

Tab 1	CS/SB 286 by EN, Albritton (CO-INTRODUCERS) Perry ; (Identical to CS/CS/H 00105) Domestic Wastewater Collection System Assessment and Maintenance					
907278	A	S	RCS	AEG, Albritton	Delete L.72 - 111:	04/09 06:07 PM
Tab 2	CS/SB 538 by BI, Brandes ; (Similar to CS/H 00387) Nonadmitted Insurance Market Reform					
Tab 3	CS/SB 1278 by EN, Mayfield ; (Similar to CS/CS/H 00405) Biosolids Management					
778974	D	S	RCS	AEG, Mayfield	Delete everything after	04/09 06:07 PM
Tab 4	SB 1502 by Bradley ; (Similar to H 05401) Department of Environmental Protection					
Tab 5	SB 1552 by Gruters (CO-INTRODUCERS) Hooper ; (Similar to CS/H 01135) Florida Red Tide Mitigation and Technology Development Initiative					
Tab 6	CS/SB 1646 by AG, Albritton ; (Similar to CS/H 01215) Department of Agriculture and Consumer Services					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

**APPROPRIATIONS SUBCOMMITTEE ON AGRICULTURE,
 ENVIRONMENT AND GENERAL GOVERNMENT**

Senator Mayfield, Chair
 Senator Powell, Vice Chair

MEETING DATE: Tuesday, April 9, 2019
TIME: 1:30—3:30 p.m.
PLACE: Toni Jennings Committee Room, 110 Senate Building

MEMBERS: Senator Mayfield, Chair; Senator Powell, Vice Chair; Senators Albritton, Bean, Berman, Broxson, Hooper, Hutson, Rodriguez, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 286 Environment and Natural Resources / Albritton (Identical CS/CS/H 105)	Domestic Wastewater Collection System Assessment and Maintenance; Establishing the Blue Star Collection System Assessment and Maintenance Program and providing its purpose; requiring the Department of Environmental Protection to adopt rules and review and approve program applications for certification; requiring the department to allow public and nonprofit utilities to participate in the Clean Water State Revolving Fund Program under certain conditions; authorizing additional recipients and uses of Small Community Sewer Construction Assistance Act grants, etc. EN 03/05/2019 Fav/CS AEG 04/09/2019 Fav/CS AP	Fav/CS Yeas 10 Nays 0
2	CS/SB 538 Banking and Insurance / Brandes (Similar CS/H 387, Compare CS/CS/CS/H 301, CS/CS/S 714)	Nonadmitted Insurance Market Reform; Deleting a limitation on per-policy fees charged by surplus lines agents for exporting certified policies; requiring that such fees be itemized separately for the customer before purchase and enumerated in the policy; deleting a requirement for surplus lines agents to quarterly file a certain affidavit with the Florida Surplus Lines Service Office, etc. BI 03/11/2019 Fav/CS AEG 04/09/2019 Favorable AP	Favorable Yeas 10 Nays 0
3	CS/SB 1278 Environment and Natural Resources / Mayfield (Similar CS/CS/H 405)	Biosolids Management; Defining the term "biosolids"; requiring the Department of Environmental Protection to adopt rules for biosolids management which meet certain requirements; authorizing a county or municipality to enact or retain in effect certain ordinances, moratoriums, or regulations, etc. EN 03/12/2019 Fav/CS AEG 04/09/2019 Fav/CS AP	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Agriculture, Environment and General Government
Tuesday, April 9, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1502 Bradley (Similar H 5401)	Department of Environmental Protection; Transferring and reassigning functions and responsibilities of the Division of Law Enforcement relating to investigators of environmental crimes within the Fish and Wildlife Conservation Commission to the Division of Law Enforcement of the Department of Environmental Protection; providing requirements for a memorandum of agreement between the department and the commission regarding the responsibilities of the department and the commission; establishing the Division of Law Enforcement within the department, etc. EN 03/26/2019 Favorable AEG 04/09/2019 Favorable AP	Favorable Yeas 10 Nays 0
5	SB 1552 Gruters (Similar CS/H 1135)	Florida Red Tide Mitigation and Technology Development Initiative; Establishing the Florida Red Tide Mitigation and Technology Development Initiative; requiring the initiative to submit an annual report by a specified date to the Governor, the Legislature, the Secretary of Environmental Protection, and the executive director of the Fish and Wildlife Conservation Commission; establishing the Initiative Technology Advisory Council, etc. EN 03/20/2019 Favorable AEG 04/09/2019 Favorable AP	Favorable Yeas 10 Nays 0
6	CS/SB 1646 Agriculture / Albritton (Similar CS/H 1215, Compare CS/S 1738)	Department of Agriculture and Consumer Services; Authorizing the Department of Agriculture and Consumer Services to consider the use of a fumigant as a pesticide for raw agricultural commodities; revising the membership of the Florida Food Safety and Food Defense Advisory Council; revising the authority of the department to conduct onsite inspections of facilities used to produce and process milk and milk products and to collect samples of such for testing; authorizing a contract for the sale of a horse to include a covenant for the continuing care of the horse, etc. AG 03/25/2019 Fav/CS AEG 04/09/2019 Favorable AP	Favorable Yeas 9 Nays 0

