ The renewal of each permit that authorizes the
3503 discharge of domestic wastewater through an ocean outfall as of
3504 July 1, 2008, shall be accompanied by an order in accordance
3505 with s. 403.088(2)(e) and (f) which establishes an enforceable
3506 compliance schedule consistent with the requirements of this
3507 subsection.
3508 (j) An entity that diverts wastewater flow from a receiving
3509 facility that discharges domestic wastewater through an ocean
3510 outfall must meet the 60 percent reuse requirement of paragraph
3511 (c). Reuse by the diverting entity of the diverted flows shall
3512 be credited to the diverting entity. The diverted flow shall
3513 also be correspondingly deducted from the receiving facility's
3514 actual flow on an annual basis from which the required reuse is
3515 calculated pursuant to paragraph (c) and the receiving
3516 facility's reuse requirement shall be recalculated accordingly.
3517 (10) The Legislature finds that the discharge of
3518 inadequately treated and managed domestic wastewater from dozens
3519 of small wastewater facilities and thousands of septic tanks and
3520 other onsite systems in the Florida Keys compromises the quality
3521 of the coastal environment, including nearshore and offshore

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3522 waters, and threatens the quality of life and local economies
3523 that depend on those resources. The Legislature also finds that
3524 the only practical and cost-effective way to fundamentally
3525 improve wastewater management in the Florida Keys is for the
3526 local governments in Monroe County, including those special
3527 districts established for the purpose of collection,
3528 transmission, treatment, or disposal of sewage, to timely
3529 complete the wastewater or sewage treatment and disposal
3530 facilities initiated under the work program of Administration
3531 Commission rule 28-20, Florida Administrative Code, and the
3532 Monroe County Sanitary Master Wastewater Plan, dated June 2000.
3533 The Legislature therefore declares that the construction and
3534 operation of comprehensive central wastewater systems in
3535 accordance with this subsection is in the public interest. To
3536 give effect to those findings, the requirements of this
3537 subsection apply to all domestic wastewater facilities in Monroe
3538 County, including privately owned facilities, unless otherwise
3539 provided under this subsection.
3540 (a) The discharge of domestic wastewater into surface
3541 waters is prohibited.
3542 (b) Monroe County, each municipality, and those special
3543 districts established for the purpose of collection,
3544 transmission, treatment, or disposal of sewage in Monroe County
3545 shall complete the wastewater collection, treatment, and
3546 disposal facilities within its jurisdiction designated as hot
3547 spots in the Monroe County Sanitary Master Wastewater Plan,
3548 dated June 2000, specifically listed in Exhibits 6-1 through 6-3
3549 of Chapter 6 of the plan and mapped in Exhibit F-1 of Appendix F
3550 of the plan. The required facilities and connections, and any

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3551 additional facilities or other adjustments required by rules
3552 adopted by the Administration Commission under s. 380.0552, must
3553 be completed by December 31, 2015, pursuant to specific
3554 schedules established by the commission. Domestic wastewater
3555 facilities located outside local government and special district
3556 service areas must meet the treatment and disposal requirements
3557 of this subsection by December 31, 2015.
3558 (c) After December 31, 2015, all new or expanded domestic
3559 wastewater discharges must comply with the treatment and
3560 disposal requirements of this subsection and department rules.
3561 (d) Wastewater treatment facilities having design
3562 capacities:
3563 1. Greater than or equal to 100,000 gallons per day must
3564 provide basic disinfection as defined by department rule and the
3565 level of treatment which, on a permitted annual average basis,
3566 produces an effluent that contains no more than the following
3567 concentrations:
3568 a. Biochemical Oxygen Demand (CBOD5) of 5 mg/l.
3569 b. Suspended Solids of 5 mg/l.
3570 c. Total Nitrogen, expressed as N, of 3 mg/l.
3571 d. Total Phosphorus, expressed as P, of 1 mg/l.
3572 2. Less than 100,000 gallons per day must provide basic
3573 disinfection as defined by department rule and the level of
3574 treatment which, on a permitted annual average basis, produces
3575 an effluent that contains no more than the following
3576 concentrations:
3577 a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
3578 b. Suspended Solids of 10 mg/l.
3579 c. Total Nitrogen, expressed as N, of 10 mg/l.

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3580 d. Total Phosphorus, expressed as P, of 1 mg/l.
3581 (e) Class V injection wells, as defined by department or
3582 Department of Health rule, must meet the following requirements
3583 and otherwise comply with department or Department of Health
3584 rules, as applicable:
3585 1. If the design capacity of the facility is less than 1
3586 million gallons per day, the injection well must be at least 90
3587 feet deep and cased to a minimum depth of 60 feet or to such
3588 greater cased depth and total well depth as may be required by
3589 department rule.
3590 2. Except as provided in subparagraph 3. for backup wells,
3591 if the design capacity of the facility is equal to or greater
3592 than 1 million gallons per day, each primary injection well must
3593 be cased to a minimum depth of 2,000 feet or to such greater
3594 depth as may be required by department rule.
3595 3. If an injection well is used as a backup to a primary
3596 injection well, the following conditions apply:
3597 a. The backup well may be used only when the primary
3598 injection well is out of service because of equipment failure,
3599 power failure, or the need for mechanical integrity testing or
3600 repair;
3601 b. The backup well may not be used for more than a total of
3602 500 hours during any 5-year period unless specifically
3603 authorized in writing by the department;
3604 c. The backup well must be at least 90 feet deep and cased
3605 to a minimum depth of 60 feet, or to such greater cased depth
3606 and total well depth as may be required by department rule; and
3607 d. Fluid injected into the backup well must meet the
3608 requirements of paragraph (d).

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3609 (f) The requirements of paragraphs (d) and (e) do not apply
3610 to:
3611 1. Class I injection wells as defined by department rule,
3612 including any authorized mechanical integrity tests;
3613 2. Authorized mechanical integrity tests associated with
3614 Class V wells as defined by department rule; or
3615 3. The following types of reuse systems authorized by
3616 department rule:
3617 a. Slow-rate land application systems;
3618 b. Industrial uses of reclaimed water; and
3619 c. Use of reclaimed water for toilet flushing, fire
3620 protection, vehicle washing, construction dust control, and
3621 decorative water features.
3622
3623 However, disposal systems serving as backups to reuse
3624 systems must comply with the other provisions of this
3625 subsection.
3626 (g) For wastewater treatment facilities in operation as of
3627 July 1, 2010, which are located within areas to be served by
3628 Monroe County, municipalities in Monroe County, or those special
3629 districts established for the purpose of collection,
3630 transmission, treatment, or disposal of sewage but which are
3631 owned by other entities, the requirements of paragraphs (d) and
3632 (e) do not apply until January 1, 2016. Wastewater operating
3633 permits issued pursuant to this chapter and in effect for these
3634 facilities as of June 30, 2010, are extended until December 31,
3635 2015, or until the facility is connected to a local government
3636 central wastewater system, whichever occurs first. Wastewater
3637 treatment facilities in operation after December 31, 2015, must

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3638 comply with the treatment and disposal requirements of this
3639 subsection and department rules.
3640 (h) If it is demonstrated that a discharge, even if the
3641 discharge is otherwise in compliance with this subsection, will
3642 cause or contribute to a violation of state water quality
3643 standards, the department shall:
3644 1. Require more stringent effluent limitations;
3645 2. Order the point or method of discharge changed;
3646 3. Limit the duration or volume of the discharge; or
3647 4. Prohibit the discharge.
3648 (i) All sewage treatment facilities must monitor effluent
3649 for total nitrogen and total phosphorus concentration as
3650 required by department rule.
3651 (j) The department shall require the levels of operator
3652 certification and staffing necessary to ensure proper operation
3653 and maintenance of sewage facilities.
3654 (k) The department may adopt rules necessary to carry out
3655 this subsection.
3656 (l) The county, each municipality, and those special
3657 districts established for the purpose of collection,
3658 transmission, treatment, or disposal of sewage may require
3659 connecting wastewater treatment facilities owned by other
3660 entities to a central sewer system within 30 days after notice
3661 of availability of service.
3662 Section 44. Section 4 of chapter 99-395, Law of Florida, as
3663 amended by section 6 of chapter 2006-223, Law of Florida;
3664 section 5 of chapter 99-395, Law of Florida; and section 6 of
3665 chapter 99-395, Law of Florida, as amended by section 1 of
3666 chapter 2001-337, and section 1 of chapter 2004-455, Law of

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3667 Florida, are repealed.
3668 Section 45. Subsection (2) of section 403.1835, Florida
3669 Statutes, is reordered and amended, and subsections (3) and (10)
3670 of that section are amended, to read:
3671 403.1835 Water pollution control financial assistance.—
3672 (2) As used in ~~For the purposes of~~ this section and s.
3673 403.1837, the term:
3674 (c) ~~(a)~~ "Local governmental agencies" refers to any
3675 municipality, county, district, or authority, or any agency
3676 thereof, or a combination of two or more of the foregoing,
3677 acting jointly in connection with a project having jurisdiction
3678 over collection, transmission, treatment, or disposal of sewage,
3679 industrial wastes, stormwater, or other wastes and includes a
3680 district or authority whose ~~the~~ principal responsibility ~~of~~
3681 ~~which~~ is to provide airport, industrial or research park, or
3682 port facilities to the public.
3683 (a) ~~(b)~~ "Bonds" means bonds, certificates, or other
3684 obligations of indebtedness issued by the ~~Florida Water~~
3685 ~~Pollution Control Financing~~ corporation under this section and
3686 s. 403.1837.
3687 (b) ~~(c)~~ "Corporation" means the Florida Water Pollution
3688 Control Financing Corporation created under s. 403.1837.
3689 (3) The department may provide financial assistance through
3690 any program authorized under 33 U.S.C. s. 1383 ~~s.603 of the~~
3691 ~~Federal Water Pollution Control Act (Clean Water Act), Pub. L.~~
3692 ~~No. 92-500~~, as amended, including, but not limited to, making
3693 grants and loans, providing loan guarantees, purchasing loan
3694 insurance or other credit enhancements, and buying or
3695 refinancing local debt. This financial assistance must be

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3696 administered in accordance with this section and applicable
3697 federal authorities. ~~The department shall administer all~~
3698 ~~programs operated from funds secured through the activities of~~
3699 ~~the Florida Water Pollution Control Financing corporation under~~
3700 ~~s. 403.1837, to fulfill the purposes of this section.~~
3701 (a) The department may make or request the corporation to
3702 make loans to local government agencies, which ~~agencies~~ may
3703 pledge any revenue available to them to repay any funds
3704 borrowed.
3705 (b) The department may make or request the corporation to
3706 make loans, grants, and deposits to other entities eligible to
3707 participate in the financial assistance programs authorized
3708 under the Federal Water Pollution Control Act, or as a result of
3709 other federal action, which ~~entities~~ may pledge any revenue
3710 available to them to repay any funds borrowed. Notwithstanding
3711 s. 17.57, the department may make deposits to financial
3712 institutions that ~~which~~ earn less than the prevailing rate for
3713 United States Treasury securities that have ~~with~~ corresponding
3714 maturities for the purpose of enabling such financial
3715 institutions to make below-market interest rate loans to
3716 entities qualified to receive loans under this section and the
3717 rules of the department.
3718 (c) The department shall administer financial assistance so
3719 that at least 15 percent of the funding made available each year
3720 under this section is reserved for use by small communities
3721 during the year it is reserved.
3722 (d) The department may make grants to financially
3723 disadvantaged small communities, as defined in s. 403.1838,
3724 using funds made available from grant allocations on loans

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3725 authorized under subsection (4). The grants must be administered
3726 in accordance with s. 403.1838.
3727 (10) The department may adopt rules regarding program
3728 administration; project eligibilities and priorities, including
3729 the development and management of project priority lists;
3730 financial assistance application requirements associated with
3731 planning, design, construction, and implementation activities,
3732 including environmental and engineering requirements; financial
3733 assistance agreement conditions; disbursement and repayment
3734 provisions; auditing provisions; program exceptions; the
3735 procedural and contractual relationship between the department
3736 and the ~~Florida Water Pollution Control Financing~~ corporation
3737 under s. 403.1837; and other provisions consistent with the
3738 purposes of this section.
3739 Section 46. Section 403.1837, Florida Statutes, is amended
3740 to read:
3741 403.1837 Florida Water Pollution Control Financing
3742 Corporation.—
3743 (1) The Florida Water Pollution Control Financing
3744 Corporation is created as a nonprofit public-benefit corporation
3745 for the purpose of financing or refinancing the costs of ~~water~~
3746 ~~pollution control~~ projects and activities described in ss. ~~s.~~
3747 403.1835 and 403.8532. The projects and activities described in
3748 those sections ~~that section are found to~~ constitute a public
3749 governmental purpose; are ~~be~~ necessary for the health, safety,
3750 and welfare of all residents; and include legislatively approved
3751 fixed capital outlay projects. Fulfilling ~~The fulfillment of~~ the
3752 purposes of the corporation promotes the health, safety, and
3753 welfare of the people of the state and serves essential

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3754 governmental functions and a paramount public purpose. The
3755 activities of the corporation are specifically limited to
3756 assisting the department in implementing financing activities to
3757 provide funding for the programs authorized in ss. ~~s.~~ 403.1835
3758 and 403.8532. All other activities relating to the purposes for
3759 which the corporation raises funds are the responsibility of the
3760 department, including, but not limited to, development of
3761 program criteria, review of applications for financial
3762 assistance, decisions relating to the number and amount of loans
3763 or other financial assistance to be provided, and enforcement of
3764 the terms of any financial assistance agreements provided
3765 through funds raised by the corporation. The corporation shall
3766 terminate upon fulfilling ~~fulfillment of~~ the purposes of this
3767 section.
3768 (2) The corporation shall be governed by a board of
3769 directors consisting of the Governor's Budget Director or ~~the~~
3770 ~~budget director's~~ designee, the Chief Financial Officer or ~~the~~
3771 ~~Chief Financial Officer's~~ designee, and the Secretary of
3772 Environmental Protection or ~~the secretary's~~ designee. The
3773 executive director of the State Board of Administration shall be
3774 the chief executive officer of the corporation; shall direct and
3775 supervise the administrative affairs of the corporation; and
3776 shall control, direct, and supervise operation of the
3777 corporation. The corporation shall have such other officers as
3778 may be determined by the board of directors.
3779 (3) The corporation shall have all the powers of a
3780 corporate body under the laws of the state, consistent ~~to the~~
3781 ~~extent not inconsistent~~ with ~~or restricted by~~ this section,
3782 including, but not limited to, the power to:

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3783 (a) Adopt, amend, and repeal bylaws consistent ~~not~~
3784 ~~inconsistent~~ with this section.
3785 (b) Sue and be sued.
3786 (c) Adopt and use a common seal.
3787 (d) Acquire, purchase, hold, lease, and convey any real and
3788 personal property as may be proper or expedient to carry out the
3789 purposes of the corporation and this section, and to sell,
3790 lease, or otherwise dispose of that property.
3791 (e) Elect or appoint and employ such officers, agents, and
3792 employees as the corporation considers advisable to operate and
3793 manage the affairs of the corporation, who ~~which officers,~~
3794 ~~agents, and employees~~ may be officers or employees of the
3795 department and the state agencies represented on the board of
3796 directors of the corporation.
3797 (f) Borrow money and issue notes, bonds, certificates of
3798 indebtedness, or other obligations or evidences of indebtedness
3799 described in s. 403.1835 or s. 403.8532.
3800 (g) Operate, as specifically directed by the department,
3801 any program to provide financial assistance authorized under s.
3802 403.1835(3) or s. 403.8532(3), which may be funded from any
3803 funds received under a service contract with the department,
3804 from the proceeds of bonds issued by the corporation, or from
3805 any other funding sources obtained by the corporation.
3806 (h) Sell all or any portion of the loans issued under s.
3807 403.1835 or s. 403.8532 to accomplish the purposes of those
3808 sections ~~this section and s. 403.1835~~.
3809 (i) Make and execute any contracts, trust agreements, and
3810 other instruments and agreements necessary or convenient to
3811 accomplish the purposes of the corporation and this section.