Other Related Meeting Documents

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: PCS/CS/SB 286 (720642)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government; Environment and Natural Resources Committee; and Senators Albritton and Perry

SUBJECT: Domestic Wastewater Collection System Assessment and Maintenance

DATE: April 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.	Reagan	Betta	AEG	Recommend: Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 286 creates the Blue Star Collection System Assessment and Maintenance Program for domestic sewer systems. The Department of Environmental Protection (DEP) will administer the program and codify program certification standards. Certification requires a demonstration of:

- The rate of reinvestment determined necessary by the utility to fully implement its collection system and pump station structural condition assessment and maintenance and replacement program;
- Periodic structural condition assessments and as-needed maintenance and replacements;
- A program designed to limit fats, roots, oils, and grease in its collection system;
- For public utilities, a local requirement that the private pump stations and lateral lines connecting to the public system be free of defects and direct stormwater connections;
- A power outage contingency plan; and
- An infiltration and inflow reduction plan.

Provides that the DEP may revoke certification if program certification standards are not met or maintained or other specified circumstances.

Public and private utilities certified under the program may receive the following:

- Publication on the DEP's website;
- Participation in the Clean Water State Revolving Loan Fund Program;

- Reduced penalties for a sanitary sewer overflow;
- 10-year operating permits; and
- A presumption of compliance with state water quality standards for pathogens.

The bill expands the Small Community Sewer Construction Assistance Grant Program to provide grant eligibility for nonprofit utilities serving financially disadvantaged small communities. The bill allows the DEP to waive the population requirement for certain independent special districts. The bill also provides that Small Community Sewer Construction Grants may be used for assessments and for planning and implementing domestic wastewater collection system assessment programs to identify conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

The bill may have an indeterminate, negative fiscal impact on the DEP associated with the rulemaking requirements and the implementation of the Blue Star Collection System Assessment and Maintenance Program. The bill may also have an indeterminate, negative fiscal impact to state revenues associated with the opportunities for reduced penalties related to sanitary sewer overflows at certified blue star facilities.

The bill takes effect July 1, 2019.

II. Present Situation:

Domestic wastewater is wastewater derived principally from dwellings, business buildings, and institutions, commonly referred to as sanitary wastewater or sewage.¹ Domestic wastewater leaves these structures through a domestic wastewater collection system for treatment at a domestic wastewater treatment facility.² There are approximately 2,000 domestic wastewater treatment facilities in the state serving roughly two-thirds of the state's population.³ Treated effluent and reclaimed water from these facilities amounts to over 1.5 billion gallons per day and is disposed of using methods such as surface water outfalls, deep aquifer injection wells, and other disposal methods such as percolation ponds and spray fields.⁴

¹ Fla. Admin. Code R. 62-600.200(21).

² Section 403.866(1), F.S. "Domestic wastewater collection system" is defined to mean "pipelines or conduits, pumping stations, and force mains and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;" Section 403.866(2), F.S. "Domestic wastewater treatment plant" is defined to mean "any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes."

³ DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Feb. 11, 2019). The remainder of the state is served by on-site treatment and disposal systems regulated by the Department of Health.

⁴ Fla. Admin. Code R. 62-600.200(22). "Effluent" is defined to mean, unless specifically stated otherwise, "water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes;" Fla. Admin. Code R. 62-600.200(54). "Reclaimed water" is defined to mean, "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility;" DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Feb. 11, 2019).

Wastewater Treatment Facility Permits

Domestic wastewater facilities that discharge to surface waters must obtain a National Pollutant Discharge Elimination System (NPDES) permit.⁵ The NPDES program is a federal program established by the Clean Water Act (CWA) to control point source discharges.⁶ NPDES permit requirements for most domestic wastewater facilities are incorporated into a state-issued permit, giving the permittee one set of permitting requirements rather than separate requirements for each permit.⁷

A domestic wastewater system is a stationary installation that is reasonably expected to be a source of water pollution.⁸ The systems must not be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the Department of Environmental Protection (DEP), unless otherwise exempted by law.⁹ A domestic wastewater treatment plant operating permit is issued for a term of five years.¹⁰ As an incentive, certain wastewater treatment facilities that are not required to have a NPDES permit may request renewal of an operation permit for a term of up to 10 years for the same fee and under the same conditions as a five-year permit. These facilities must meet the following criteria:

- The waters from the treatment facility are not discharged to Class I municipal injection wells or the treatment facility is not required to comply with the federal standards under the Underground Injection Control Program;
- The treatment facility is not operating under a temporary operating permit or a permit with an accompanying administrative order and does not have any enforcement action pending against it by the United States Environmental Protection Agency (EPA), the DEP, or an approved local program;
- The treatment facility has operated under an operation permit for five years and, for at least the preceding two years, has generally operated in conformance with the limits of permitted flows and other conditions specified in the permit;
- The DEP has reviewed the discharge monitoring reports required by the DEP rule and is satisfied that the reports are accurate;
- The treatment facility has generally met water quality standards in the preceding two years, except for violations attributable to events beyond the control of the treatment plant or its operator (e.g., destruction of equipment by fire, wind, or other abnormal events that could not reasonably be expected to occur); and
- The DEP or an approved local program has conducted, in the preceding 12 months, an inspection of the facility and has verified in writing to the operator of the facility that it is not exceeding the permitted capacity and is in substantial compliance.¹¹

⁵ Section 403.031(13), F.S., defines “waters” to mean rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; *see also* Fla. Admin. Code R. 62-620.200(77).

⁶ 33 U.S.C. s. 1342.

⁷ Section 403.0885, F.S.; Fla. Admin. Code R. Ch. 62-620; DEP, *Wastewater Permitting*, <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited Feb. 11, 2019); DEP, *Types of Permits*, <http://flwaterpermits.com/typesofpermits.html> (last visited Feb. 11, 2019).

⁸ Section 403.031(7), F.S.

⁹ Section 403.087(1), F.S.

¹⁰ Section 430.087(1), F.S.; Fla. Admin. Code R. 62-620.320(8).

¹¹ Section 403.087(3), F.S.

Disinfection

Disinfection is the selective destruction of disease-producing organisms, or pathogens, in wastewater effluent, reclaimed water, and biosolids.¹² Most domestic wastewater treatment facilities must meet either basic disinfection for discharges to surface water or high-level disinfection for reuse systems.¹³

Basic disinfection requires that the effluent after disinfection contain less than 200 fecal coliform values per 100 milliliters of sample.¹⁴ High-level disinfection, which is used in conjunction with some types of reuse projects, including irrigation of residential lawns, areas accessible to the public, and edible food crops, requires that fecal coliforms be reduced below detection.¹⁵ Filtration is required ahead of the disinfection process and serves as an integral part of the overall high-level disinfection process.¹⁶

Total Maximum Daily Loads

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.¹⁷ Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, the DEP is required to establish a TMDL for impaired waterbodies.¹⁸ A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.¹⁹ Waste load allocations are pollutant loads attributable to existing and future point sources. Load allocations are pollutant loads attributable to existing and future nonpoint sources. Point sources are discernible, confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.²⁰

Basin Management Action Plans and Best Management Practices

The DEP is the lead agency in coordinating the development and implementation of TMDLs. Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to

¹² Fla. Admin. Code R. 62-600.200(18) and (47).

¹³ DEP, *Ultraviolet Disinfection for Domestic Wastewater*, <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last visited Feb. 11, 2019).

¹⁴ Fla. Admin. Code R. 62-600.440(5).

¹⁵ Fla. Admin. Code R. 62-600.440(6).

¹⁶ DEP, *Ultraviolet Disinfection for Domestic Wastewater*, <https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater> (last visited Feb. 11, 2019).

¹⁷ Section 403.067, F.S.

¹⁸ *Id.*

¹⁹ Section 403.031(21), F.S.

²⁰ Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources. Nonpoint sources can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

achieve TMDLs. BMAPs are plans that use existing planning tools to address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Non-regulatory and incentive-based programs, including best management practices (BMPs), cost sharing, waste minimization, pollution prevention, agreements, and public education;²¹
- Public works projects, including capital facilities; and
- Land acquisition.²²

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.²³ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the public to collectively determine and share water quality clean-up responsibilities.²⁴

The BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the BMAP must be made as appropriate.²⁵

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.²⁶ A nonpoint source discharger may be subject to enforcement action by the DEP or a water management district based on a failure to implement these requirements.²⁷ BMPs are designed to reduce the amount of nutrients, sediments, and pesticides that enter the water system and to help reduce water use. BMPs are developed for agricultural operations as well as for other activities, such as nutrient management on golf courses, forestry operations, and stormwater management.²⁸

Presumption of Compliance

Where interim measures, BMPs, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction, or in voluntary BMP programs, must be

²¹ Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

²² Section 403.067(7), F.S.

²³ *Id.*

²⁴ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Feb. 11, 2019).

²⁵ Section 403.067(7)(a)6., F.S.

²⁶ Section 403.067(7)(b)2.g., F.S. For example, BMPs for agriculture include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

²⁷ Section 403.067(7)(b)2.h., F.S.