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3812 (j) Select, retain, and employ professionals, contractors,
3813 or agents, which may include the Division of Bond Finance of the
3814 State Board of Administration, as ~~are~~ necessary or convenient to
3815 enable or assist the corporation in carrying out its purposes
3816 and this section.
3817 (k) Do any act or thing necessary or convenient to carry
3818 out the purposes of the corporation and this section.
3819 (4) The corporation shall evaluate all financial and market
3820 conditions necessary and prudent for the purpose of making
3821 sound, financially responsible, and cost-effective decisions in
3822 order to secure additional funds to fulfill the purposes of this
3823 section and ss. ~~s.~~ 403.1835 and 403.8532.
3824 (5) The corporation may enter into one or more service
3825 contracts with the department under which the corporation shall
3826 provide services to the department in connection with financing
3827 the functions, projects, and activities provided ~~for~~ in ss. ~~s.~~
3828 403.1835 and 403.8532. The department may enter into one or more
3829 service contracts with the corporation and provide for payments
3830 under those contracts pursuant to s. 403.1835(9) or s. 403.8533,
3831 subject to annual appropriation by the Legislature.
3832 (a) The service contracts may provide for the transfer of
3833 all or a portion of the funds in the Wastewater Treatment and
3834 Stormwater Management Revolving Loan Trust Fund and the Drinking
3835 Water Revolving Loan Trust Fund to the corporation for use by
3836 the corporation for costs incurred by the corporation in its
3837 operations, including, but not limited to, payment of debt
3838 service, reserves, or other costs in relation to bonds issued by
3839 the corporation, for use by the corporation at the request of
3840 the department to directly provide the types of local financial

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3841 assistance provided ~~for~~ in ss. ~~s.~~ 403.1835(3) and 403.8532(3),
3842 or for payment of the administrative costs of the corporation.
3843 (b) The department may not transfer funds under any service
3844 contract with the corporation without a specific appropriation
3845 for such purpose in the General Appropriations Act, except for
3846 administrative expenses incurred by the State Board of
3847 Administration or other expenses necessary under documents
3848 authorizing or securing previously issued bonds of the
3849 corporation. The service contracts may also provide for the
3850 assignment or transfer to the corporation of any loans made by
3851 the department.
3852 (c) The service contracts may establish the operating
3853 relationship between the department and the corporation and must
3854 ~~shall~~ require the department to request the corporation to issue
3855 bonds before any issuance of bonds by the corporation, to take
3856 any actions necessary to enforce the agreements entered into
3857 between the corporation and other parties, and to take all other
3858 actions necessary to assist the corporation in its operations.
3859 (d) In compliance with s. 287.0641 and other applicable
3860 provisions of law, the obligations of the department under the
3861 service contracts do not constitute a general obligation of the
3862 state or a pledge of the faith and credit or taxing power of the
3863 state, nor may the obligations be construed ~~in any manner~~ as an
3864 obligation of the State Board of Administration or entities for
3865 which it invests funds, or of the department except as provided
3866 in this section as payable solely from amounts available under
3867 any service contract between the corporation and the department,
3868 subject to appropriation.
3869 (e) In compliance with this subsection and s. 287.0582,

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3870 service contracts must expressly include the following
3871 statement: "The State of Florida's performance and obligation to
3872 pay under this contract is contingent upon an annual
3873 appropriation by the Legislature."
3874 (6) The corporation may issue and incur notes, bonds,
3875 certificates of indebtedness, or other obligations or evidences
3876 of indebtedness payable from and secured by amounts received
3877 from payment of loans and other moneys received by the
3878 corporation, including, but not limited to, amounts payable to
3879 the corporation by the department under a service contract
3880 entered into under subsection (5). The proceeds of the bonds may
3881 be used for the purpose of providing funds for projects and
3882 activities provided ~~for~~ in subsection (1) or for refunding bonds
3883 previously issued by the corporation. The corporation may select
3884 a financing team and issue obligations through competitive
3885 bidding or negotiated contracts, whichever is most cost-
3886 effective. ~~Any~~ Such indebtedness of the corporation does not
3887 constitute a debt or obligation of the state or a pledge of the
3888 faith and credit or taxing power of the state.
3889 (7) The corporation is exempt from taxation and assessments
3890 of any nature whatsoever upon its income and any property,
3891 assets, or revenues acquired, received, or used in the
3892 furtherance of the purposes provided in ss. 403.1835, ~~and~~
3893 403.1838, and 403.8532. The obligations of the corporation
3894 incurred under subsection (6) and the interest and income on the
3895 obligations and all security agreements, letters of credit,
3896 liquidity facilities, or other obligations or instruments
3897 arising out of, entered into in connection with, or given to
3898 secure payment of the obligations are exempt from all taxation;

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3899 however, the exemption does not apply to any tax imposed by
3900 chapter 220 on the interest, income, or profits on debt
3901 obligations owned by corporations.
3902 (8) The corporation shall validate any bonds issued under
3903 this section, except refunding bonds, which may be validated at
3904 the option of the corporation, by proceedings under chapter 75.
3905 The validation complaint must be filed ~~only~~ in the Circuit Court
3906 for Leon County. The notice required under s. 75.06 must be
3907 published in Leon County, and the complaint and order of the
3908 circuit court shall be served only on the State Attorney for the
3909 Second Judicial Circuit. Sections 75.04(2) and 75.06(2) do not
3910 apply to a validation complaint filed as authorized in this
3911 subsection. The validation of the first bonds issued under this
3912 section may be appealed to the Supreme Court, and the appeal
3913 shall be handled on an expedited basis.
3914 (9) The corporation and the department may ~~shall~~ not take
3915 any action that ~~will~~ materially and adversely affects ~~affect~~ the
3916 rights of holders of any obligations issued under this section
3917 as long as the obligations are outstanding.
3918 (10) The corporation is not a special district for purposes
3919 of chapter 189 or a unit of local government for purposes of
3920 part III of chapter 218. The provisions of chapters 120 and 215,
3921 except the limitation on interest rates provided by s. 215.84,
3922 which applies to obligations of the corporation issued under
3923 this section, and part I of chapter 287, except ss. 287.0582 and
3924 287.0641, do not apply to this section, the corporation ~~created~~
3925 ~~in this section~~, the service contracts entered into under this
3926 section, or debt obligations issued by the corporation as
3927 provided in this section.

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3928 (11) The benefits or earnings of the corporation may not
3929 inure to the benefit of any private person, except persons
3930 receiving grants and loans under s. 403.1835 or s. 403.8532.
3931 (12) Upon dissolution of the corporation, title to all
3932 property owned by the corporation reverts to the department.
3933 (13) The corporation may contract with the State Board of
3934 Administration to serve as trustee with respect to debt
3935 obligations issued by the corporation as provided by this
3936 section; to hold, administer, and invest proceeds of those debt
3937 obligations and other funds of the corporation; and to perform
3938 other services required by the corporation. The State Board of
3939 Administration may perform these services and may contract with
3940 others to provide all or a part of those services and to recover
3941 the costs and expenses of providing those services.
3942 Section 47. Subsections (2), (3), (9), and (14) of section
3943 403.8532, Florida Statutes, are amended to read:
3944 403.8532 Drinking water state revolving loan fund; use;
3945 rules.—
3946 (2) For purposes of this section, the term:
3947 (a) "Bonds" means bonds, certificates, or other obligations
3948 of indebtedness issued by the corporation under this section and
3949 s. 403.1837.
3950 (b) "Corporation" means the Florida Water Pollution Control
3951 Financing Corporation created pursuant to s. 403.1837.
3952 (c) ~~(a)~~ "Financially disadvantaged community" means the
3953 service area of a project to be served by a public water system
3954 that meets criteria established by department rule and in
3955 accordance with federal guidance.
3956 (d) ~~(b)~~ "Local governmental agency" means any municipality,

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3957 county, district, or authority, or any agency thereof, or a
3958 combination of two or more of the foregoing acting jointly in
3959 connection with a project, having jurisdiction over a public
3960 water system.
3961 (e) ~~(c)~~ "Public water system" means all facilities,
3962 including land, necessary for the treatment and distribution of
3963 water for human consumption and includes public water systems as
3964 defined in s. 403.852 and as otherwise defined in the federal
3965 Safe Drinking Water Act, as amended. Such systems may be
3966 publicly owned, privately owned, investor-owned, or
3967 cooperatively held.
3968 (f) ~~(d)~~ "Small public water system" means a public water
3969 system that ~~which~~ regularly serves fewer than 10,000 people.
3970 (3) The department may ~~is authorized to~~ make, or request
3971 that the corporation make, loans, grants, and deposits to
3972 community water systems, nonprofit transient noncommunity water
3973 systems, and nonprofit nontransient noncommunity water systems
3974 to assist them in planning, designing, and constructing public
3975 water systems, unless such public water systems are for-profit
3976 privately owned or investor-owned systems that regularly serve
3977 1,500 service connections or more within a single certified or
3978 franchised area. However, a for-profit privately owned or
3979 investor-owned public water system that regularly serves 1,500
3980 service connections or more within a single certified or
3981 franchised area may qualify for a loan only if the proposed
3982 project will result in the consolidation of two or more public
3983 water systems. The department may ~~is authorized to~~ provide loan
3984 guarantees, ~~to~~ purchase loan insurance, and ~~to~~ refinance local
3985 debt through the issue of new loans for projects approved by the

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3986 department. Public water systems may ~~are authorized to~~ borrow
3987 funds made available pursuant to this section and may pledge any
3988 revenues or other adequate security available to them to repay
3989 any funds borrowed.
3990 (a) The department shall administer loans so that amounts
3991 credited to the Drinking Water Revolving Loan Trust Fund in any
3992 fiscal year are reserved for the following purposes:
3993 1.~~(a)~~ At least 15 percent for ~~to~~ qualifying small public
3994 water systems.
3995 2.~~(b)~~ Up to 15 percent for ~~to~~ qualifying financially
3996 disadvantaged communities.
3997 (b)~~(c)~~ ~~However,~~ If an insufficient number of the projects
3998 for which funds are reserved under this subsection ~~paragraph~~
3999 have been submitted to the department at the time the funding
4000 priority list authorized under this section is adopted, the
4001 reservation of these funds ~~shall~~ no longer applies ~~apply~~. The
4002 department may award the unreserved funds as otherwise provided
4003 in this section.
4004 (9) The department may adopt rules regarding the procedural
4005 and contractual relationship between the department and the
4006 corporation under s. 403.1837 and ~~is authorized to make rules~~
4007 ~~necessary~~ to carry out the purposes of this section and the
4008 federal Safe Drinking Water Act, as amended. Such rules shall:
4009 (a) Set forth a priority system for loans based on public
4010 health considerations, compliance with state and federal
4011 requirements relating to public drinking water systems, and
4012 affordability. The priority system shall give special
4013 consideration to ~~the following~~:
4014 1. Projects that provide for the development of alternative

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4015 drinking water supply projects and management techniques in
4016 areas where existing source waters are limited or threatened by
4017 saltwater intrusion, excessive drawdowns, contamination, or
4018 other problems;
4019 2. Projects that provide for a dependable, sustainable
4020 supply of drinking water and that are not otherwise financially
4021 feasible; and
4022 3. Projects that contribute to the sustainability of
4023 regional water sources.
4024 (b) Establish the requirements for the award and repayment
4025 of financial assistance.
4026 (c) Require evidence of credit worthiness and adequate
4027 security, including an identification of revenues to be pledged,
4028 and documentation of their sufficiency for loan repayment and
4029 pledged revenue coverage, to ensure that each loan recipient can
4030 meet its loan repayment requirements.
4031 (d) Require each project receiving financial assistance to
4032 be cost-effective, environmentally sound, implementable, and
4033 self-supporting.
4034 (e) Implement other provisions of the federal Safe Drinking
4035 Water Act, as amended.
4036 (14) ~~All moneys available for financial assistance under~~
4037 ~~this section shall be deposited in~~ The Drinking Water Revolving
4038 Loan Trust Fund established under s. 403.8533 shall be used
4039 exclusively to carry out the purposes of this section. Any funds
4040 that ~~therein which~~ are not needed on an immediate basis for
4041 financial assistance shall be invested pursuant to s. 215.49.
4042 State revolving fund capitalization grants awarded by the
4043 Federal Government, state matching funds, and investment

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4044 earnings thereon shall be deposited into the fund. The principal
4045 and interest of all loans repaid and investment earnings thereon
4046 shall be deposited into the fund.
4047 Section 48. Section 403.8533, Florida Statutes, is amended
4048 to read:
4049 403.8533 Drinking Water Revolving Loan Trust Fund.—
4050 (1) There is created the Drinking Water Revolving Loan
4051 Trust Fund to be administered by the Department of Environmental
4052 Protection for the purposes of:
4053 (a) Funding for low-interest loans for planning,
4054 engineering design, and construction of public drinking water
4055 systems and improvements to such systems;
4056 (b) Funding for compliance activities, operator
4057 certification programs, and source water protection programs;
4058 ~~and~~
4059 (c) Funding for administering loans by the department; and~~.~~
4060 (d) Paying amounts payable under any service contract
4061 entered into by the department under s. 403.1837, subject to
4062 annual appropriation by the Legislature.
4063 (2) The trust fund shall be used for the deposit of all
4064 moneys awarded by the Federal Government to fund revolving loan
4065 programs. All moneys in the fund that are not needed on an
4066 immediate basis for loans shall be invested pursuant to s.
4067 215.49. The principal and interest of all loans repaid and
4068 investment earnings shall be deposited into this fund.
4069 (3) Pursuant to s. 19(f)(3), Art. III of the State
4070 Constitution, the Drinking Water Revolving Loan Trust Fund is
4071 exempt from the termination provisions of s. 19(f)(2), Art. III
4072 of the State Constitution.

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4073 Section 49. Subsection (6) of section 369.317, Florida
4074 Statutes, is amended to read:
4075 369.317 Wekiva Parkway.—
4076 (6) The Orlando-Orange County Expressway Authority is
4077 hereby granted the authority to act as a third-party acquisition
4078 agent, pursuant to s. 259.041 on behalf of the Board of Trustees
4079 or chapter 373 on behalf of the governing board of the St. Johns
4080 River Water Management District, for the acquisition of all
4081 necessary lands, property and all interests in property
4082 identified herein, including fee simple or less-than-fee simple
4083 interests. The lands subject to this authority are identified in
4084 paragraph 10.a., State of Florida, Office of the Governor,
4085 Executive Order 03-112 of July 1, 2003, and in Recommendation 16
4086 of the Wekiva Basin Area Task Force created by Executive Order
4087 2002-259, such lands otherwise known as Neighborhood Lakes, a
4088 1,587+/- acre parcel located in Orange and Lake Counties within
4089 Sections 27, 28, 33, and 34 of Township 19 South, Range 28 East,
4090 and Sections 3, 4, 5, and 9 of Township 20 South, Range 28 East;
4091 Seminole Woods/Swamp, a 5,353+/- acre parcel located in Lake
4092 County within Section 37, Township 19 South, Range 28 East; New
4093 Garden Coal; a 1,605+/- acre parcel in Lake County within
4094 Sections 23, 25, 26, 35, and 36, Township 19 South, Range 28
4095 East; Pine Plantation, a 617+/- acre tract consisting of eight
4096 individual parcels within the Apopka City limits. The Department
4097 of Transportation, the Department of Environmental Protection,
4098 the St. Johns River Water Management District, and other land
4099 acquisition entities shall participate and cooperate in
4100 providing information and support to the third-party acquisition
4101 agent. The land acquisition process authorized by this paragraph

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4102 shall begin no later than December 31, 2004. Acquisition of the
4103 properties identified as Neighborhood Lakes, Pine Plantation,
4104 and New Garden Coal, or approval as a mitigation bank shall be
4105 concluded no later than December 31, 2010. Department of
4106 Transportation and Orlando-Orange County Expressway Authority
4107 funds expended to purchase an interest in those lands identified
4108 in this subsection shall be eligible as environmental mitigation
4109 for road construction related impacts in the Wekiva Study Area.
4110 If any of the lands identified in this subsection are used as
4111 environmental mitigation for road construction related impacts
4112 incurred by the Department of Transportation or Orlando-Orange
4113 County Expressway Authority, or for other impacts incurred by
4114 other entities, within the Wekiva Study Area or within the
4115 Wekiva parkway alignment corridor, and if the mitigation offsets
4116 these impacts, the St. Johns River Water Management District and
4117 the Department of Environmental Protection shall consider the
4118 activity regulated under part IV of chapter 373 to meet the
4119 cumulative impact requirements of s. 373.414(8)(a).
4120 Section 50. Section 373.631, Florida Statutes, is created
4121 to read:
4122 373.631 Water advisory entities.—It is the intent of the
4123 Legislature to utilize academic entities within universities in
4124 the State University System as advisory bodies to provide
4125 recommendations based on the best scientific data available to
4126 the Legislature to guide water policy in the state. In
4127 consideration of preference given to such universities in s.
4128 373.63, the University of Florida Water Institute shall be the
4129 lead entity and, in consultation with other entities within the
4130 State University System, shall submit a report detailing

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4131 recommendations to the Legislature by February 1, 2011, and by
4132 February 1 every 2 years thereafter.
4133 Section 51. Paragraph (m) is added to subsection (1) of
4134 section 553.77, Florida Statutes, to read:
4135 553.77 Specific powers of the commission.—
4136 (1) The commission shall:
4137 (m) Develop recommendations that result in conservation of
4138 Florida's water resources. The commission must consider products
4139 that exceed National Energy Policy Act requirements for water
4140 use and may consider products certified by the Environmental
4141 Protection Agency's WaterSense program, the Department of
4142 Energy's Energy Star program, or other certification programs.
4143 Section 52. Subsection (20) is added to section 215.47,
4144 Florida Statutes, to read:
4145 215.47 Investments; authorized securities; loan of
4146 securities.—Subject to the limitations and conditions of the
4147 State Constitution or of the trust agreement relating to a trust
4148 fund, moneys available for investments under ss. 215.44-215.53
4149 may be invested as follows:
4150 (20) The State Board of Administration, consistent with its
4151 fiduciary duties, may invest net assets of the system trust fund
4152 in projects deemed eligible under the provisions of s. 373.707.
4153 Section 53. Subsection (8) is added to section 373.129,
4154 Florida Statutes, to read:
4155 373.129 Maintenance of actions.—The department, the
4156 governing board of any water management district, any local
4157 board, or a local government to which authority has been
4158 delegated pursuant to s. 373.103(8), is authorized to commence
4159 and maintain proper and necessary actions and proceedings in any