²⁸ DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Feb. 11, 2019).

verified at representative sites by the DEP.²⁹ Implementation of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites by the DEP, provide a presumption of compliance with water quality standards.³⁰ The DEP is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants.³¹

Penalties

It is a violation of state law for any person to cause pollution that harms or injures human health or welfare; animal, plant, or aquatic life; or property.³² A person who commits such a violation is liable to the state for any damage caused and for civil penalties.³³ A person who willfully commits such a violation is guilty of a felony of the third degree, punishable by a fine of not more than \$50,000 or by imprisonment for five years, or by both, for each offense.³⁴ Each day during any portion of which such violation occurs constitutes a separate offense.³⁵ It is the Legislature's intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance.³⁶

Sanitary Sewer Overflows

Although domestic wastewater treatment facilities are permitted and designed to safely and properly collect and manage a specified wastewater capacity, obstructions or extreme conditions can cause a sanitary sewer overflow (SSO). Any overflow, spill, release, discharge, or diversion of untreated or partially treated wastewater from a sanitary sewer system is a SSO.³⁷

Factors contributing to SSOs may include:

- Build-up of solids, fats, oils, and greases in the wastewater collection system impeding flow;
- Too much rainfall infiltrating through the ground into leaky sanitary sewers, which are not intended to hold rainfall. Excess water can also flow through roof drains connected to sewers or poorly connected sewer lines;
- Blocked, broken, or cracked pipes and other equipment or power failures that keep the system from properly functioning. Tree roots can grow into the sewer. Sections of pipe can settle or shift so that pipe joints no longer match. Sediment and other material can build up and cause pipes to break or collapse; and

²⁹ Sections 403.067(7)(c)3., and (12)(b), F.S.

³⁰ Section 403.067(7)(c)3., F.S.

³¹ *Id.*

³² Section 403.161(1)(a), F.S.

³³ Section 403.161(2), F.S.; *see s.* 403.141, F.S., for civil penalties.

³⁴ Section 403.161(3), F.S.

³⁵ Section 403.161(3), F.S.; *ss.* 775.082(3)(e) and 775.083(1)(g), F.S.

³⁶ Section 403.161(6), F.S.

³⁷ DEP, *Sanitary Sewer Overflows (SSOs)*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Feb. 11, 2019).

- A deteriorating or aging sewer system that can be expensive to repair. Some municipalities have found severe problems, necessitating costly correction programs.³⁸

A key concern with SSOs entering rivers, lakes, or streams is their negative effect on water quality. In addition, because SSOs contain partially treated or potentially untreated domestic wastewater, ingestion or similar contact may cause illness. People can be exposed through direct contact in areas of high public access, food that has been contaminated, inhalation, and skin absorption. The Department of Health issues health advisories when bacteria levels present a risk to human health, and may post warning signs when bacteria affect public beaches or other areas where there is a risk of human exposure.³⁹

Reduction of SSOs can be achieved through:

- Cleaning and maintaining the sewer system;
- Reducing infiltration and inflow through rehabilitation and repairing broken or leaking lines;
- Enlarging or upgrading sewer pump station or sewage treatment plant capacity and/or reliability; and
- Constructing wet weather storage and treatment facilities to treat excess flows.⁴⁰

After an SSO event, the DEP reviews the data from utilities to assess the overall impact to the environment in deciding whether to take additional action. In its review, the DEP considers how serious the violation was; whether this was a first-time violation or a repeated violation; whether the violation was inadvertent or beyond reasonable control; and whether the damage to the environment can be undone or remediated quickly.⁴¹ The DEP also takes into account the severity of the rain event (e.g., if it was a hurricane or a storm, or if the area had received an unusually large amount of rainfall beyond historical averages). If the discharge was caused by operator error or lack of a certified operator on-site at the time, then the DEP may consider additional training for operators to prevent similar errors from occurring in the future. In some circumstances, the DEP will meet with utilities to discuss infrastructure repairs and process improvements the utility is making and planning to implement in order to avoid further SSOs.⁴²

Financing Wastewater Treatment Facilities

Asset Management

Renewing and replacing domestic wastewater treatment infrastructure is an ongoing task. Asset management can help a utility maximize the value of its capital as well as its operations and maintenance dollars. Asset management provides utility managers and decision makers with critical information on capital assets and timing of investments. Some key steps for asset management are making an inventory of critical assets, evaluating the condition and performance of such assets, and developing plans to maintain, repair, and replace assets and to fund these

³⁸ DEP, *Preventing SSOs*, available at <https://floridadep.gov/sites/default/files/preventing-sanitary-sewer-overflows.pdf> (last visited Feb. 11, 2019); DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Feb. 11, 2019).

³⁹ DEP, *SSOs*, available at <https://floridadep.gov/sites/default/files/sanitary-sewer-overflows.pdf> (last visited Feb. 11, 2019).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

activities.⁴³ The EPA provides guidance and reference manuals for utilities to aid in developing asset management plans.⁴⁴

Many states, including Florida, provide financial incentives for the development and implementation of an asset management plan when requesting funding under a State Revolving Fund or other state funding mechanism.⁴⁵ Florida's incentives include priority scoring,⁴⁶ reduction of interest rates,⁴⁷ principal forgiveness for financially disadvantaged small communities,⁴⁸ and eligibility for small community wastewater facilities grants.⁴⁹

Water and Wastewater Utility Reserve Fund

In 2016, the Legislature authorized the Public Service Commission (PSC) to allow a utility to create a utility reserve fund for repair and replacement of existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The utility reserve fund would be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.