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4160 court of competent jurisdiction for any of the following
4161 purposes:
4162 (8) In conflicts arising where a water management district
4163 is a party to litigation against another governmental entity, as
4164 defined in s. 164.1031, a district has an affirmative duty to
4165 engage in alternative dispute resolution in good faith as
4166 required by chapter 164.
4167 Section 54. Paragraph (b) of subsection (9) of section
4168 403.707, Florida Statutes, is amended to read:
4169 403.707 Permits.—
4170 (9) The department shall establish a separate category for
4171 solid waste management facilities that accept only construction
4172 and demolition debris for disposal or recycling. The department
4173 shall establish a reasonable schedule for existing facilities to
4174 comply with this section to avoid undue hardship to such
4175 facilities. However, a permitted solid waste disposal unit that
4176 receives a significant amount of waste prior to the compliance
4177 deadline established in this schedule shall not be required to
4178 be retrofitted with liners or leachate control systems.
4179 (b) The department shall ~~not~~ require liners and leachate
4180 collection systems at individual disposal units and lateral
4181 expansions of existing disposal units, that have not received a
4182 department permit authorizing construction or operation prior to
4183 July 1, 2010. ~~facilities unless it demonstrates, based upon the~~
4184 ~~types of waste received, the methods for controlling types of~~
4185 ~~waste disposed of, the proximity of groundwater and surface~~
4186 ~~water, and the results of the hydrogeological and geotechnical~~
4187 ~~investigations, that the facility is reasonably expected to~~
4188 ~~result in violations of groundwater standards and criteria~~

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4189 ~~otherwise.~~
4190 Section 55. Section 298.66, Florida Statutes, is amended to
4191 read:
4192 298.66 Obstruction of public drainage canals, etc.,
4193 prohibited; damages; penalties.—
4194 (1) A ~~No~~ person may not willfully, or otherwise, obstruct
4195 any public canal, drain, ditch or watercourse or damage or
4196 destroy any public drainage works constructed in or maintained
4197 by any district.
4198 (2)~~(1)~~ Any person who ~~shall~~ willfully obstructs ~~obstruct~~
4199 any public canal, drain, ditch, or watercourse or damages or
4200 destroys ~~shall damage or destroy~~ any public drainage works
4201 constructed in or maintained by any district~~,~~ shall be liable to
4202 any person injured thereby for the full amount of the injury
4203 occasioned to any land or crops or other property by reason of
4204 such misconduct~~,~~ and shall be liable to the district
4205 constructing the drainage ~~said~~ work for double the cost of
4206 removing such obstruction or repairing such damage.
4207 (3)~~(2)~~ Any person who ~~Whoever shall~~ willfully, or
4208 otherwise, obstructs ~~obstruct~~ any public canal, drain, ditch, or
4209 watercourse, impedes or obstructs ~~or impede or obstruct~~ the flow
4210 of water therein, or damages or destroys ~~shall damage or destroy~~
4211 any public drainage works constructed in or maintained by any
4212 district commits ~~shall be guilty of~~ a felony of the third
4213 degree, punishable as provided in s. 775.082, s. 775.083, or s.
4214 775.084.
4215 Section 56. Subsection (9) is added to section 212.055,
4216 Florida Statutes, to read:
4217 212.055 Discretionary sales surtaxes; legislative intent;

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4218 authorization and use of proceeds.—It is the legislative intent
4219 that any authorization for imposition of a discretionary sales
4220 surtax shall be published in the Florida Statutes as a
4221 subsection of this section, irrespective of the duration of the
4222 levy. Each enactment shall specify the types of counties
4223 authorized to levy; the rate or rates which may be imposed; the
4224 maximum length of time the surtax may be imposed, if any; the
4225 procedure which must be followed to secure voter approval, if
4226 required; the purpose for which the proceeds may be expended;
4227 and such other requirements as the Legislature may provide.
4228 Taxable transactions and administrative procedures shall be as
4229 provided in s. 212.054.
4230 (9) AREA OF CRITICAL STATE CONCERN WASTEWATER AND
4231 STORMWATER SURTAX.—
4232 (a) A county designated as an area of critical state
4233 concern may levy a discretionary sales surtax of 1 percent
4234 pursuant to an ordinance that is enacted by a majority of the
4235 members of the county governing authority and is conditioned to
4236 take effect only upon approval by a majority vote of the
4237 electors of the county voting in a referendum.
4238 (b) The referendum to be placed on the ballot must include
4239 a statement that provides a brief and general description of the
4240 purposes for which the proceeds of the surtax may be used. The
4241 statement must conform to the requirement of s. 101.161 and
4242 shall be placed on the ballot by the governing body of the
4243 county. The following question shall be placed on the ballot:
4244 FOR the one-cent sales tax
4245 AGAINST the one-cent sales tax
4246 (c) Pursuant to s. 212.054(4), the proceeds of the surtax

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4247 levied under this subsection shall be distributed to the county
4248 and the municipalities within such county in which the surtax
4249 was collected, according to:
4250 1. An interlocal agreement between the county governing
4251 authority and the governing bodies of the municipalities
4252 representing a majority of the county's municipal population,
4253 which agreement may include a school district with the consent
4254 of the county governing authority and the governing bodies of
4255 the municipalities representing a majority of the county's
4256 municipal population; or
4257 2. If there is no interlocal agreement, according to the
4258 formula provided in s. 218.62, any change in the distribution
4259 formula must take effect on the first day of any month that
4260 begins at least 60 days after written notification of that
4261 change has been made to the department.
4262 (d) The proceeds of the surtax and any interest accrued
4263 thereto may be expended within the county and municipalities for
4264 the purposes of servicing existing bond and state revolving loan
4265 fund indebtedness to finance, plan, construct, upgrade,
4266 reconstruct or renovate wastewater and stormwater collection and
4267 treatment infrastructure; and to finance, plan, construct,
4268 upgrade, reconstruct or renovate, wastewater and stormwater
4269 collection and treatment infrastructure; fixed capital costs
4270 associated with the construction, upgrade, reconstruction,
4271 renovation, expansion or improvement of wastewater and
4272 stormwater facilities which has a useful life expectancy of at
4273 least 5 years; land acquisition, land improvement, design, and
4274 engineering costs related thereto. The proceeds of the surtax
4275 must be set aside and invested as permitted by law, with the

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4276 principal and income to be used for the purposes provided in
4277 this subsection. Counties and municipalities receiving proceeds
4278 under the provisions of this subsection may pledge such proceeds
4279 for the purpose of servicing new bond or state revolving loan
4280 indebtedness incurred pursuant to law. Counties and
4281 municipalities may use the services of the Division of Bond
4282 Finance of the State Board of Administration pursuant to the
4283 State Bond Act to issue any bonds through the provisions of this
4284 subsection. Counties and municipalities may join together for
4285 the issuance of bonds authorized by this subsection.
4286 (e) A surtax imposed under this subsection expires 20 years
4287 after the effective date of the surtax unless reenacted by an
4288 ordinance that is subject to approval by a majority of the
4289 electors of the county voting in a subsequent referendum.
4290 (f) This subsection shall be liberally construed to achieve
4291 its purpose.
4292 Section 57. It is the intent of the Legislature that the
4293 creation of Part VII, Chapter 373, Florida Statutes, is to
4294 reorganize certain existing provisions of Part I of Chapter 373,
4295 Florida Statutes and does not make any substantive changes to
4296 existing law or judicial interpretation thereof. It is further
4297 the intent of the Legislature that any legislation enacted
4298 during the 2010 Regular Session and any extension thereof
4299 affecting the following sections, 373.0361, 373.0391, 373.0831,
4300 373.196, 373.1961, 373.1962, and 373.1963, Florida Statutes,
4301 either before or after this act becomes law, be given full force
4302 and effect substantively and that such new substantive
4303 provisions of law shall be integrated into the following
4304 sections 373.703, 373.705, 373.707, 373.709, 373.711, 373.713,

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4305 and 373.715, Florida Statutes created in this act.
4306 Section 58. This act shall take effect July 1, 2010.
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4308
4309 ========== T I T L E A M E N D M E N T ==========
4310 And the title is amended as follows:
4311 Delete everything before the enacting clause
4312 and insert:
4313 A bill to be entitled
4314 An act relating to environmental protection; creating part
4315 VII of ch. 373, F.S., relating to water supply policy, planning,
4316 production, and funding; providing a declaration of policy;
4317 providing for the general powers and duties of water management
4318 district governing boards; requiring the Department of
4319 Environmental Protection to develop the Florida water supply
4320 plan; providing components of the plan; requiring water
4321 management district governing boards to develop water supply
4322 plans for their respective regions; providing components of
4323 district water supply plans; providing legislative findings and
4324 intent with respect to water resource development and water
4325 supply development; requiring water management districts to fund
4326 and implement water resource development; specifying water
4327 supply development projects that are eligible to receive
4328 priority consideration for state or water management district
4329 funding assistance; encouraging cooperation in the development
4330 of water supplies; providing for alternative water supply
4331 development; encouraging municipalities, counties, and special
4332 districts to create regional water supply authorities;
4333 establishing the primary roles of the water management districts

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4334 in alternative water supply development; establishing the
4335 primary roles of local governments, regional water supply
4336 authorities, special districts, and publicly owned and privately
4337 owned water utilities in alternative water supply development;
4338 requiring the water management districts to detail the specific
4339 allocations to be used for alternative water supply development
4340 in their annual budget submission; requiring that the water
4341 management districts include the amount needed to implement the
4342 water supply development projects in each annual budget;
4343 establishing general funding criteria for funding assistance to
4344 the state or water management districts; establishing economic
4345 incentives for alternative water supply development; providing a
4346 funding formula for the distribution of state funds to the water
4347 management districts for alternative water supply development;
4348 requiring that funding assistance for alternative water supply
4349 development be limited to a percentage of the total capital
4350 costs of an approved project; establishing a selection process
4351 and criteria; providing for cost recovery from the Public
4352 Service Commission; requiring a water management district
4353 governing board to conduct water supply planning for each region
4354 identified in the district water supply plan; providing
4355 procedures and requirements with respect to regional water
4356 supply plans; providing for joint development of a specified
4357 water supply development component of a regional water supply
4358 plan within the boundaries of the Southwest Florida Water
4359 Management District; providing that approval of a regional water
4360 supply plan is not subject to the rulemaking requirements of the
4361 Administrative Procedure Act; requiring the department to submit
4362 annual reports on the status of regional water supply planning

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4363 in each district; providing construction with respect to the
4364 water supply development component of a regional water supply
4365 plan; requiring water management districts to present to certain
4366 entities the relevant portions of a regional water supply plan;
4367 requiring certain entities to provide written notification to
4368 water management districts as to the implementation of water
4369 supply project options; requiring water management districts to
4370 notify local governments of the need for alternative water
4371 supply projects; requiring water management districts to assist
4372 local governments in the development and future revision of
4373 local government comprehensive plan elements or public
4374 facilities reports related to water resource issues; providing
4375 for the creation of regional water supply authorities; providing
4376 purpose of such authorities; specifying considerations with
4377 respect to the creation of a proposed authority; specifying
4378 authority of a regional water supply authority; providing
4379 authority of specified entities to convey title, dedicate land,
4380 or grant land-use rights to a regional water supply authority
4381 for specified purposes; providing preferential rights of
4382 counties and municipalities to purchase water from regional
4383 water supply authorities; providing exemption for specified
4384 water supply authorities from consideration of certain factors
4385 and submissions; providing applicability of such exemptions;
4386 authorizing the West Coast Regional Water Supply Authority and
4387 its member governments to reconstitute the authority's
4388 governance and rename the authority under a voluntary interlocal
4389 agreement; providing compliance requirements with respect to the
4390 interlocal agreement; providing for supersession of conflicting
4391 general or special laws; providing requirements with respect to

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4392 annual budgets; specifying the annual millage for the authority;
4393 authorizing the authority to request the governing board of the
4394 district to levy ad valorem taxes within the boundaries of the
4395 authority to finance authority functions; providing requirements
4396 and procedures with respect to the collection of such taxes;
4397 amending ss. 120.52, 163.3167, 163.3177, 163.3191, 189.404,
4398 189.4155, 189.4156, and 367.021, F.S.; conforming cross-
4399 references and removing obsolete provisions; amending ss.
4400 373.036, 373.0363, 373.0421, 373.0695, 373.223, 373.2234,
4401 373.229, 373.236, 373.536, 373.59, 378.212, 378.404, 403.0891,
4402 403.890, 403.891, and 682.02, F.S.; conforming cross-references
4403 and removing obsolete provisions; renumbering s. 373.71, F.S.;
4404 relating to the Apalachicola-Chattahoochee-Flint River Basin
4405 Compact, to clarify retention of the section in part VI of ch.
4406 373, F.S.; repealing s. 373.0361, F.S.; relating to regional
4407 water supply planning; repealing s. 373.0391, F.S.; relating to
4408 technical assistance to local governments; repealing s.
4409 373.0831, F.S.; relating to water resource and water supply
4410 development; repealing s. 373.196, F.S.; relating to alternative
4411 water supply development; repealing s. 373.1961, F.S.; relating
4412 to water production and related powers and duties of water
4413 management districts; repealing s. 373.1962, F.S.; relating to
4414 regional water supply authorities; repealing s. 373.1963, F.S.;
4415 relating to assistance to the West Coast Regional Water Supply
4416 Authority; amending s. 373.1961, F.S.; adding a high-water
4417 recharge criterion to the ranking criteria for water projects;
4418 amending s. 373.019, F.S.; redefining the term "alternative
4419 water supply" to include conservation projects; amending s.
4420 373.019, F.S.; amending s. 373.414, F.S.; adding limestone

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4421 extraction operations to activities in surface waters and
4422 wetlands that require mitigation; amending 378.901, F.S.;
4423 allowing life-of-mine permits for limestone extraction
4424 operations; providing authority for local governments to impose
4425 different permit restrictions; creating s. 373.4131, F.S.;
4426 providing legislative findings; providing definitions; directing
4427 the Department of Environmental Protection, along with the water
4428 management districts, to create a statewide uniform stormwater
4429 management rule; providing requirements for rule creation;
4430 exempting agriculture from the rule; amending s. 373.41492,
4431 F.S.; updating mitigation fees for the Miami-Dade Lake Belt
4432 Mitigation Plan; amending s. 403.031, F.S.; modifying the
4433 definition of "pollution" to include excess nutrients; providing
4434 definitions for "first magnitude spring" and "second magnitude
4435 spring"; amending 403.061, F.S.; directing the Department of
4436 Environmental Protection to limit nutrients in water bodies;
4437 creating s. 403.0675, F.S.; directing the Department of
4438 Environmental Protection to establish and implement numeric
4439 nutrient criteria that comply with the United States
4440 Environmental Protection Agency's requirements; providing
4441 legislative findings; providing requirements for development of
4442 the numeric nutrient criteria; amending s. 215.619, F.S.;
4443 authorizing the issuance of bonds to be used to finance the
4444 management of sewage facilities in the Florida Keys Area of
4445 Critical State Concern; amending s. 380.0552, F.S.; revising
4446 legislative intent relating to the designation of the Florida
4447 Keys as an area of critical state concern; revising the
4448 procedures for removing the designation; providing for
4449 administrative review of such removal rather than judicial

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4450 review; authorizing the Administration Commission to adopt rules
4451 or revise existing rules; revising the principles guiding
4452 development; revising compliance requirements for reviewing
4453 comprehensive plan amendments; amending s. 381.0065, F.S.;
4454 providing additional legislative intent; providing additional
4455 requirements for onsite sewage treatment and disposal systems in
4456 Monroe County; directing the Department of Health to create and
4457 administer a statewide septic tank evaluation program; providing
4458 procedures and criteria for the evaluation program; prohibiting
4459 the land application of septage after January 1, 2016; creating
4460 s. 381.00656, F.S.; providing for a low-income grant program for
4461 septic tank maintenance and replacement; amending s. 381.0066,
4462 F.S.; authorizing the Department of Health to collect an
4463 evaluation report fee; requiring such fees to be revenue
4464 neutral; amending s. 403.086, F.S.; requiring the Department of
4465 Environmental Protection to submit a report on the effects of
4466 reclaimed water use; clarifying reuse requirements for domestic
4467 wastewater facilities that discharge through ocean outfalls;
4468 clarifying reuse requirements for domestic wastewater facilities
4469 that divert wastewater from facilities discharging through ocean
4470 outfalls; providing legislative findings and discharge
4471 requirements for wastewater facilities in Monroe County;
4472 repealing sections 4, 5, and 6 of chapter 99-395, Law of
4473 Florida, as amended, relating to sewage treatment in the Florida
4474 Keys; amending 403.1835, F.S.; conforming terms to changes made
4475 to the Florida Water Pollution Control Financing Corporation;
4476 amending s. 403.1837, F.S.; expanding the purview of the
4477 corporation to include loans made from the drinking water state
4478 revolving loan fund; providing conforming changes; amending s.

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4479 403.8532, F.S.; providing definitions for the terms "bonds" and
4480 "corporation"; providing conforming changes; authorizing the
4481 Department of Environmental Protection to adopt certain rules;
4482 amending s. 403.8533, F.S.; revising the purposes for the
4483 Drinking Water Revolving Loan Trust Fund; providing that the
4484 trust fund is exempt from the termination provisions of the
4485 State Constitution; amending s. 369.317, F.S.; clarifying
4486 mitigation offsets in the Wekiva Study Area; creating s.
4487 373.631, F.S.; providing legislative intent to utilize State
4488 University System academic bodies to provide regular science-
4489 based policy recommendations to the Legislature; directing that
4490 the University of Florida Water Institute be the lead academic
4491 body; amending s. 553.77, F.S.; directing the Florida Building
4492 Commission to recommend products that result in water
4493 conservation; amending s. 215.47, F.S.; authorizing the State
4494 Board of Administration to make investments in alternative water
4495 supply and water resource development projects; amending s.
4496 373.129, F.S.; requiring the water management districts to
4497 submit to alternative dispute resolution in conflicts with other
4498 governmental entities; amending s. 403.707, F.S.; requiring
4499 liners for new landfills and expansions of existing landfills
4500 not yet permitted that will accept construction and demolition
4501 debris; amending s. 298.66, F.S.; clarifying penalties for
4502 people who damage drainage works constructed or maintained by a
4503 water management district; amending s. 212.055, F.S.; allowing
4504 counties designated as an area of critical state concern to levy
4505 a one-cent sales surtax for stormwater and wastewater
4506 management; requiring approval of the surtax by voter
4507 referendum; providing legislative intent that there are no

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4508 substantive changes in the reorganization ch. 373, F.S.;
4509 providing legislative intent that substantive changes affecting
4510 repealed sections of law relating to the reorganization of ch.
4511 373, F.S., shall be given full force and effect; providing an
4512 effective date.
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LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Justice) recommended the following:

Senate Amendment (with title amendment)

Between lines 5376 and 5377
insert:
Section 58. Section 376.30702, Florida Statutes, is amended to read:
376.30702 Contamination notification.—
(1) FINDINGS; INTENT; APPLICABILITY.—The Legislature finds ~~and declares~~ that when contamination is discovered by any person as a result of site rehabilitation activities conducted pursuant to the risk-based corrective action provisions found in s. 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, or

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13 pursuant to an administrative or court order, it is in the
14 public's best interest that potentially affected persons be
15 notified of the existence of such contamination. Therefore,
16 persons discovering such contamination shall notify the
17 department and those identified under this section of the ~~such~~
18 discovery in accordance with the requirements of this section~~,~~
19 ~~and the department shall be responsible for notifying the~~
20 ~~affected public~~. The Legislature intends that ~~for the provisions~~
21 ~~of~~ this section ~~to~~ govern the notice requirements for early
22 notification of the discovery of contamination.
23 (2) INITIAL NOTICE OF CONTAMINATION ~~BEYOND PROPERTY~~
24 ~~BOUNDARIES.—~~
25 (a) If at any time during site rehabilitation conducted
26 pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, ~~or~~ s.
27 376.30701, or an administrative or court order the person
28 responsible for site rehabilitation, the person's authorized
29 agent, or another representative of the person discovers from
30 laboratory analytical results that comply with appropriate
31 quality assurance protocols specified in department rules that
32 contamination as defined in applicable department rules exists
33 in any ground water, surface water, or soil ~~medium~~ beyond the
34 boundaries of the property at which site rehabilitation was
35 initiated ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81,~~
36 ~~or s. 376.30701~~, the person responsible for site rehabilitation
37 shall give actual notice as soon as possible, but no later than
38 10 days after the ~~from such~~ discovery, to the Division of Waste
39 Management at the department's Tallahassee office. The actual
40 notice must ~~shall~~ be provided on a form adopted by department
41 rule and mailed by certified mail, return receipt requested. The

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42 person responsible for site rehabilitation shall simultaneously
43 provide ~~mail~~ a copy of the ~~such~~ notice to the appropriate
44 department district office and~~,~~ county health department~~, and~~
45 ~~all known lessees and tenants of the source property~~.
46 (b) The notice must ~~shall~~ include the following
47 information:
48 1.~~(a)~~ The location of the property at which site
49 rehabilitation was initiated ~~pursuant to s. 376.3071(5), s.~~
50 ~~376.3078(4), s. 376.81, or s. 376.30701~~ and contact information
51 for the person responsible for site rehabilitation, the person's
52 authorized agent, or another representative of the person.
53 2.~~(b)~~ A listing of all record owners of the ~~any~~ real
54 property~~, other than the property at which site rehabilitation~~
55 ~~was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s.~~
56 ~~376.81, or s. 376.30701,~~ at which contamination has been
57 discovered; the parcel identification number for ~~any~~ such ~~real~~
58 property; the owner's address listed in the current county
59 property tax office records; and the owner's telephone number.
60 ~~The requirements of this paragraph do not apply to the notice to~~
61 ~~known tenants and lessees of the source property.~~
62 3.~~(c)~~ Separate tables for ~~by medium, such as~~ groundwater,
63 soil, and surface water which~~, or sediment, that~~ list sampling
64 locations identified on the vicinity map described in
65 subparagraph 4.; sampling dates; names of contaminants detected
66 above cleanup target levels; their corresponding cleanup target
67 levels; the contaminant concentrations; and whether the cleanup
68 target level is based on health, nuisance, organoleptic, or
69 aesthetic concerns.
70 4.~~(d)~~ A vicinity map that shows each sampling location with

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71 corresponding laboratory analytical results described in
72 subparagraph 3. ~~and the date on which the sample was collected~~
73 and that identifies the property boundaries of the property at
74 which site rehabilitation was initiated ~~pursuant to s.~~
75 ~~376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701~~ and any
76 ~~the~~ other properties at which contamination has been discovered
77 during such site rehabilitation. If available, a contaminant
78 plume map signed and sealed by a state-licensed professional
79 engineer or geologist may be included with the vicinity map.
80 (3) DEPARTMENT'S NOTICE RESPONSIBILITIES.—
81 (a) After receiving the initial notice required under
82 subsection (2), the department shall notify the following
83 persons of the contamination:
84 1. The mayor, the chair of the county commission, or the
85 comparable senior elected official representing the affected
86 area.
87 2. The city manager, the county administrator, or the
88 comparable senior administrative official representing the
89 affected area.
90 3. The school district superintendent representing the
91 affected area.
92 4. The state senator, state representative, and United
93 States Representative representing the affected area and both
94 United States Senators.
95 5. All real property owners, presidents of any condominium
96 associations, or sole owners of condominiums, lessees, and the
97 tenants of record for:
98 a. The property at which site rehabilitation is being
99 conducted, if different from the person responsible for site

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100 rehabilitation;
101 b. Any properties within a 500-foot radius of each sampling
102 point at which contamination is discovered, if site
103 rehabilitation was initiated pursuant to s. 376.30701 or an
104 administrative or court order; and
105 c. Any properties within a 250-foot radius of each sampling
106 point at which contamination is discovered or any properties
107 identified on a contaminant plume map provided pursuant to
108 subparagraph (2)(b)4. if site rehabilitation was initiated
109 pursuant to s. 376.3071(5), s. 376.3078(4), or s. 376.81, or at,
110 or in connection with, a permitted solid waste management
111 facility subject to a groundwater monitoring plan.
112 (b) The notice provided to:
113 1. Local government officials shall be mailed by certified
114 mail, return receipt requested, and must advise the local
115 government of its responsibilities under subsection (4).
116 2. Real property owners, presidents of any condominium
117 associations or sole owners of condominiums, lessees, and
118 tenants of record may be delivered by certified mail, return
119 receipt requested, first-class mail, hand delivery, or door
120 hanger.
121 (c) Within 30 days after receiving the initial ~~actual~~
122 notice required under ~~pursuant to~~ subsection (2), ~~or within 30~~
123 ~~days of the effective date of this act if the department already~~
124 ~~possesses information equivalent to that required by the notice,~~
125 the department shall verify that the person responsible for site
126 rehabilitation has complied with the notice requirements of this
127 section ~~send a copy of such notice, or an equivalent~~
128 ~~notification, to all record owners of any real property, other~~

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129 ~~than the property at which site rehabilitation was initiated~~
130 ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s.~~
131 ~~376.30701, at which contamination has been discovered~~. If the
132 person responsible for site rehabilitation has not complied with
133 the notice requirements, the department may pursue enforcement
134 as provided under this chapter and chapter 403.
135 (d)1. If the property at which contamination has been
136 discovered is the site of a school as defined in s. 1003.01, the
137 department shall mail ~~also send~~ a copy of the notice to the
138 superintendent ~~chair of the school board~~ of the school district
139 in which the property is located and direct the superintendent
140 ~~said school board~~ to provide actual notice annually to teachers
141 and parents or guardians of students attending the school during
142 the period of site rehabilitation.
143 2. If the property at which contamination has been
144 discovered is the site of a private K-12 school or a child care
145 facility as defined in s. 402.302, the department shall mail a
146 copy of the notice to the governing board, principal, or owner
147 of the school or child care facility and direct the governing
148 board, principal, or owner to provide actual notice annually to
149 teachers and parents or guardians of students or children
150 attending the school or child care facility during the period of
151 site rehabilitation.
152 3. After receiving the initial notice required under
153 subsection (2), if any property within a 500-foot radius of the
154 property at which contamination has been discovered during site
155 rehabilitation pursuant to s. 376.30701 or an administrative or
156 court order is the site of a school as defined in s. 1003.01,
157 the department shall mail a copy of the notice to the

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158 superintendent of the school district in which the property is
159 located and direct the superintendent to provide actual notice
160 annually to the principal of the school.
161 4. After receiving the initial notice required under
162 subsection (2), if any property within a 250-foot radius of the
163 property at which contamination has been discovered during site
164 rehabilitation pursuant to s. 376.3071(5), s. 376.3078(4), or s.
165 376.81, or at, or in connection with, a permitted solid waste
166 management facility subject to a groundwater monitoring plan, is
167 the site of a school as defined in s. 1003.01, the department
168 shall mail a copy of the notice to the superintendent of the
169 school district in which the property is located and direct the
170 superintendent to provide actual notice annually to the
171 principal of the school.
172 (e) Along with the copy of the notice ~~or its equivalent~~,
173 the department shall include a letter identifying sources of
174 additional information about the contamination and a telephone
175 number to which further inquiries should be directed. The
176 department may collaborate with the Department of Health to
177 develop such sources of information and to establish procedures
178 for responding to public inquiries about health risks associated
179 with contaminated sites.
180 (4) LOCAL GOVERNMENT'S NOTICE RESPONSIBILITIES.—If contact
181 information is available, within 30 days after receiving notice
182 under subsection (3), the local government shall mail a copy of
183 the notice to the president or equivalent officer of each
184 homeowners' association or neighborhood association within the
185 potentially affected area described in subsection (3).
186 (5) RECOVERY OF NOTIFICATION COSTS.—The department and the

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187 local government shall recover the costs of postage, materials,
188 and labor associated with providing notification from the
189 responsible party, unless site rehabilitation is eligible for
190 state-funded cleanup pursuant to the risk-based corrective
191 action provisions found in s. 376.3071(5) or s. 376.3078(4).
192 (6) ~~(4)~~ RULEMAKING AUTHORITY.—The department shall adopt
193 rules and forms ~~pursuant to ss. 120.536(1) and 120.54~~ to
194 administer ~~implement~~ the requirements of this section.
195 Section 59. The Legislature finds that this act fulfills an
196 important state interest.
197
198 ========== T I T L E A M E N D M E N T ==========
199 And the title is amended as follows:
200 Delete line 263
201 and insert:
202 approval of the surtax by voter referendum; amending
203 s. 376.30702, F.S.; revising contamination
204 notification provisions; requiring individuals
205 responsible for site rehabilitation to provide notice
206 of site rehabilitation to specified entities; revising
207 provisions relating to the content of such notice;
208 requiring the Department of Environmental Protection
209 to provide notice of site rehabilitation to specified
210 entities and certain property owners; providing an
211 exemption; requiring the department to verify
212 compliance with notice requirements; authorizing the
213 department to pursue enforcement measures for
214 noncompliance with notice requirements; revising the
215 department's contamination notification requirements

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216 for certain public schools; requiring the department
217 to provide specified notice to private K-12 schools
218 and child care facilities; requiring the department to
219 provide specified notice to public schools within a
220 specified area; providing notice requirements,
221 including directives to extend such notice to certain
222 other persons; requiring local governments to provide
223 specified notice of site rehabilitation; authorizing
224 the local government and the department to recover
225 notification costs from responsible parties; providing
226 a statement of important state interest; providing

Committee:

POLICY AND STEERING COMMITTEE ON WAYS AND MEANS

Senator Alexander, Chair

Supplemental Meeting Packet

Amendments filed before 2-hour Deadline, as well as Late Filed amendments

Tuesday, April 20, 2010

2:15 – 4:15 p.m.

Pat Thomas Committee Room, 412 Knott Building

AA1

550168

LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Justice) recommended the following:

1 **Senate Amendment to Amendment (156026) (with title**
2 **amendment)**
3
4 Between lines 4291 and 4292
5 insert:
6 Section 57. Section 376.30702, Florida Statutes, is amended
7 to read:
8 376.30702 Contamination notification.—
9 (1) FINDINGS; INTENT; APPLICABILITY.—The Legislature finds
10 ~~and declares~~ that when contamination is discovered by any person
11 as a result of site rehabilitation activities conducted pursuant
12 to the risk-based corrective action provisions found in s.

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13 376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701, or
14 pursuant to an administrative or court order, it is in the
15 public's best interest that potentially affected persons be
16 notified of the existence of such contamination. Therefore,
17 persons discovering such contamination shall notify the
18 department and those identified under this section of the ~~such~~
19 discovery in accordance with the requirements of this section~~,~~
20 ~~and the department shall be responsible for notifying the~~
21 ~~affected public~~. The Legislature intends that ~~for the provisions~~
22 ~~of~~ this section ~~to~~ govern the notice requirements for early
23 notification of the discovery of contamination.
24 (2) INITIAL NOTICE OF CONTAMINATION ~~BEYOND PROPERTY~~
25 ~~BOUNDARIES.~~
26 (a) If at any time during site rehabilitation conducted
27 pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, ~~or~~ s.
28 376.30701, or an administrative or court order the person
29 responsible for site rehabilitation, the person's authorized
30 agent, or another representative of the person discovers from
31 laboratory analytical results that comply with appropriate
32 quality assurance protocols specified in department rules that
33 contamination as defined in applicable department rules exists
34 in any ground water, surface water, or soil ~~medium~~ beyond the
35 boundaries of the property at which site rehabilitation was
36 initiated ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81,~~
37 ~~or s. 376.30701~~, the person responsible for site rehabilitation
38 shall give actual notice as soon as possible, but no later than
39 10 days after the ~~from such~~ discovery, to the Division of Waste
40 Management at the department's Tallahassee office. The actual
41 notice must ~~shall~~ be provided on a form adopted by department

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42 rule and mailed by certified mail, return receipt requested. The
43 person responsible for site rehabilitation shall simultaneously
44 provide ~~mail~~ a copy of the ~~such~~ notice to the appropriate
45 department district office and~~,~~ county health department~~, and~~
46 ~~all known lessees and tenants of the source property~~.
47 (b) The notice must ~~shall~~ include the following
48 information:
49 1.~~(a)~~ The location of the property at which site
50 rehabilitation was initiated ~~pursuant to s. 376.3071(5), s.~~
51 ~~376.3078(4), s. 376.81, or s. 376.30701~~ and contact information
52 for the person responsible for site rehabilitation, the person's
53 authorized agent, or another representative of the person.
54 2.~~(b)~~ A listing of all record owners of the ~~any~~ real
55 property~~, other than the property at which site rehabilitation~~
56 ~~was initiated pursuant to s. 376.3071(5), s. 376.3078(4), s.~~
57 ~~376.81, or s. 376.30701,~~ at which contamination has been
58 discovered; the parcel identification number for ~~any~~ such ~~real~~
59 property; the owner's address listed in the current county
60 property tax office records; and the owner's telephone number.
61 ~~The requirements of this paragraph do not apply to the notice to~~
62 ~~known tenants and lessees of the source property.~~
63 3.~~(c)~~ Separate tables for ~~by medium, such as~~ groundwater,
64 soil, and surface water which~~, or sediment, that~~ list sampling
65 locations identified on the vicinity map described in
66 subparagraph 4.; sampling dates; names of contaminants detected
67 above cleanup target levels; their corresponding cleanup target
68 levels; the contaminant concentrations; and whether the cleanup
69 target level is based on health, nuisance, organoleptic, or
70 aesthetic concerns.