The PSC adopted rules governing the implementation, management, and use of the fund, including expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for the PSC authorization before fund disbursements.⁵⁰ The PSC requires an applicant to provide a capital improvement plan or an asset management plan in seeking authorization to create a utility reserve fund.⁵¹

The Clean Water State Revolving Fund Program

Florida's Clean Water State Revolving Fund (CWSRF) is a federal-state partnership that provides communities a permanent, independent source of low-cost financing for a wide-range of water quality infrastructure projects.⁵² The CWSRF is funded through money received from federal grants as well as state contributions, which then "revolve" through the repayment of previous loans and interest earned. While these programs offer loans, grant-like funding is also available for qualified small, disadvantaged communities, which reduces the amount owed on loans by the percentage for which the community qualifies.

⁴³ EPA, *Sustainable Water Infrastructure - Asset Management for Water and Wastewater Utilities*, <https://www.epa.gov/sustainable-water-infrastructure/asset-management-water-and-wastewater-utilities> (last visited Feb. 11, 2019).

⁴⁴ EPA, *Asset Management: A Best Practices Guide*, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF>; EPA, *Reference Guide for Asset Management Tools/Asset Management Plan Components and Implementation Tools for Small and Medium Sized Drinking Water and Wastewater Systems* (May 2014), available at https://www.epa.gov/sites/production/files/2016-04/documents/am_tools_guide_may_2014.pdf (last visited Feb. 11, 2019).

⁴⁵ EPA, *State Asset Management Initiatives* (Aug. 2012), available at https://www.epa.gov/sites/production/files/2016-04/documents/state_asset_management_initiatives_11-01-12.pdf (last visited Feb. 11, 2019).

⁴⁶ Fla. Admin. Code R. 62-503.300(e).

⁴⁷ Fla. Admin. Code R. 62-503.300(5)(b)1. and 62-503.700(7).

⁴⁸ Fla. Admin. Code R. 62-503.500(4).

⁴⁹ Fla. Admin. Code R. 62-505.300(d) and 62-505.350(5)(c).

⁵⁰ Fla. Admin. Code R. 25-30.444.

⁵¹ Fla. Admin. Code R. 25-30.444(2)(e) and (m).

⁵² 33 USC s. 1383; EPA, *CWSRF*, <https://www.epa.gov/cwsrf> (last visited Feb. 11, 2019); EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Feb. 11, 2019).

The CWSRF provides low-interest loans to local governments to plan, design, and build or upgrade wastewater, stormwater, and nonpoint source pollution prevention projects. Certain agricultural best management practices may also qualify for funding. Very low interest rate loans, grants, and other discounted assistance for small communities are available. Interest rates on loans are below market rates and vary based on the economic means of the community. Generally, local governments and special districts are eligible loan sponsors.⁵³ The EPA classifies eleven types of projects that are eligible to receive CWSRF assistance. They include projects:

- For a municipality or inter-municipal, interstate, or state agency to construct a publicly owned treatment works;
- For a public, private, or nonprofit entity to implement a state nonpoint source pollution management program;
- For a public, private, or nonprofit entity to develop and implement a conservation and management plan;
- For a public, private, or nonprofit entity to construct, repair, or replace decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- For a public, private, or nonprofit entity to manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- For a municipality or inter-municipal, interstate, or state agency to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;
- For a public, private, or nonprofit entity to develop and implement watershed projects;
- For a municipality or inter-municipal, interstate, or state agency to reduce the energy consumption needs for publicly owned treatment works;
- For a public, private, or nonprofit entity for projects for reusing or recycling wastewater, stormwater, or subsurface drainage water;
- For a public, private, or nonprofit entity to increase the security of publicly owned treatment works; and
- For any qualified nonprofit entity, to provide technical assistance to owners and operators of small and medium sized publicly owned treatment works to plan, develop, and obtain financing for the CWSRF eligible projects and to assist each treatment works in achieving compliance with the CWA.⁵⁴

Small Community Sewer Construction

The Small Community Sewer Construction Assistance Act is a grant program established as part of the CWSRF program that requires the DEP to award grants to assist financially disadvantaged small communities with their needs for adequate domestic wastewater facilities.⁵⁵ Under the program, a financially disadvantaged small community is defined as a county, municipality, or special district⁵⁶ with a total population of 10,000 or less, and a per capita income less than the

⁵³ DEP, *State Revolving Fund*, <https://floridadep.gov/wra/srf> (last visited Feb. 11, 2019).

⁵⁴ EPA, *Learn about the CWSRF*, <https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf> (last visited Feb. 11, 2019).

⁵⁵ Sections 403.1835(3)(d) and 403.1838, F.S.

⁵⁶ Section 189.012(6), F.S., defines special district; ss. 189.012(2) and (3), F.S., define dependent special district and independent special district, respectively.

state average per capita income.⁵⁷ In 2016, the Legislature included counties and special districts as eligible entities for grants under the program if they otherwise met the definition of a financially disadvantaged small community.⁵⁸

In accordance with rules adopted by the Environmental Regulation Commission, the DEP may provide grants, for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.⁵⁹ The rules of the commission must also:

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permissible, and implementable;
- Require appropriate user charges, connection fees, and other charges to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant;
- Require grant applications to be submitted on appropriate forms with appropriate supporting documentation and require records to be maintained;
- Establish a system to determine eligibility of grant applications;
- Establish a system to determine the relative priority of grant applications, which must consider public health protection and water pollution abatement;
- Establish requirements for competitive procurement of engineering and construction services, materials, and equipment; and
- Provide for termination of grants when program requirements are not met.⁶⁰

Rural Area of Opportunity

A rural area of opportunity (RAO) is a rural community, or a region composed of rural communities, designated by the Governor, affected adversely by an extraordinary economic event, severe or chronic distress, or a natural disaster that presents a unique economic development opportunity of regional impact.⁶¹ The three designated RAOs are the:

- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, South Bay, and Immokalee; and
- North Central RAO, which includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.⁶²

Plant Operations Excellence Awards

Each year, the DEP presents awards to domestic wastewater and drinking water facilities around the state that demonstrate excellence in operation, maintenance, innovative treatment, waste

⁵⁷ Section 403.1838(2), F.S.

⁵⁸ Chapter 2016-55, Laws of Fla.

⁵⁹ Section 403.1838(3)(a), F.S.

⁶⁰ Section 403.1838(3)(b), F.S.; Fla. Admin. Code R. Ch. 62-505.

⁶¹ Section 288.0656(2)(d), F.S.

⁶² DEO, RAO, <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity> (last visited Feb. 11, 2019).

reduction, pollution prevention, recycling, or other achievements. These awards recognize facilities that demonstrate a special commitment to excellence in management through dedicated professionalism and that have an impeccable history of record-keeping compliance. In 2019, the department will award a total of 18 facilities, including 10 domestic wastewater facilities and eight drinking water facilities statewide.⁶³

III. Effect of Proposed Changes:

Section 1 creates s. 403.1839, F.S., creating the Blue Star Collection System Assessment and Maintenance Program.

The bill defines terms and provides the following legislative findings:

- The implementation of domestic wastewater collection system assessment and maintenance practices has been shown to effectively limit sanitary sewer overflows (SSOs) and the unauthorized discharge of pathogens.
- The voluntary implementation of practices beyond those required by law has the potential to further limit SSOs.
- The unique geography, community, growth, size, and age of domestic wastewater collection systems across the state require diverse responses, using the best professional judgment of local utility operators, to ensure that programs designed to limit SSOs are effective.

The bill establishes in the Department of Environmental Protection (DEP) a Blue Star Collection System Assessment and Maintenance Program and states that the purpose of this voluntary incentive program is to assist public and private utilities in limiting sanitary sewer overflows and the unauthorized discharge of pathogens.

The bill requires the DEP to adopt rules to administer the program, including certification standards for the program. The bill requires the DEP to review and approve public and private domestic wastewater utilities that apply for certification under the program and that demonstrate continued compliance with program certification requirements. A utility must provide reasonable documentation that it meets the following certification standards:

- Implementation of periodic collection system and pump station structural condition assessments and the performance of as-needed maintenance and replacement.
- The rate of reinvestment determined necessary by the utility to fully implement its collection system and pump station structural condition assessment and maintenance and replacement program.
- Implementation of a program designed to limit the presence of fats, roots, oils, and grease in the collection system.
- If the applicant is a public utility, the existence of a local law or building code requiring the private pump stations and lateral lines connecting to the public system to be free of:
 - Cracks, holes, missing parts, or similar defects; and
 - Direct stormwater connections that allow the direct inflow of stormwater into the private system and the public domestic wastewater collection system.

⁶³ DEP, *DEP Presents Plant Excellence Awards to One Wastewater and Three Northwest Florida Drinking Water Facilities* (Feb. 13, 2019), available at <https://content.govdelivery.com/accounts/FLDEP/bulletins/22ebc9f> (last visited Feb. 14, 2019).

- Adoption of a power outage contingency plan that addresses mitigation of the impacts of power outages on the utility's collection system and pump stations.
- Adoption of an infiltration and inflow reduction plan to minimize infiltration and inflow throughout the utility's collection system.

The bill provides that program certifications expire after five years. During the five-year certification period, a utility must annually provide documentation to the DEP on the status of its implementation of the program and must demonstrate that it meets all program criteria in order to maintain its program certification or the DEP shall revoke the certification.

The bill provides that the DEP may revoke a utility's program certification if the utility experiences SSOs due to factors under the control of the utility or if the utility violates any permit condition or any applicable DEP rule or law.