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71 4.~~(d)~~ A vicinity map that shows each sampling location with
72 corresponding laboratory analytical results described in
73 subparagraph 3. ~~and the date on which the sample was collected~~
74 and that identifies the property boundaries of the property at
75 which site rehabilitation was initiated ~~pursuant to s.~~
76 ~~376.3071(5), s. 376.3078(4), s. 376.81, or s. 376.30701~~ and any
77 ~~the~~ other properties at which contamination has been discovered
78 during such site rehabilitation. If available, a contaminant
79 plume map signed and sealed by a state-licensed professional
80 engineer or geologist may be included with the vicinity map.
81 (3) DEPARTMENT'S NOTICE RESPONSIBILITIES.—
82 (a) After receiving the initial notice required under
83 subsection (2), the department shall notify the following
84 persons of the contamination:
85 1. The mayor, the chair of the county commission, or the
86 comparable senior elected official representing the affected
87 area.
88 2. The city manager, the county administrator, or the
89 comparable senior administrative official representing the
90 affected area.
91 3. The school district superintendent representing the
92 affected area.
93 4. The state senator, state representative, and United
94 States Representative representing the affected area and both
95 United States Senators.
96 5. All real property owners, presidents of any condominium
97 associations, or sole owners of condominiums, lessees, and the
98 tenants of record for:
99 a. The property at which site rehabilitation is being

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100 conducted, if different from the person responsible for site
101 rehabilitation;
102 b. Any properties within a 500-foot radius of each sampling
103 point at which contamination is discovered, if site
104 rehabilitation was initiated pursuant to s. 376.30701 or an
105 administrative or court order; and
106 c. Any properties within a 250-foot radius of each sampling
107 point at which contamination is discovered or any properties
108 identified on a contaminant plume map provided pursuant to
109 subparagraph (2)(b)4. if site rehabilitation was initiated
110 pursuant to s. 376.3071(5), s. 376.3078(4), or s. 376.81, or at,
111 or in connection with, a permitted solid waste management
112 facility subject to a groundwater monitoring plan.
113 (b) The notice provided to:
114 1. Local government officials shall be mailed by certified
115 mail, return receipt requested, and must advise the local
116 government of its responsibilities under subsection (4).
117 2. Real property owners, presidents of any condominium
118 associations or sole owners of condominiums, lessees, and
119 tenants of record may be delivered by certified mail, return
120 receipt requested, first-class mail, hand delivery, or door
121 hanger.
122 (c) Within 30 days after receiving the initial ~~actual~~
123 notice required under ~~pursuant to~~ subsection (2), ~~or within 30~~
124 ~~days of the effective date of this act if the department already~~
125 ~~possesses information equivalent to that required by the notice,~~
126 the department shall verify that the person responsible for site
127 rehabilitation has complied with the notice requirements of this
128 section ~~send a copy of such notice, or an equivalent~~

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129 ~~notification, to all record owners of any real property, other~~
130 ~~than the property at which site rehabilitation was initiated~~
131 ~~pursuant to s. 376.3071(5), s. 376.3078(4), s. 376.81, or s.~~
132 ~~376.30701, at which contamination has been discovered~~. If the
133 person responsible for site rehabilitation has not complied with
134 the notice requirements, the department may pursue enforcement
135 as provided under this chapter and chapter 403.
136 (d) If the property at which contamination has been
137 discovered is the site of:
138 1. A school as defined in s. 1003.01, the department shall
139 mail ~~also send~~ a copy of the notice to the superintendent ~~chair~~
140 ~~of the school board~~ of the school district in which the property
141 is located and direct the superintendent ~~said school board~~ to
142 provide actual notice annually to teachers and parents or
143 guardians of students attending the school during the period of
144 site rehabilitation.
145 2. A private K-12 school or a child care facility as
146 defined in s. 402.302, the department shall mail a copy of the
147 notice to the governing board, principal, or owner of the school
148 or child care facility and direct the governing board,
149 principal, or owner to provide actual notice annually to
150 teachers and parents or guardians of students or children
151 attending the school or child care facility during the period of
152 site rehabilitation.
153 (e) After receiving the initial notice required under
154 subsection (2), if any property within:
155 1. A 500-foot radius of the property at which contamination
156 has been discovered during site rehabilitation pursuant to s.
157 376.30701 or an administrative or court order is the site of a

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158 school as defined in s. 1003.01, the department shall mail a
159 copy of the notice to the superintendent of the school district
160 in which the property is located and direct the superintendent
161 to provide actual notice annually to the principal of the
162 school.
163 2. A 250-foot radius of the property at which contamination
164 has been discovered during site rehabilitation pursuant to s.
165 376.3071(5), s. 376.3078(4), or s. 376.81, or at, or in
166 connection with, a permitted solid waste management facility
167 subject to a groundwater monitoring plan, is the site of a
168 school as defined in s. 1003.01, the department shall mail a
169 copy of the notice to the superintendent of the school district
170 in which the property is located and direct the superintendent
171 to provide actual notice annually to the principal of the
172 school.
173 (f) Along with the copy of the notice ~~or its equivalent~~,
174 the department shall include a letter identifying sources of
175 additional information about the contamination and a telephone
176 number to which further inquiries should be directed. The
177 department may collaborate with the Department of Health to
178 develop such sources of information and to establish procedures
179 for responding to public inquiries about health risks associated
180 with contaminated sites.
181 (4) LOCAL GOVERNMENT'S NOTICE RESPONSIBILITIES.—If contact
182 information is available, within 30 days after receiving notice
183 under subsection (3), the local government shall mail a copy of
184 the notice to the president or equivalent officer of each
185 homeowners' association or neighborhood association within the
186 potentially affected area described in subsection (3).

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187 (5) RECOVERY OF NOTIFICATION COSTS.—The department and the
188 local government shall recover the costs of postage, materials,
189 and labor associated with providing notification from the
190 responsible party, unless site rehabilitation is eligible for
191 state-funded cleanup pursuant to the risk-based corrective
192 action provisions found in s. 376.3071(5) or s. 376.3078(4).
193 (6) ~~(4)~~ RULEMAKING AUTHORITY.—The department shall adopt
194 rules and forms ~~pursuant to ss. 120.536(1) and 120.54~~ to
195 administer ~~implement~~ the requirements of this section.
196 Section 58. The Legislature finds that this act fulfills an
197 important state interest.
198
199 ========== T I T L E A M E N D M E N T ==========
200 And the title is amended as follows:
201 After line 4507
202 insert:
203 referendum; amending s. 376.30702, F.S.; revising
204 contamination notification provisions; requiring
205 individuals responsible for site rehabilitation to
206 provide notice of site rehabilitation to specified
207 entities; revising provisions relating to the content
208 of such notice; requiring the Department of
209 Environmental Protection to provide notice of site
210 rehabilitation to specified entities and certain
211 property owners; providing an exemption; requiring the
212 department to verify compliance with notice
213 requirements; authorizing the department to pursue
214 enforcement measures for noncompliance with notice
215 requirements; revising the department's contamination

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216 notification requirements for certain public schools;
217 requiring the department to provide specified notice
218 to private K-12 schools and child care facilities;
219 requiring the department to provide specified notice
220 to public schools within a specified area; providing
221 notice requirements, including directives to extend
222 such notice to certain other persons; requiring local
223 governments to provide specified notice of site
224 rehabilitation; authorizing the local government and
225 the department to recover notification costs from
226 responsible parties; providing a statement of
227 important state interest; providing legislative intent
228 that there are no

COMMITTEE AMENDMENT

(3)

304092

LEGISLATIVE ACTION

Senate . House

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LATE FILED

The Policy and Steering Committee on Ways and Means (Thrasher) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 84 and 85
4 insert:
5 Section 2. Section 550.135, Florida Statutes, is amended to
6 read:
7 550.135 Division of moneys derived under this law.—All
8 moneys that are deposited with the Chief Financial Officer to
9 the credit of the Pari-mutuel Wagering Trust Fund shall be
10 distributed as follows:
11 (1)(a) At the end of each fiscal year, the division shall
12 deduct the regulatory costs incurred for that year from the

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13 taxes and fees imposed under this chapter and s. 849.086 paid by
14 all pari-mutuel facilities and distribute the excess to each
15 non-slot facility based on its pro rata share by November 1. The
16 pro-rata share for each non-slot facility shall be calculated as
17 all taxes on handle from wagers placed at the non-slot facility,
18 which shall include wagers placed as an intertrack guest, plus
19 all daily license fees paid by that facility less any credits of
20 that facility pursuant to s. 550.09511 and s. 550.09514 whether
21 applied directly or transferred to another facility under that
22 section, divided by the total of all such taxes on handle paid
23 from wagers placed at all non-slot facilities and daily license
24 fees paid by all non-slot facilities less credits applied or
25 transferred by all non-slot facilities. In no event shall a
26 facility receive back more than that facility paid, directly or
27 indirectly, in taxes and fees imposed under this chapter and s.
28 849.086. The first pro rata distribution shall be paid on or
29 before November 1, 2011 and shall be based on fiscal year 2010-
30 2011. For purposes of this section, the division's regulatory
31 costs shall include all operating and non-operating expenditures
32 incurred or encumbered by the department related to the
33 regulation of pari-mutuel wagering pursuant to ch. 550 and the
34 regulation of cardrooms pursuant to s. 849.086.
35 (b) If at the end of any state fiscal year, the aggregate
36 amount of tax paid to the state by all pari-mutuel licensees for
37 the operation of slot machines is less than the aggregate amount
38 of tax paid by all pari-mutuel licensees for the operation of
39 slot machines in the 2008-2009 state fiscal year plus the amount
40 of the tax exemptions in s. 849.086(13)(a), a surcharge shall be
41 imposed on pari-mutuel licensees that do not operate slot

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42 machines. The surcharge equals the difference between the
43 aggregate amount of tax paid by all pari-mutuel licensees for
44 the operation of slot machines in the 2008-2009 state fiscal
45 year plus the amount of the tax exemptions in s. 849.086(13)(a)
46 and the aggregate amount of tax paid to the state by all pari-
47 mutuel licensees for the operation of slot machines in the
48 applicable state fiscal year. The surcharge shall not exceed
49 $7.5 million. Each pari-mutuel facility shall pay its pro rata
50 share of the surcharge to the state within 45 days after the end
51 of the state fiscal year. The pro rata share of the surcharge
52 for each licensee shall be calculated as the total amount of
53 taxes on cardroom gross receipts that would have been due to the
54 state if the exemptions under s. 849.086(13)(a) did not apply,
55 divided by the total of such amounts for all licensees that did
56 not operate slot machines.
57 ~~The daily license fee revenues collected pursuant to s.~~
58 ~~550.0951(1) shall be used to fund the operating cost of the~~
59 ~~division and to provide a proportionate share of the operation~~
60 ~~of the office of the secretary and the Division of~~
61 ~~Administration of the Department of Business and Professional~~
62 ~~Regulation; however, other collections in the Pari-mutuel~~
63 ~~Wagering Trust Fund may also be used to fund the operation of~~
64 ~~the division in accordance with authorized appropriations.~~
65 (c) ~~(2)~~ Five hundred thousand dollars shall be retained in
66 the Pari-mutuel Wagering Trust fund to carry forward for the
67 subsequent fiscal year for the operating and non-operating
68 expenditures incurred or encumbered by the department related to
69 the regulation of pari-mutuel wagering pursuant to this chapter
70 and the regulation of cardrooms pursuant to s. 849.086. Such

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71 amount shall be in addition to the amount of the division's
72 regulatory costs. All unappropriated funds in excess of the
73 $500,000 remaining ~~$1.5 million~~ in the Pari-mutuel Wagering
74 Trust Fund, collected pursuant to this chapter, after the
75 distribution under subsection (1)(a), shall be deposited with
76 the Chief Financial Officer to the credit of the General Revenue
77 Fund.
78 (2) ~~(3)~~ The slot machine license fee, the slot machine
79 occupational license fee, and the compulsive or addictive
80 gambling prevention program fee collected pursuant to ss.
81 551.106, 551.107(2)(a)1., and 551.118 shall be used to fund the
82 direct and indirect operating expenses of the division's slot
83 machine regulation operations and to provide funding for
84 relevant enforcement activities in accordance with authorized
85 appropriations. Funds deposited into the Pari-mutuel Wagering
86 Trust Fund pursuant to ss. 551.106, 551.107(2)(a)1., and 551.118
87 shall be reserved in the trust fund for slot machine regulation
88 operations. On June 30, any unappropriated funds in excess of
89 those necessary for incurred obligations and subsequent year
90 cash flow for slot machine regulation operations shall be
91 deposited with the Chief Financial Officer to the credit of the
92 General Revenue Fund.
93
94
95 ========== T I T L E A M E N D M E N T ==========
96 And the title is amended as follows:
97 Delete line 6
98 and insert:
99 their pari-mutuel facilities; amending s. 550.135,

304092

100 F.S.; providing for a refund of taxes and fees paid by
101 all pari-mutuel wagers at pari-mutuel facilities that
102 do not operate slot machines after deduction of the
103 costs of regulation by the division; imposing a
104 surcharge on pari-mutuel licensees that do not operate
105 slot machines if the taxes on pari-mutuel facilities
106 that do operate slot machines are less than a certain
107 amount; specifying the maximum amount of the
108 surcharge; providing for the calculation of the pro
109 rata share of the surcharge for each pari-mutuel
110 licensee that does not operate slot machines;
111 providing that excess funds in the Pari-mutuel Trust
112 Fund to be deposited in the General Revenue Fund;
113 amending s. 550.0951,

SA1

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LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Substitute for Amendment (349734)**
2
3 Delete lines 132 - 171
4 and insert:
5 (b) Pursuant to paragraph (a), a municipality may install
6 or, by contract or interlocal agreement, authorize the
7 installation of any such detectors only within the incorporated
8 area of the municipality, and a county may install or, by
9 contract or interlocal agreement, authorize the installation of
10 any such detectors only within the unincorporated area of the
11 county.
12 Section 5. Section 316.0083, Florida Statutes, is created

439160

13 to read:
14 316.0083 Mark Wandall Traffic Safety Program;
15 administration; report.—
16 (1)(a) For purposes of administering this section, the
17 department, a county, or a municipality may authorize a traffic
18 infraction enforcement officer under s. 316.640 to issue a
19 traffic citation for a violation of s. 316.074(1) or s.
20 316.075(1)(c)1. A notice of violation and a traffic citation may
21 not be issued for failure to stop at a red light if the driver
22 is making a right-hand turn in a careful and prudent manner at
23 an intersection where right-hand turns are permissible. This
24 paragraph does not prohibit a review of information from a
25 traffic infraction detector by an authorized employee or agent
26 of the department, a county, or a municipality before issuance
27 of the traffic citation by the traffic infraction enforcement
28 officer. This paragraph does not prohibit the department, a
29 county, or a municipality from issuing notification as provided
30 in paragraph (b) to the registered owner of the motor vehicle
31 involved in the violation of s. 316.074(1) or s. 316.075(1)(c)1.
32 (b)1.a. Within 30 days after a violation, notification must
33 be sent to the registered owner of the motor vehicle involved in
34 the violation specifying the remedies available under s. 318.14,
35 and specifying that the violator must pay the penalty of $158 to
36 the department, county, or municipality, or furnish an affidavit
37 in accordance with paragraph (d), within 30 days following the
38 date of the notification in order to avoid court fees, costs,
39 and the issuance of a traffic citation. The notification shall
40 be sent by first-class mail.
41 b. Included with the notification to the registered owner

439160

42 of the motor vehicle involved in the infraction must be a notice
43 that the owner has the right to review the photographic or
44 electronic images and the streaming video evidence that
45 constitutes a rebuttable presumption against the owner of the
46 vehicle. The notice must state the time and place and Internet
47 location where the evidence may be examined and observed.

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211448

LEGISLATIVE ACTION

Senate . House

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LATE FILED

The Policy and Steering Committee on Ways and Means (Altman) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 648 and 649
4 insert:
5
6 Section 15. Section 322.291, Florida Statutes, is amended
7 to read:
8 322.291 Driver improvement schools or DUI programs;
9 required in certain suspension and revocation cases.—
10 (1) Except as provided in s. 322.03(2), any person:
11 (a) ~~(1)~~ Whose driving privilege has been revoked:
12 1. ~~(a)~~ Upon conviction for:

211448

13 a.~~1.~~ Driving, or being in actual physical control of, any
14 vehicle while under the influence of alcoholic beverages, any
15 chemical substance set forth in s. 877.111, or any substance
16 controlled under chapter 893, in violation of s. 316.193;
17 b.~~2.~~ Driving with an unlawful blood- or breath-alcohol
18 level;
19 c.~~3.~~ Manslaughter resulting from the operation of a motor
20 vehicle;
21 d.~~4.~~ Failure to stop and render aid as required under the
22 laws of this state in the event of a motor vehicle crash
23 resulting in the death or personal injury of another;
24 e.~~5.~~ Reckless driving; or
25 2.~~(b)~~ As a habitual offender;
26 3.~~(c)~~ Upon direction of the court, if the court feels that
27 the seriousness of the offense and the circumstances surrounding
28 the conviction warrant the revocation of the licensee's driving
29 privilege; or
30 (b)~~(2)~~ Whose license was suspended under the point system,
31 was suspended for driving with an unlawful blood-alcohol level
32 of 0.10 percent or higher before January 1, 1994, was suspended
33 for driving with an unlawful blood-alcohol level of 0.08 percent
34 or higher after December 31, 1993, was suspended for a violation
35 of s. 316.193(1), or was suspended for refusing to submit to a
36 lawful breath, blood, or urine test as provided in s. 322.2615
37
38 shall, before the driving privilege may be reinstated, present
39 to the department proof of enrollment in a department-approved
40 advanced driver improvement course operating pursuant to s.
41 318.1451 or a substance abuse education course conducted by a

211448

42 DUI program licensed pursuant to s. 322.292, which shall include
43 a psychosocial evaluation and treatment, if referred.
44 Additionally, for a third or subsequent violation of
45 requirements for installation of an ignition interlock device, a
46 person must complete treatment as determined by a licensed
47 treatment agency following a referral by a DUI program and have
48 the duration of the ignition interlock device requirement
49 extended by at least 1 month up to the time period required to
50 complete treatment. If the person fails to complete such course
51 or evaluation within 90 days after reinstatement, or
52 subsequently fails to complete treatment, if referred, the DUI
53 program shall notify the department of the failure. Upon receipt
54 of the notice, the department shall cancel the offender's
55 driving privilege, notwithstanding the expiration of the
56 suspension or revocation of the driving privilege. The
57 department may temporarily reinstate the driving privilege upon
58 verification from the DUI program that the offender has
59 completed the education course and evaluation requirement and
60 has reentered and is currently participating in treatment. If
61 the DUI program notifies the department of the second failure to
62 complete treatment, the department shall reinstate the driving
63 privilege only after notice of completion of treatment from the
64 DUI program.
65 (2) All DUI program services must be completed through a
66 provider that does not also provide misdemeanor probation
67 services pursuant to s. 948.15 to the same individual. A waiver
68 may be granted only if the department determines that there is
69 not more than one provider of either service in that county.
70 Section 16. Subsection (5) of section 322.292, Florida