The bill provides that if a utility knowingly submits false or inaccurate information or documentation in a program certification application the DEP shall revoke the program certification.

The bill requires the DEP to annually publish on its website a list of certified blue star utilities beginning on January 1, 2021, and allow public and nonprofit utilities to participate in the Clean Water State Revolving Fund Program for any purpose of the Blue Star Collection System Assessment and Maintenance Program which is consistent with federal requirements for participating in the Clean Water State Revolving Fund Program.

The bill authorizes the DEP, in the calculation of penalties for a sanitary sewer overflow, to reduce the penalty based on a utility's status as a certified blue star utility. The DEP may also reduce a penalty based on a certified blue star utility's investment in assessment and maintenance activities to identify and address conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

Section 2 amends s. 403.067(7)(c), F.S., relating to best management practices. The bill requires that for the sole purpose of establishing a total maximum daily load (TMDL) for pathogens in a surface water, the DEP must provide a domestic wastewater utility with a defensible expectation of compliance with water quality standards for fecal indicator bacteria when the utility implements and maintains a program as a certified blue star utility and when the utility demonstrates a history of compliance with wastewater disinfection requirements incorporated in the utility's operating permit for any discharge into the impaired surface water.

Section 3 amends s. 403.087, F.S., to require, subject to National Pollutant Discharge Elimination System (NPDES) permit duration limits for a utility, the DEP to issue 10-year permits to blue star certified utilities for the same fee and under the same conditions that apply to a five-year permit, upon approval of its application for renewal, if the certified blue star utility demonstrates that it:

- Is in compliance with any consent order or an accompanying administrative order related to its permit;
- Does not have any pending enforcement action against it by the United States Environmental Protection Agency, the DEP, or a local program; and

- If applicable, has submitted annual program implementation reports demonstrating progress in the implementation of the program.

Section 4 amends s. 403.161, F.S., to authorize, notwithstanding any other law, the DEP to reduce a penalty based on the person's investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility.

Section 5 amends s. 403.1838, F.S., to expand the eligibility for and uses of the Small Community Sewer Construction Grants to include nonprofit utilities serving financially disadvantaged small communities. The bill also allows the DEP to waive the population requirement for an independent special district that serves fewer than 10,000 wastewater customers, is located within a watershed with an adopted TMDL or basin management action plan for pollutants associated with domestic wastewater, and is wholly located within a rural area of opportunity.

Under the bill, nonprofit utilities serving these communities may also receive grants for up to 100 percent of the costs of planning, assessing, designing, constructing, upgrading, or replacing wastewater facilities. The use of grant funds for assessments is added to the section. The bill also provides that Small Community Sewer Construction Grants may be used for planning and implementing domestic wastewater collection system assessment programs to identify conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

Section 6 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may have a positive fiscal impact on private utilities that will now be eligible for the Clean Water State Revolving Fund and Small Community Sewer Construction Assistance Grants.

The bill may also have a positive fiscal impact on private utilities being afforded an opportunity to have reduced penalties based on the investment, maintenance, rehabilitation, or expansion of a permitted facility.

C. Government Sector Impact:

The bill may have a negative fiscal impact on the Department of Environmental Protection associated with the rulemaking requirements of the bill and the implementation of the Blue Star Collection System Assessment and Maintenance Program, including review of annual reports and annual posting of blue star certified facilities on its website. The incentives associated with being blue star certified (e.g., reduced penalties, in-kind penalties, and 10-year operating permits) may reduce the amount of revenue generated from these activities.

The bill may have a negative fiscal impact to state revenues associated with the opportunities for reduced penalties related to sanitary sewer overflows at certified blue star facilities. However, the bill may have a positive fiscal impact on local governments which are afforded an opportunity to have reduced penalties based on the investment, maintenance, rehabilitation, or expansion of a permitted facility.

The bill may have a positive fiscal impact on local governments as it increases the eligible uses for Small Community Sewer Construction Assistance Grants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Wastewater facilities are a traditional type of “point source” pollution and are subject to National Pollutant Discharge Elimination System (NPDES) permits. Generally, best management practices are applicable to nonpoint sources. It is unclear how the defensible expectation of compliance in the best management practices paragraph will affect how these utilities are regulated.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.067, 403.087, 403.161, and 403.1838.

This bill creates section 408.1839 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 9, 2019:

- Requires that a utility must demonstrate a plan to reduce infiltration and inflow throughout the utility's collection system in order to obtain certification.
- Requires the Department of Environmental Protection (DEP) to revoke a utility's certification if all program standards are not met.
- Requires the DEP to revoke the utility's certification if a sanitary sewer overflow occurs due to factors under the control of the utility or if the utility violates any permit condition or any applicable DEP rule or law.
- Requires the DEP to revoke the program certification if a utility knowingly submits false or inaccurate information or documentation.