211448

71 Statutes, is amended to read:
72 322.292 DUI programs supervision; powers and duties of the
73 department.—
74 (5) A private probation services provider authorized under
75 s. 948.15 may not also provide DUI program services under this
76 section to the same individual unless it is the only provider of
77 DUI program services in that county ~~refer probationers to any~~
78 ~~DUI program owned in whole or in part by that probation services~~
79 ~~provider or its affiliates~~. ~~The department shall establish rules~~
80 ~~to administer this subsection.~~
81
82 ========== T I T L E A M E N D M E N T ==========
83 And the title is amended as follows:
84
85 Delete line 85
86 and insert:
87
88 motor vehicle insurance rates; amending ss. 322.291,
89 and 322.292, F.S.; requiring that all DUI program
90 services be completed at a provider who does not also
91 provide other misdemeanor probation services to the
92 same individual; providing that the Department of
93 Highway Safety and Motor Vehicles may grant a waiver
94 to such a provider if the department determines that
95 there is not more than one provider of either service
96 in that county; amending s. 395.4036,

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LEGISLATIVE ACTION

Senate	.	House
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LATE FILED

The Policy and Steering Committee on Ways and Means (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 163.08, Florida Statutes, is created to read:

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to require, in part, that the state reduce its energy requirements through enhanced conservation and efficiency

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13 measures in all end-use sectors and reduce atmospheric carbon
14 dioxide by promoting an increased use of renewable energy
15 resources. That act also declared it the public policy of the
16 state to play a leading role in developing and instituting
17 energy management programs that promote energy conservation,
18 energy security, and the reduction of greenhouse gases. In
19 addition to establishing policies to promote the use of
20 renewable energy, the Legislature provided for a schedule of
21 increases in the energy performance of buildings subject to the
22 Florida Energy Efficiency Code for Building Construction. In
23 chapter 2008-191, Laws of Florida, the Legislature adopted new
24 energy conservation and greenhouse gas reduction comprehensive
25 planning requirements for local governments. In the 2008 general
26 election, the voters of this state approved a constitutional
27 amendment authorizing the Legislature, by general law, to
28 prohibit consideration of any change or improvement made for the
29 purpose of improving a property's resistance to wind damage or
30 the installation of a renewable energy source device in the
31 determination of the assessed value of residential real
32 property.
33 (b) The Legislature finds that all energy-consuming-
34 improved properties that are not using energy conservation
35 strategies contribute to the burden affecting all improved
36 property resulting from fossil fuel energy production. Improved
37 property that has been retrofitted with energy-related
38 qualifying improvements receives the special benefit of
39 alleviating the property's burden from energy consumption. All
40 improved properties not protected from wind damage by wind-
41 resistance qualifying improvements contribute to the burden

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42 affecting all improved property resulting from potential wind
43 damage. Improved property that has been retrofitted with wind-
44 resistance qualifying improvements receives the special benefit
45 of reducing the property's burden from potential wind damage.
46 Further, the installation and operation of qualifying
47 improvements not only benefit the affected properties for which
48 the improvements are made, but also assist in fulfilling the
49 goals of the state's energy and hurricane mitigation policies.
50 In order to make qualifying improvements more affordable and
51 assist property owners who wish to undertake such improvements,
52 the Legislature finds that there is a compelling state interest
53 in enabling property owners to voluntarily finance such
54 improvements with local government assistance.
55 (c) The Legislature determines that the actions authorized
56 under this section, including, but not limited to, the financing
57 of qualifying improvements through the execution of financing
58 agreements and the related imposition of voluntary assessments
59 are reasonable and necessary to serve and achieve a compelling
60 state interest and are necessary for the prosperity and welfare
61 of the state and its property owners and inhabitants.
62 (2) As used in this section, the term:
63 (a) "Local government" means a county, municipality, or
64 special district defined as a dependent district pursuant to s.
65 189.403 or a special district created by two or more local
66 general-purpose governments pursuant to s. 163.01.
67 (b) "Qualifying improvement" includes any:
68 1. Energy conservation and efficiency improvement, which is
69 a measure to reduce consumption through conservation or a more
70 efficient use of electricity, natural gas, propane, or other

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71 forms of energy on the property, including, but not limited to,
72 air sealing; installation of insulation; installation of energy-
73 efficient heating, cooling, or ventilation systems; building
74 modifications to increase the use of daylight; replacement of
75 windows; installation of energy controls or energy recovery
76 systems; installation of electric vehicle charging equipment;
77 and installation of efficient lighting equipment.
78 2. Renewable energy improvement, which is the installation
79 of any system in which the electrical, mechanical, or thermal
80 energy is produced from a method that uses one or more of the
81 following fuels or energy sources: hydrogen, solar energy,
82 geothermal energy, bioenergy, and wind energy.
83 3. Wind-resistance improvement, which includes, but is not
84 limited to:
85 a. Improving the strength of the roof-deck attachment;
86 b. Creating a secondary water barrier to prevent water
87 intrusion;
88 c. Installing wind-resistant shingles;
89 d. Installing gable-end bracing;
90 e. Reinforcing roof-to-wall connections;
91 f. Installing storm shutters; or
92 g. Installing opening protections.
93 (3) A local government may levy non-ad valorem assessments
94 to fund qualifying improvements.
95 (4) Subject to local government ordinance or resolution, a
96 property owner may apply to the local government for funding to
97 finance a qualifying improvement and enter into a financing
98 agreement with the local government. Costs incurred by the local
99 government for such purpose may be collected as a non-ad valorem

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100 assessment. A non-ad valorem assessment shall be collected
101 pursuant to s. 197.3632, and notwithstanding s. 197.3632(8)(a),
102 shall not be subject to discount for early payment. However, the
103 notice and adoption requirements of s. 197.3632(4) do not apply
104 if this section is used and complied with, and the initial
105 resolution, publication of notice, and mailed notices to the
106 property appraiser, tax collector, and Department of Revenue
107 required by s. 197.3632(3)(a) may be provided on or before
108 August 15 in conjunction with any non-ad valorem assessment
109 authorized by this section, if the property appraiser, tax
110 collector, and local government agree.
111 (5) Pursuant to this section or as otherwise provided by
112 law or pursuant to a local government's home rule power, a local
113 government may enter into a partnership with one or more local
114 governments for the purpose of providing and financing
115 qualifying improvements.
116 (6) A qualifying improvement program may be administered by
117 a for-profit entity or a not-for-profit organization on behalf
118 of and at the discretion of the local government.
119 (7) A local government may incur debt for the purpose of
120 providing such improvements, payable from revenues received from
121 the improved property or any other available revenue source
122 authorized by law.
123 (8) A local government may enter into a financing agreement
124 only with the record owner of the affected property. Any
125 financing agreement entered into pursuant to this section or a
126 summary memorandum of such agreement shall be recorded in the
127 public records of the county within which the property is
128 located by the sponsoring unit of local government within 5 days

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129 after execution of the agreement. The recorded agreement shall
130 provide constructive notice that the assessment to be levied on
131 the property constitutes a lien of equal dignity to county taxes
132 and assessments from the date of recordation.
133 (9) Before entering into a financing agreement, the local
134 government shall reasonably determine that all property taxes
135 and any other assessments levied on the same bill as property
136 taxes are paid and have not been delinquent for the preceding 3
137 years or the property owner's period of ownership, whichever is
138 less; that there are no involuntary liens, including, but not
139 limited to, construction liens on the property; that no notices
140 of default or other evidence of property-based debt delinquency
141 have been recorded during the preceding 3 years or the property
142 owner's period of ownership, whichever is less; and that the
143 property owner is current on all mortgage debt on the property.
144 (10) A qualifying improvement shall be affixed to a
145 building or facility that is part of the property and shall
146 constitute an improvement to the building or facility or a
147 fixture attached to the building or facility. An agreement
148 between a local government and a qualifying property owner may
149 not cover wind-resistance improvements in buildings or
150 facilities under new construction or construction for which a
151 certificate of occupancy or similar evidence of substantial
152 completion of new construction or improvement has not been
153 issued.
154 (11) Any work requiring a license under any applicable law
155 to make a qualifying improvement shall be performed by a
156 contractor properly certified or registered pursuant to part I
157 or part II of chapter 489.

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158 (12)(a) Without the consent of the holders or loan
159 servicers of any mortgage encumbering or otherwise secured by
160 the property, the total amount of any non-ad valorem assessment
161 for a property under this section may not exceed 20 percent of
162 the just value of the property as determined by the county
163 property appraiser.
164 (b) Notwithstanding paragraph (a), a non-ad valorem
165 assessment for a qualifying improvement defined in subparagraph
166 (2)(b)1. or subparagraph (2)(b)2. which is supported by an
167 energy audit is not subject to the limits in this subsection if
168 the audit demonstrates that the annual energy savings from the
169 qualified improvement equals or exceeds the annual repayment
170 amount of the non-ad valorem assessment.
171 (13) At least 30 days before entering into a financing
172 agreement, the property owner shall provide to the holders or
173 loan servicers of any existing mortgages encumbering or
174 otherwise secured by the property a notice of the owner's intent
175 to enter into a financing agreement together with the maximum
176 principal amount to be financed and the maximum annual
177 assessment necessary to repay that amount. A verified copy or
178 other proof of such notice shall be provided to the local
179 government. A provision in any agreement between a mortgagee or
180 other lienholder and a property owner, or otherwise now or
181 hereafter binding upon a property owner, which allows for
182 acceleration of payment of the mortgage, note, or lien or other
183 unilateral modification solely as a result of entering into a
184 financing agreement as provided for in this section is not
185 enforceable. This subsection does not limit the authority of the
186 holder or loan servicer to increase the required monthly escrow

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187 by an amount necessary to annually pay the qualifying
188 improvement assessment.
189 (14) Each contract for the sale of a parcel of real
190 property for which a non-ad valorem assessment has been imposed
191 under the authority of this section within the local government
192 shall include, immediately prior to the space reserved in the
193 contract for the signature of the purchaser, the following
194 disclosure statement in boldfaced and conspicuous type that is
195 larger than the type in the remaining text of the contract:
196
197 "THE ...(name of local government)... HAS IMPOSED A NON-AD
198 VALOREM ASSESSMENT ON THIS PROPERTY. THIS ASSESSMENT IS IN
199 ADDITION TO OTHER LOCAL GOVERNMENTAL ASSESSMENTS AND ALL OTHER
200 ASSESSMENTS PROVIDED FOR BY LAW."
201 (15) A provision in any agreement between a local
202 government and a public or private power or energy provider or
203 other utility provider is not enforceable to limit or prohibit
204 any local government from exercising its authority under this
205 section.
206 (16) This section is additional and supplemental to county
207 and municipal home rule authority and not in derogation of such
208 authority or a limitation upon such authority.
209 Section 2. This act shall take effect upon becoming a law.
210
211 ========== T I T L E A M E N D M E N T ==========
212 And the title is amended as follows:
213 Delete everything before the enacting clause
214 and insert:
215 A bill to be entitled

855390

216 An act relating to qualifying improvements to real
217 property; creating s. 163.08, F.S.; providing
218 legislative findings and intent; providing
219 definitions; authorizing a local government to levy
220 non-ad valorem assessments to fund certain
221 improvements; authorizing a property owner to apply
222 for funding and enter into a financing agreement with
223 a local government to finance certain improvements;
224 authorizing a local government to collect moneys for
225 such purposes through non-ad valorem assessments;
226 providing collection requirements; authorizing local
227 governments to enter into partnerships with other
228 local governments to provide and finance certain
229 improvements; authorizing a qualifying improvement
230 program to be administered by a for-profit entity or
231 not-for-profit organization under certain
232 circumstances; authorizing a local government to incur
233 debt payable from revenues received from the improved
234 property; providing a financing restriction for local
235 governments; requiring a financial agreement to be
236 recorded in a county's public records within 5 days
237 after execution of the agreement; specifying
238 responsibilities for local governments before entering
239 into financing agreements; requiring qualifying
240 improvements to be affixed to a building or facility
241 on the property and be performed by a properly
242 certified or registered contractor; excluding certain
243 projects from financing agreement coverage; limiting
244 the amount of the non-ad valorem assessment to a

855390

245 percentage of the just value of the property;
246 providing exceptions; specifying information to be
247 provided to property owners before entering into
248 financing agreements; prohibiting acceleration of a
249 mortgage under certain circumstances; providing
250 assessment disclosure requirements; specifying
251 unenforceability of certain agreement provisions;
252 providing for construction preserving a local
253 government's home rule authority; providing an
254 effective date.

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916344

LEGISLATIVE ACTION

Senate . House

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LATE FILED

The Policy and Steering Committee on Ways and Means (Peaden) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 2446 - 2448
4 and insert:
5 basis. This initiative is limited to the geographic area covered
6 by the current contract. The agency shall develop and implement
7 a separate program for the statewide mail-order delivery of
8 prescription drugs to Medicaid patients who have various
9 chronic-disease states in order to assist Medicaid patients in
10 securing prescriptions and to reduce program costs. The agency
11 may seek and implement any federal waivers necessary to
12 implement this subparagraph.

916344

13
14 ========== T I T L E A M E N D M E N T ==========
15 And the title is amended as follows:
16 Delete line 192
17 and insert:
18 Medicaid prescribed-drug spending-control program;
19 requiring the Agency for Health Care Administration to
20 develop and implement a separate program for mail-
21 order delivery of prescription drugs for certain
22 Medicaid patients;

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920186

LEGISLATIVE ACTION

Senate . House

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LATE FILED

The Policy and Steering Committee on Ways and Means (Peaden) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3
4 Between lines 1745 and 1746
5 insert:
6 1. An individual who is not a medical professional or
7 family member listed in this paragraph may own up to 30 percent
8 of a health care clinic that is exempt under this paragraph if
9 the individual obtains prior approval from the agency for
10 ownership of a percentage of a health care clinic. Such an
11 individual is considered an "applicant" under s. 400.991(5), and
12 must meet all the requirements of that section before being

920186

13 approved by the agency for ownership of a minority interest in a
14 health care clinic.
15 2. If an individual who is not a medical professional or
16 family member listed in this paragraph assumes ownership of an
17 investment interest in a health care clinic without the prior
18 approval of the agency, the health care clinic shall lose its
19 exemption from licensure under this paragraph.
20 3. If an individual who is not a medical professional or a
21 family member fails to obtain prior approval from the agency for
22 the right to hold an ownership interest in such clinic, the
23 agency may require the individual to divest his or her ownership
24 interest in the health care clinic.
25
26 ========== T I T L E A M E N D M E N T ==========
27 And the title is amended as follows:
28 Delete lines 143 - 144
29 and insert:
30 providing that part X of ch. 400, F.S., the Health
31 Care Clinic Act, does not apply to an individual who
32 is not a medical professional or family member of a
33 medical professional and owns up to a specified
34 percent of a health care clinic if the individual or
35 family member obtains the prior approval of the Agency
36 for Health Care Administration to own the clinic, or
37 to an entity owned by

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231798

LEGISLATIVE ACTION

Senate . House

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LATE FILED

The Policy and Steering Committee on Ways and Means (Peaden) recommended the following:

1 **Senate Substitute for Amendment (920186) (with title**
2 **amendment)**
3
4 Delete lines 1721 - 1726
5 and insert:
6 (f) A sole proprietorship, group practice, partnership, or
7 corporation that provides health care services by physicians
8 covered by s. 627.419, that is directly supervised by one or
9 more of such physicians, and that is wholly owned by one or more
10 of those physicians or by a physician and the spouse, parent,
11 child, or sibling of that physician.
12 1. An individual who is not a medical professional or

231798

13 family member listed in this paragraph may own up to 30 percent
14 of a health care clinic that is exempt under this paragraph if
15 the individual obtains prior approval from the agency for
16 ownership of a percentage of a health care clinic. Such an
17 individual is considered an "applicant" under s. 400.991(5), and
18 must meet all the requirements of that section before being
19 approved by the agency for ownership of a minority interest in a
20 health care clinic.
21 2. If an individual who is not a medical professional or
22 family member listed in this paragraph assumes ownership of an
23 investment interest in a health care clinic without the prior
24 approval of the agency, the health care clinic shall lose its
25 exemption from licensure under this paragraph.
26 3. If an individual who is not a medical professional or a
27 family member fails to obtain prior approval from the agency for
28 the right to hold an ownership interest in such clinic, the
29 agency may require the individual to divest his or her ownership
30 interest in the health care clinic.
31
32 ========== T I T L E A M E N D M E N T ==========
33 And the title is amended as follows:
34
35 Delete lines 143 - 144
36 and insert:
37
38 providing that part X of ch. 400, F.S., the Health
39 Care Clinic Act, does not apply to an individual who
40 is not a medical professional or family member of a
41 medical professional and owns up to a specified

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42 percent of a health care clinic if the individual or
43 family member obtains the prior approval of the Agency
44 for Health Care Administration to own the clinic, or
45 to an entity owned by

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161030

LEGISLATIVE ACTION

Senate . House
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LATE FILED

The Policy and Steering Committee on Ways and Means (Peaden) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 3813 and 3814
4 insert:
5 Section 101. Subsections (4) and (9) of section 381.0403,
6 Florida Statutes, are repealed.
7 Section 102. Paragraph (a) of subsection (3) of section
8 381.0403, Florida Statutes, is amended to read:
9 381.0403 The Community Hospital Education Act.—
10 (3) PROGRAM FOR COMMUNITY HOSPITAL EDUCATION; STATE AND
11 LOCAL PLANNING.—
12 (a) There is established under the Department of Health a

161030

13 program for statewide graduate medical education. It is intended
14 that continuing graduate medical education programs for interns
15 and residents be established on a statewide basis. The program
16 shall provide financial support for primary care specialty
17 interns and residents based on policies recommended and approved
18 by the Community Hospital Education Council, herein established,
19 and the Department of Health. Only those programs with at least
20 three residents or interns in each year of the training program
21 are qualified to apply for financial support. Programs with
22 fewer than three residents or interns per training year are
23 qualified to apply for financial support, but only if the
24 appropriate accrediting entity for the particular specialty has
25 approved the program for fewer positions. Programs added after
26 fiscal year 1997-1998 shall have 5 years to attain the requisite
27 number of residents or interns. When feasible and to the extent
28 allowed through the General Appropriations Act, state funds
29 shall be used to generate federal matching funds under Medicaid,
30 or other federal programs, and the resulting combined state and
31 federal funds shall be allocated to participating hospitals for
32 the support of graduate medical education. The department may
33 spend up to $75,000 of the state appropriation for
34 administrative costs associated with the production of the
35 annual report as specified in ss. 458.3192 and 459.0082
36 ~~subsection (9)~~, and for administration of the program.
37 Section 103. Section 381.4018, Florida Statutes, is amended
38 to read:
39 381.4018 Physician workforce assessment and development.—
40 (1) DEFINITIONS.—As used in this section, the term:
41 (a) "Consortium" or "consortia" means a combination of

161030

42 statutory teaching hospitals, statutory rural hospitals,
43 specialty children's hospitals, other hospitals, accredited
44 medical schools, clinics operated by the Department of Health,
45 clinics operated by the Department of Veterans' Affairs, area
46 health education centers, community health centers, federally
47 qualified health centers, prison clinics, local community
48 clinics, or other programs. At least one member of the
49 consortium shall be a sponsoring institution accredited or
50 currently seeking accreditation by the Accreditation Council for
51 Graduate Medical Education or the American Osteopathic
52 Association.
53 (b) "Council" means the Physician Workforce Advisory
54 Council.
55 (c) "Department" means the Department of Health.
56 (d) "Graduate medical education program" means a program
57 accredited by the Accreditation Council for Graduate Medical
58 Education or the American Osteopathic Association.
59 (e) "Primary care specialty" means emergency medicine,
60 family practice, internal medicine, pediatrics, psychiatry,
61 geriatrics, general surgery, obstetrics and gynecology, and
62 combined pediatrics and internal medicine and other specialties
63 as determined by the Physician Workforce Advisory Council or the
64 Department of Health.
65 (2) ~~(1)~~ LEGISLATIVE INTENT.—The Legislature recognizes that
66 physician workforce planning is an essential component of
67 ensuring that there is an adequate and appropriate supply of
68 well-trained physicians to meet this state's future health care
69 service needs as the general population and elderly population
70 of the state increase. The Legislature finds that items to

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71 consider relative to assessing the physician workforce may
72 include physician practice status; specialty mix; geographic
73 distribution; demographic information, including, but not
74 limited to, age, gender, race, and cultural considerations; and
75 needs of current or projected medically underserved areas in the
76 state. Long-term strategic planning is essential as the period
77 from the time a medical student enters medical school to
78 completion of graduate medical education may range from 7 to 10
79 years or longer. The Legislature recognizes that strategies to
80 provide for a well-trained supply of physicians must include
81 ensuring the availability and capacity of quality ~~graduate~~
82 medical schools and graduate medical education programs in this
83 state, as well as using new or existing state and federal
84 programs providing incentives for physicians to practice in
85 needed specialties and in underserved areas in a manner that
86 addresses projected needs for physician manpower.
87 (3) ~~(2)~~ PURPOSE.—The department ~~of Health~~ shall serve as a
88 coordinating and strategic planning body to actively assess the
89 state's current and future physician workforce needs and work
90 with multiple stakeholders to develop strategies and
91 alternatives to address current and projected physician
92 workforce needs.
93 (4) ~~(3)~~ GENERAL FUNCTIONS.—The department shall maximize the
94 use of existing programs under the jurisdiction of the
95 department and other state agencies and coordinate governmental
96 and nongovernmental stakeholders and resources in order to
97 develop a state strategic plan and assess the implementation of
98 such strategic plan. In developing the state strategic plan, the
99 department shall:

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100 (a) Monitor, evaluate, and report on the supply and
101 distribution of physicians licensed under chapter 458 or chapter
102 459. The department shall maintain a database to serve as a
103 statewide source of data concerning the physician workforce.
104 (b) Develop a model and quantify, on an ongoing basis, the
105 adequacy of the state's current and future physician workforce
106 as reliable data becomes available. Such model must take into
107 account demographics, physician practice status, place of
108 education and training, generational changes, population growth,
109 economic indicators, and issues concerning the "pipeline" into
110 medical education.
111 (c) Develop and recommend strategies to determine whether
112 the number of qualified medical school applicants who might
113 become competent, practicing physicians in this state will be
114 sufficient to meet the capacity of the state's medical schools.
115 If appropriate, the department shall, working with
116 representatives of appropriate governmental and nongovernmental
117 entities, develop strategies and recommendations and identify
118 best practice programs that introduce health care as a
119 profession and strengthen skills needed for medical school
120 admission for elementary, middle, and high school students, and
121 improve premedical education at the precollege and college level
122 in order to increase this state's potential pool of medical
123 students.
124 (d) Develop strategies to ensure that the number of
125 graduates from the state's public and private allopathic and
126 osteopathic medical schools is ~~are~~ adequate to meet physician
127 workforce needs, based on the analysis of the physician
128 workforce data, so as to provide a high-quality medical

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129 education to students in a manner that recognizes the uniqueness
130 of each new and existing medical school in this state.
131 (e) Pursue strategies and policies to create, expand, and
132 maintain graduate medical education positions in the state based
133 on the analysis of the physician workforce data. Such strategies
134 and policies must take into account the effect of federal
135 funding limitations on the expansion and creation of positions
136 in graduate medical education. The department shall develop
137 options to address such federal funding limitations. The
138 department shall consider options to provide direct state
139 funding for graduate medical education positions in a manner
140 that addresses requirements and needs relative to accreditation
141 of graduate medical education programs. The department shall
142 consider funding residency positions as a means of addressing
143 needed physician specialty areas, rural areas having a shortage
144 of physicians, and areas of ongoing critical need, and as a
145 means of addressing the state's physician workforce needs based
146 on an ongoing analysis of physician workforce data.
147 (f) Develop strategies to maximize federal and state
148 programs that provide for the use of incentives to attract
149 physicians to this state or retain physicians within the state.
150 Such strategies should explore and maximize federal-state
151 partnerships that provide incentives for physicians to practice
152 in federally designated shortage areas. Strategies shall also
153 consider the use of state programs, such as the Florida Health
154 Service Corps established pursuant to s. 381.0302 and the
155 Medical Education Reimbursement and Loan Repayment Program
156 pursuant to s. 1009.65, which provide for education loan
157 repayment or loan forgiveness and provide monetary incentives

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158 for physicians to relocate to underserved areas of the state.
159 (g) Coordinate and enhance activities relative to physician
160 workforce needs, undergraduate medical education, ~~and~~ graduate
161 medical education, and reentry of retired military and other
162 physicians into the physician workforce provided by the Division
163 of Medical Quality Assurance, ~~the Community Hospital Education~~
164 ~~Program and the Graduate Medical Education Committee established~~
165 ~~pursuant to s. 381.0403,~~ area health education center networks
166 established pursuant to s. 381.0402, and other offices and
167 programs within the department ~~of Health~~ as designated by the
168 State Surgeon General.
169 (h) Work in conjunction with and act as a coordinating body
170 for governmental and nongovernmental stakeholders to address
171 matters relating to the state's physician workforce assessment
172 and development for the purpose of ensuring an adequate supply
173 of well-trained physicians to meet the state's future needs.
174 Such governmental stakeholders shall include, but need not be
175 limited to, the State Surgeon General or his or her designee,
176 the Commissioner of Education or his or her designee, the
177 Secretary of Health Care Administration or his or her designee,
178 and the Chancellor of the State University System or his or her
179 designee ~~from the Board of Governors of the State University~~
180 ~~System~~, and, at the discretion of the department, other
181 representatives of state and local agencies that are involved in
182 assessing, educating, or training the state's current or future
183 physicians. Other stakeholders shall include, but need not be
184 limited to, organizations representing the state's public and
185 private allopathic and osteopathic medical schools;
186 organizations representing hospitals and other institutions

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187 providing health care, particularly those that currently provide
188 or have an interest in providing accredited medical education
189 and graduate medical education to medical students and medical
190 residents; organizations representing allopathic and osteopathic
191 practicing physicians; and, at the discretion of the department,
192 representatives of other organizations or entities involved in
193 assessing, educating, or training the state's current or future
194 physicians.
195 (i) Serve as a liaison with other states and federal
196 agencies and programs in order to enhance resources available to
197 the state's physician workforce and medical education continuum.
198 (j) Act as a clearinghouse for collecting and disseminating
199 information concerning the physician workforce and medical
200 education continuum in this state.
201 (5) PHYSICIAN WORKFORCE ADVISORY COUNCIL.—There is created
202 in the department the Physician Workforce Advisory Council, an
203 advisory council as defined in s. 20.03. The council shall
204 comply with the requirements of s. 20.052, except as otherwise
205 provided in this section.
206 (a) The council shall consist of 19 members. Members
207 appointed by the State Surgeon General shall include:
208 1. A designee from the department who is a physician
209 licensed under chapter 458 or chapter 459 and recommended by the
210 State Surgeon General.
211 2. An individual who is affiliated with the Science
212 Students Together Reaching Instructional Diversity and
213 Excellence program and recommended by the area health education
214 center network.
215 3. Two individuals recommended by the Council of Florida

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216 Medical School Deans, one representing a college of allopathic
217 medicine and one representing a college of osteopathic medicine.
218 4. One individual recommended by the Florida Hospital
219 Association, representing a hospital that is licensed under
220 chapter 395, has an accredited graduate medical education
221 program, and is not a statutory teaching hospital.
222 5. One individual representing a statutory teaching
223 hospital as defined in s. 408.07 and recommended by the Safety
224 Net Hospital Alliance.
225 6. One individual representing a family practice teaching
226 hospital as defined in s. 395.805 and recommended by the Council
227 of Family Medicine and Community Teaching Hospitals.
228 7. Two individuals recommended by the Florida Medical
229 Association, one representing a primary care specialty and one
230 representing a nonprimary care specialty.
231 8. Two individuals recommended by the Florida Osteopathic
232 Medical Association, one representing a primary care specialty
233 and one representing a nonprimary care specialty.
234 9. Two individuals who are program directors of accredited
235 graduate medical education programs, one representing a program
236 that is accredited by the Accreditation Council for Graduate
237 Medical Education and one representing a program that is
238 accredited by the American Osteopathic Association.
239 10. An individual recommended by the Florida Association of
240 Community Health Centers representing a federally qualified
241 health center located in a rural area as defined in s.
242 381.0406(2)(a).
243 11. An individual recommended by the Florida Academy of
244 Family Physicians.

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245 12. An individual recommended by the Florida Alliance for
246 Health Professions Diversity.
247 13. The Chancellor of the State University System or his or
248 her designee.
249 14. A layperson member as determined by the State Surgeon
250 General.
251
252 Appointments to the council shall be made by the State Surgeon
253 General. Each entity authorized to make recommendations under
254 this subsection shall make at least two recommendations to the
255 State Surgeon General for each appointment to the council. The
256 State Surgeon General shall name one appointee for each position
257 from the recommendations made by each authorized entity.
258 (b) Each council member shall be appointed to a 4-year
259 term. An individual may not serve more than two terms. Any
260 council member may be removed from office for malfeasance;
261 misfeasance; neglect of duty; incompetence; permanent inability
262 to perform official duties; or pleading guilty or nolo
263 contendere to, or being found guilty of, a felony. Any council
264 member who meets the criteria for removal, or who is otherwise
265 unwilling or unable to properly fulfill the duties of the
266 office, shall be succeeded by an individual chosen by the State
267 Surgeon General to serve out the remainder of the council
268 member's term. If the remainder of the replaced council member's
269 term is less than 18 months, notwithstanding the provisions of
270 this paragraph, the succeeding council member may be reappointed
271 twice by the State Surgeon General.
272 (c) The chair of the council is the State Surgeon General,
273 who shall designate a vice chair from the membership of the

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274 council to serve in the absence of the State Surgeon General. A
275 vacancy shall be filled for the remainder of the unexpired term
276 in the same manner as the original appointment.
277 (d) Council members are not entitled to receive
278 compensation or reimbursement for per diem or travel expenses.
279 (e) The council shall meet at least twice a year in person
280 or by teleconference.
281 (f) The council shall:
282 1. Advise the State Surgeon General and the department on
283 matters concerning current and future physician workforce needs
284 in this state;
285 2. Review survey materials and the compilation of survey
286 information;
287 3. Annually review the number, location, cost, and
288 reimbursement of graduate medical education programs and
289 positions;
290 4. Provide recommendations to the department regarding the
291 survey completed by physicians licensed under chapter 458 or
292 chapter 459;
293 5. Assist the department in preparing the annual report to
294 the Legislature pursuant to ss. 458.3192 and 459.0082;
295 6. Assist the department in preparing an initial strategic
296 plan, conduct ongoing strategic planning in accordance with this
297 section, and provide ongoing advice on implementing the
298 recommendations;
299 7. Monitor and provide recommendations regarding the need
300 for an increased number of primary care or other physician
301 specialties to provide the necessary current and projected
302 health and medical services for the state; and

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303 8. Monitor and make recommendations regarding the status of
304 the needs relating to graduate medical education in this state.
305 (6) PHYSICIAN WORKFORCE GRADUATE MEDICAL EDUCATION
306 INNOVATION PILOT PROJECTS.—
307 (a) The Legislature finds that:
308 1. In order to ensure a physician workforce that is
309 adequate to meet the needs of this state's residents and its
310 health care system, policymakers must consider the education and
311 training of future generations of well-trained health care
312 providers.
313 2. Physicians are likely to practice in the state where
314 they complete their graduate medical education.
315 3. It can directly affect the makeup of the physician
316 workforce by selectively funding graduate medical education
317 programs to provide needed specialists in geographic areas of
318 the state which have a deficient number of such specialists.
319 4. Developing additional positions in graduate medical
320 education programs is essential to the future of this state's
321 health care system.
322 5. It was necessary in 2007 to pass legislation that
323 provided for an assessment of the status of this state's current
324 and future physician workforce. The department is collecting and
325 analyzing information on an ongoing basis to assess this state's
326 physician workforce needs, and such assessment may facilitate
327 the determination of graduate medical education needs and
328 strategies for the state.
329 (b) There is established under the department a program to
330 foster innovative graduate medical education pilot projects that
331 are designed to promote the expansion of graduate medical

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332 education programs or positions to prepare physicians to
333 practice in needed specialties and underserved areas or settings
334 and to provide demographic and cultural representation in a
335 manner that addresses current and projected needs for this
336 state's physician workforce. Funds appropriated annually by the
337 Legislature for this purpose shall be distributed to
338 participating hospitals, medical schools, other sponsors of
339 graduate medical education programs, consortia engaged in
340 developing new graduate medical education programs or positions
341 in those programs, or pilot projects providing innovative
342 graduate medical education in community-based clinical settings.
343 Pilot projects shall be selected on a competitive grant basis,
344 subject to available funds.
345 (c) Pilot projects shall be designed to meet one or more of
346 this state's physician workforce needs, as determined pursuant
347 to this section, including, but not limited to:
348 1. Increasing the number of residencies or fellowships in
349 primary care or other needed specialties.
350 2. Enhancing the retention of primary care physicians or
351 other needed specialties in this state.
352 3. Promoting practice in rural or medically underserved
353 areas of the state.
354 4. Encouraging racial and ethnic diversity within the
355 state's physician workforce.
356 5. Encouraging practice in community health care or other
357 ambulatory care settings.
358 6. Encouraging practice in clinics operated by the
359 department, including, but not limited to, county health
360 departments, clinics operated by the Department of Veterans'

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361 Affairs, prison clinics, or similar settings of need.
362 7. Encouraging the increased production of geriatricians.
363 (d) Priority shall be given to a proposal for a pilot
364 project that:
365 1. Demonstrates a collaboration of federal, state, and
366 local entities that are public or private.
367 2. Obtains funding from multiple sources.
368 3. Focuses on enhancing graduate medical education in rural
369 or underserved areas.
370 4. Focuses on enhancing graduate medical education in
371 ambulatory or community-based settings other than a hospital
372 environment.
373 5. Includes the use of technology, such as electronic
374 medical records, distance consultation, and telemedicine, to
375 ensure that residents are better prepared to care for patients
376 in this state, regardless of the community in which the
377 residents practice.
378 6. Is designed to meet multiple policy needs as enumerated
379 in subsection (3).
380 7. Uses a consortium to provide for graduate medical
381 education experiences.
382 (e) The department shall adopt by rule appropriate
383 performance measures to use in order to consistently evaluate
384 the effectiveness, safety, and quality of the programs, as well
385 as the impact of each program on meeting this state's physician
386 workforce needs.
387 (f) Participating pilot projects shall submit to the
388 department an annual report on the project in a manner required
389 by the department.

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390 (g) Funding provided to a pilot project may be used only
391 for the direct costs of providing graduate medical education.
392 Accounting of such costs and expenditures shall be documented in
393 the annual report.
394 (h) State funds shall be used to supplement funds from any
395 local government, community, or private source. The state may
396 provide up to 50 percent of the funds, and local governmental
397 grants or community or private sources shall provide the
398 remainder of the funds.
399 (7) RULEMAKING.—The department shall adopt rules as
400 necessary to administer this section.
401 Section 104. Section 458.3192, Florida Statutes, is amended
402 to read:
403 458.3192 Analysis of survey results; report.—
404 (1) Each year, the Department of Health shall analyze the
405 results of the physician survey required by s. 458.3191 and
406 determine by geographic area and specialty the number of
407 physicians who:
408 (a) Perform deliveries of children in this state ~~Florida~~.
409 (b) Read mammograms and perform breast-imaging-guided
410 procedures in this state ~~Florida~~.
411 (c) Perform emergency care on an on-call basis for a
412 hospital emergency department.
413 (d) Plan to reduce or increase emergency on-call hours in a
414 hospital emergency department.
415 (e) Plan to relocate ~~their allopathic or osteopathic~~
416 ~~practice~~ outside the state.
417 (f) Practice medicine in this state.
418 (g) Plan to reduce or modify the scope of their practice.

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419 (2) The Department of Health must report its findings to
420 the Governor, the President of the Senate, and the Speaker of
421 the House of Representatives by November 1 each year. The
422 department shall also include in its report findings,
423 recommendations, and strategic planning activities as provided
424 in s. 381.4018. The department may also include other
425 information requested by the Physician Workforce Advisory
426 Council.
427 Section 105. Section 459.0082, Florida Statutes, is amended
428 to read:
429 459.0082 Analysis of survey results; report.—
430 (1) Each year, the Department of Health shall analyze the
431 results of the physician survey required by s. 459.0081 and
432 determine by geographic area and specialty the number of
433 physicians who:
434 (a) Perform deliveries of children in this state ~~Florida~~.
435 (b) Read mammograms and perform breast-imaging-guided
436 procedures in this state ~~Florida~~.
437 (c) Perform emergency care on an on-call basis for a
438 hospital emergency department.
439 (d) Plan to reduce or increase emergency on-call hours in a
440 hospital emergency department.
441 (e) Plan to relocate ~~their allopathic or osteopathic~~
442 ~~practice~~ outside the state.
443 (f) Practice medicine in this state.
444 (g) Plan to reduce or modify the scope of their practice.
445 (2) The Department of Health must report its findings to
446 the Governor, the President of the Senate, and the Speaker of
447 the House of Representatives by November 1 each year. The

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448 department shall also include in its report findings,
449 recommendations, and strategic planning activities as provided
450 in s. 381.4018. The department may also include other
451 information requested by the Physician Workforce Advisory
452 Council.
453 Section 106. Section 458.315, Florida Statutes, is amended
454 to read:
455 458.315 Temporary certificate for practice in areas of
456 critical need.—
457 (1) Any physician who:
458 (a) Is licensed to practice in any jurisdiction in the
459 United States and ~~other state,~~ whose license is currently valid;
460 or~~,~~
461 (b) Has served as a physician in the United States Armed
462 Forces for at least 10 years and received an honorable discharge
463 from the military;
464
465 and who pays an application fee of $300 may be issued a
466 temporary certificate for ~~to~~ practice in areas of ~~communities of~~
467 ~~Florida where there is a~~ critical need ~~for physicians~~.
468 (2) A certificate may be issued to a physician who:
469 (a) Practices in an area of critical need;
470 (b) Will be employed by or practice in a county health
471 department, correctional facility, Department of Veterans'
472 Affairs clinic, community health center funded by s. 329, s.
473 330, or s. 340 of the United States Public Health Services Act,
474 or other agency or institution that is approved by the State
475 Surgeon General and provides health care to meet the needs of
476 underserved populations in this state; or

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477 (c) Will practice for a limited time to address critical
478 physician-specialty, demographic, or geographic needs for this
479 state's physician workforce as determined by the State Surgeon
480 General ~~entity that provides health care to indigents and that~~
481 ~~is approved by the State Health Officer~~.
482 (3) The Board of Medicine may issue this temporary
483 certificate with the following restrictions:
484 (a) ~~(1)~~ The State Surgeon General ~~board~~ shall determine the
485 areas of critical need~~, and the physician so certified may~~
486 ~~practice in any of those areas for a time to be determined by~~
487 ~~the board~~. Such areas ~~shall~~ include, but are not ~~be~~ limited to,
488 health professional shortage areas designated by the United
489 States Department of Health and Human Services.
490 1. ~~(a)~~ A recipient of a temporary certificate for practice
491 in areas of critical need may use the certificate ~~license~~ to
492 work for any approved entity ~~employer~~ in any area of critical
493 need or as authorized by the State Surgeon General ~~approved by~~
494 ~~the board~~.
495 2. ~~(b)~~ The recipient of a temporary certificate for practice
496 in areas of critical need shall, within 30 days after accepting
497 employment, notify the board of all approved institutions in
498 which the licensee practices and of all approved institutions
499 where practice privileges have been denied.
500 (b) ~~(2)~~ The board may administer an abbreviated oral
501 examination to determine the physician's competency, but a ~~no~~
502 written regular examination is not required ~~necessary~~. Within 60
503 days after receipt of an application for a temporary
504 certificate, the board shall review the application and issue
505 the temporary certificate, ~~or~~ notify the applicant of denial, or

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506 notify the applicant that the board recommends additional
507 assessment, training, education, or other requirements as a
508 condition of certification. If the applicant has not actively
509 practiced during the prior 3 years and the board determines that
510 the applicant may lack clinical competency, possess diminished
511 or inadequate skills, lack necessary medical knowledge, or
512 exhibit patterns of deficits in clinical decisionmaking, the
513 board may:
514 1. Deny the application;
515 2. Issue a temporary certificate having reasonable
516 restrictions that may include, but are not limited to, a
517 requirement for the applicant to practice under the supervision
518 of a physician approved by the board; or
519 3. Issue a temporary certificate upon receipt of
520 documentation confirming that the applicant has met any
521 reasonable conditions of the board which may include, but are
522 not limited to, completing continuing education or undergoing an
523 assessment of skills and training.
524 (c) ~~(3)~~ Any certificate issued under this section is ~~shall~~
525 ~~be~~ valid only so long as the State Surgeon General determines
526 that the reason ~~area~~ for which it was ~~is~~ issued remains a ~~an~~
527 ~~area of~~ critical need to the state. The Board of Medicine shall
528 review each temporary certificateholder not ~~the service within~~
529 ~~said area not~~ less than annually to ascertain that the minimum
530 requirements of the Medical Practice Act and its adopted ~~the~~
531 rules ~~and regulations promulgated thereunder~~ are being complied
532 with. If it is determined that such minimum requirements are not
533 being met, the board shall ~~forthwith~~ revoke such certificate or
534 shall impose restrictions or conditions, or both, as a condition

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535 of continued practice under the certificate.
536 (d) ~~(4)~~ The board may ~~shall~~ not issue a temporary
537 certificate for practice in an area of critical need to any
538 physician who is under investigation in any jurisdiction in the
539 United States ~~another state~~ for an act that ~~which~~ would
540 constitute a violation of this chapter until such time as the
541 investigation is complete, at which time the provisions of s.
542 458.331 ~~shall~~ apply.
543 (4) ~~(5)~~ The application fee and all licensure fees,
544 including neurological injury compensation assessments, shall be
545 waived for those persons obtaining a temporary certificate to
546 practice in areas of critical need for the purpose of providing
547 volunteer, uncompensated care for low-income residents
548 ~~Floridians~~. The applicant must submit an affidavit from the
549 employing agency or institution stating that the physician will
550 not receive any compensation for any service involving the
551 practice of medicine.
552 Section 107. Section 459.0076, Florida Statutes, is created
553 to read:
554 459.0076 Temporary certificate for practice in areas of
555 critical need.—
556 (1) Any physician who:
557 (a) Is licensed to practice in any jurisdiction in the
558 United States and whose license is currently valid; or
559 (b) Has served as a physician in the United States Armed
560 Forces for at least 10 years and received an honorable discharge
561 from the military;
562
563 and who pays an application fee of $300 may be issued a

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564 temporary certificate for practice in areas of critical need.
565 (2) A certificate may be issued to a physician who:
566 (a) Will practice in an area of critical need;
567 (b) Will be employed by or practice in a county health
568 department, correctional facility, Department of Veterans'
569 Affairs clinic, community health center funded by s. 329, s.
570 330, or s. 340 of the United States Public Health Services Act,
571 or other agency or institution that is approved by the State
572 Surgeon General and provides health care to meet the needs of
573 underserved populations in this state; or
574 (c) Will practice for a limited time to address critical
575 physician-specialty, demographic, or geographic needs for this
576 state's physician workforce as determined by the State Surgeon
577 General.
578 (3) The Board of Osteopathic Medicine may issue this
579 temporary certificate with the following restrictions:
580 (a) The State Surgeon General shall determine the areas of
581 critical need. Such areas include, but are not limited to,
582 health professional shortage areas designated by the United
583 States Department of Health and Human Services.
584 1. A recipient of a temporary certificate for practice in
585 areas of critical need may use the certificate to work for any
586 approved entity in any area of critical need or as authorized by
587 the State Surgeon General.
588 2. The recipient of a temporary certificate for practice in
589 areas of critical need shall, within 30 days after accepting
590 employment, notify the board of all approved institutions in
591 which the licensee practices and of all approved institutions
592 where practice privileges have been denied.

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593 (b) The board may administer an abbreviated oral
594 examination to determine the physician's competency, but a
595 written regular examination is not required. Within 60 days
596 after receipt of an application for a temporary certificate, the
597 board shall review the application and issue the temporary
598 certificate, notify the applicant of denial, or notify the
599 applicant that the board recommends additional assessment,
600 training, education, or other requirements as a condition of
601 certification. If the applicant has not actively practiced
602 during the prior 3 years and the board determines that the
603 applicant may lack clinical competency, possess diminished or
604 inadequate skills, lack necessary medical knowledge, or exhibit
605 patterns of deficits in clinical decisionmaking, the board may:
606 1. Deny the application;
607 2. Issue a temporary certificate having reasonable
608 restrictions that may include, but are not limited to, a
609 requirement for the applicant to practice under the supervision
610 of a physician approved by the board; or
611 3. Issue a temporary certificate upon receipt of
612 documentation confirming that the applicant has met any
613 reasonable conditions of the board which may include, but are
614 not limited to, completing continuing education or undergoing an
615 assessment of skills and training.
616 (c) Any certificate issued under this section is valid only
617 so long as the State Surgeon General determines that the reason
618 for which it was issued remains a critical need to the state.
619 The Board of Osteopathic Medicine shall review each temporary
620 certificateholder not less than annually to ascertain that the
621 minimum requirements of the Osteopathic Medical Practice Act and

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622 its adopted rules are being complied with. If it is determined
623 that such minimum requirements are not being met, the board
624 shall revoke such certificate or shall impose restrictions or
625 conditions, or both, as a condition of continued practice under
626 the certificate.
627 (d) The board may not issue a temporary certificate for
628 practice in an area of critical need to any physician who is
629 under investigation in any jurisdiction in the United States for
630 an act that would constitute a violation of this chapter until
631 such time as the investigation is complete, at which time the
632 provisions of s. 459.015 apply.
633 (4) The application fee and all licensure fees, including
634 neurological injury compensation assessments, shall be waived
635 for those persons obtaining a temporary certificate to practice
636 in areas of critical need for the purpose of providing
637 volunteer, uncompensated care for low-income residents. The
638 applicant must submit an affidavit from the employing agency or
639 institution stating that the physician will not receive any
640 compensation for any service involving the practice of medicine.
641
642 ========== T I T L E A M E N D M E N T ==========
643 And the title is amended as follows:
644 Delete line 306
645 and insert:
646 cross-references; revising a reference; repealing s.
647 381.0403(4) and (9), F.S., relating to the program for
648 graduate medical education innovations and the
649 graduate medical education committee and report;
650 amending s. 381.0403, F.S.; conforming a cross-

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651 reference; amending s. 381.4018, F.S.; providing
652 definitions; requiring the Department of Health to
653 coordinate and enhance activities regarding the
654 reentry of retired military and other physicians into
655 the physician workforce; revising the list of
656 governmental stakeholders that the Department of
657 Health is required to work with regarding the state
658 strategic plan and in assessing the state's physician
659 workforce; creating the Physician Workforce Advisory
660 Council; providing membership of the council;
661 providing for appointments to the council; providing
662 terms of membership; providing for removal of a
663 council member; providing for the chair and vice chair
664 of the council; providing that council members are not
665 entitled to receive compensation or reimbursement for
666 per diem or travel expenses; providing the duties of
667 the council; establishing the physician workforce
668 graduate medical education innovation pilot projects
669 under the department; providing the purposes of the
670 pilot projects; providing for the appropriation of
671 state funds for the pilot projects; requiring the
672 pilot projects to meet certain policy needs of the
673 physician workforce in this state; providing criteria
674 for prioritizing proposals for pilot projects;
675 requiring the department to adopt by rule appropriate
676 performance measures; requiring participating pilot
677 projects to submit an annual report to the department;
678 requiring state funds to be used to supplement funds
679 from other sources; requiring the department to adopt

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680 rules; amending ss. 458.3192 and 459.0082, F.S.;
681 requiring the department to determine by geographic
682 area and specialty the number of physicians and
683 osteopathic physicians who plan to relocate outside
684 the state, practice medicine in this state, and reduce
685 or modify the scope of their practice; authorizing the
686 department to report additional information in its
687 findings to the Governor and the Legislature; amending
688 s. 458.315, F.S.; revising the standards for the Board
689 of Medicine to issue a temporary certificate to
690 certain physicians to practice medicine in areas of
691 critical need; authorizing the State Surgeon General
692 to designate areas of critical need; creating s.
693 459.0076, F.S.; authorizing the Board of Osteopathic
694 Medicine to issue temporary certificates to
695 osteopathic physicians who meet certain requirements
696 to practice osteopathic medicine in areas of critical
697 need; providing restrictions for issuance of a
698 temporary certificate; authorizing the State Surgeon
699 General to designate areas of critical need;
700 authorizing the Board of Osteopathic Medicine to waive
701 the application fee and licensure fees for obtaining
702 temporary certificates for certain purposes; providing
703 an

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LEGISLATIVE ACTION

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The Policy and Steering Committee on Ways and Means (Peaden) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 1721 - 1745
4 and insert:
5 (f) A sole proprietorship, group practice, partnership, ~~or~~
6 corporation, or other legal entity that provides health care
7 services by practitioners licensed under chapter 458, chapter
8 459, chapter 461, chapter 466 or chapter 460, subject to the
9 limitations of s. 460.4167, which ~~physicians covered by s.~~
10 ~~627.419, that~~ is directly supervised by one or more of such
11 physicians, and ~~that~~ is wholly owned by one or more of those
12 physicians or physician assistants, or by a physician or

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13 physician assistant and the spouse, parent, child, or sibling of
14 that physician or physician assistant. A certificate of
15 exemption is valid only for the entity, persons, and location
16 for which it was originally issued.
17 1. However, an individual who is not a medical professional
18 or family member listed in this paragraph may own up to 30
19 percent of a health care clinic entity that is exempt under this
20 paragraph if the individual obtains prior approval from the
21 agency for ownership of a percentage of a health care clinic.
22 Such an individual is considered an "applicant" under s.
23 400.991(5), and must meet all the requirements of that section
24 and s. 408.809 and level 2 background screening before being
25 approved by the agency for ownership of a minority interest in a
26 health care clinic.
27 2. If an individual who is not a medical professional or
28 family member listed in this paragraph assumes ownership of an
29 investment interest in a health care clinic without the prior
30 approval of the agency, the health care clinic shall lose its
31 exemption from licensure under this paragraph.
32 3. Under no circumstances may ownership of a health care
33 clinic by an individual other than the physician or physicians
34 or the physician and the spouse, parent, child, or sibling of
35 that physician to whom the exemption was granted exceed 30
36 percent.
37 (g) A sole proprietorship, group practice, partnership, or
38 corporation that provides health care services by licensed
39 health care practitioners under chapter 457, ~~chapter 458,~~
40 ~~chapter 459, chapter 460, chapter 461,~~ chapter 462, chapter 463,
41 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,

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42 chapter 490, chapter 491, or part I, part III, part X, part
43 XIII, or part XIV of chapter 468, or s. 464.012, which are
44 wholly owned by one or more licensed health care practitioners,
45 or the licensed health care practitioners set forth in this
46 paragraph and the spouse, parent, child, or sibling of a
47 licensed health care practitioner, so long as one of the owners
48 who is a licensed health care practitioner is directly
49 supervising health care services ~~the business activities~~ and is
50 legally responsible for the entity's compliance with all federal
51 and state laws. However, a health care practitioner, who is a
52 supervising owner may not supervise services beyond the scope of
53 the practitioner's license, except that, for the purposes of
54 this part, a clinic owned by a licensee in s. 456.053(3)(b) that
55 provides only services authorized pursuant to s. 456.053(3)(b)
56 may be supervised by a licensee specified in s. 456.053(3)(b). A
57 certificate of exemption is valid only for the entity, persons,
58 and location for which it was originally issued.
59
60 ========== T I T L E A M E N D M E N T ==========
61 And the title is amended as follows:
62
63 Delete lines 143 - 144
64 and insert:
65
66 providing that part X of ch. 400, F.S., the Health
67 Care Clinic Act, does not apply to an individual,
68 corporation, or other legal entity that provides
69 health care services that are directly supervised by
70 one or more physicians or physician assistants or to

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71 an individual who is not a medical professional or
72 family member of a medical professional and owns up to
73 a specified percent of a health care clinic if the
74 individual or family member obtains the prior approval
75 of the Agency for Health Care Administration to own
76 the clinic, or to an entity owned by

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LEGISLATIVE ACTION

Senate	.	House
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The Policy and Steering Committee on Ways and Means (Bennett) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 97 - 127.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 5 - 22
8 and insert:
9 property appraiser; providing an effective date.