CS by Environment and Natural Resources Committee on March 5, 2019:

- Requires that for the purpose of establishing a total maximum daily load for pathogens in a surface water, the DEP must provide a domestic wastewater utility with a "defensible expectation of compliance" with state water quality standards for fecal indicator bacteria when a utility meets certain requirements.
- Revises one of the certification standards for the Blue Star Collection System Assessment and Maintenance Program to clarify that the rate of reinvestment determined necessary by the utility is the rate necessary to fully implement its collection system and pump station structural condition assessment and maintenance and replacement program.
- Authorizes the DEP to implement the Small Community Sewer Construction Assistance Program.
- Makes technical changes.

- B. **Amendments:**

None.



907278

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2019	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and
General Government (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete lines 72 - 111
and insert:

(4) APPROVAL, STANDARDS, AND VIOLATIONS.—

(a) The department shall adopt rules to administer the
program, including, at a minimum, the certification standards
for the program as provided in paragraph (b) and the violation
provisions as provided in paragraph (d), and shall review and
approve public and private domestic wastewater utilities that



907278

11 apply for certification or renewal under the program and that
12 demonstrate maintenance of program certification pursuant to
13 paragraph (c) based upon the certification standards.

14 (b) A utility must provide, at a minimum, reasonable
15 documentation of the following certification standards in order
16 to be certified under the program:

17 1. The implementation of periodic collection system and
18 pump station structural condition assessments and the
19 performance of as-needed maintenance and replacements.

20 2. The rate of reinvestment determined necessary by the
21 utility to fully implement its collection system and pump
22 station structural condition assessment and maintenance and
23 replacement program.

24 3. The implementation of a program designed to limit the
25 presence of fats, roots, oils, and grease in the collection
26 system.

27 4. If the applicant is a public utility, a local law or
28 building code requiring the private pump stations and lateral
29 lines connecting to the public system to be free of:

30 a. Cracks, holes, missing parts, or similar defects; and

31 b. Direct stormwater connections that allow the direct
32 inflow of stormwater into the private system and the public
33 domestic wastewater collection system.

34 5. A power outage contingency plan that addresses
35 mitigation of the impacts of power outages on the utility's
36 collection system and pump stations.

37 6. An infiltration and inflow reduction plan to minimize
38 infiltration and inflow throughout the utility's collection
39 system.



907278

(c)1. Program certifications shall expire after 5 years. A utility shall document its implementation of the program on an annual basis with the department and must demonstrate that the utility meets all program standards or the department shall revoke the utility's program certification.

2. The approval of an application for renewal certification must be based on the utility demonstrating maintenance of program standards. A utility applying for renewal certification must demonstrate maintenance of program standards and progress in implementing the program or the department may not approve the application.

3. The department may determine that a utility is not meeting or maintaining program standards and may revoke the utility's program certification if the utility experiences sanitary sewer overflows due to factors under the control of the utility or if the utility violates any permit condition or any applicable department rule or law.

(d) A utility that submits information or documentation to the department pursuant to this section is subject to s. 403.161(1)(c). The department shall revoke the program certification of a utility that knowingly submits false or inaccurate information or documentation in an application for certification under the program.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 12

and insert:

expiration and renewal; requiring the department to



907278

69 revoke a utility's program certification under certain
70 circumstances; providing for penalties for violations;
71 requiring the department to

By the Committee on Environment and Natural Resources; and
Senators Albritton and Perry

592-02706A-19

2019286c1

1 A bill to be entitled
2 An act relating to domestic wastewater collection
3 system assessment and maintenance; creating s.
4 403.1839, F.S.; providing definitions; providing
5 legislative findings; establishing the Blue Star
6 Collection System Assessment and Maintenance Program
7 and providing its purpose; requiring the Department of
8 Environmental Protection to adopt rules and review and
9 approve program applications for certification;
10 specifying the documentation utilities must submit to
11 qualify for certification; providing for certification
12 expiration and renewal; requiring the department to
13 publish an annual list of certified blue star
14 utilities; requiring the department to allow public
15 and nonprofit utilities to participate in the Clean
16 Water State Revolving Fund Program under certain
17 conditions; authorizing the department to reduce
18 penalties for sanitary sewer overflows at certified
19 utilities and for investments in certain assessment
20 and maintenance activities; amending s. 403.067, F.S.;
21 creating a defensible expectation of compliance with
22 certain water quality standards for certified
23 utilities; amending s. 403.087, F.S.; requiring the
24 department to issue extended operating permits to
25 certified utilities under certain conditions; amending
26 s. 403.161, F.S.; authorizing the department to reduce
27 penalties based on certain system investments for
28 permitted facilities; amending s. 403.1838, F.S.;
29 authorizing additional recipients and uses of Small

Page 1 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02706A-19

2019286c1

30 Community Sewer Construction Assistance Act grants;
31 revising provisions to authorize the department,
32 rather than the Environmental Regulation Commission,
33 to implement rules for such grants; providing an
34 effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 403.1839, Florida Statutes, is created
39 to read:

40 403.1839 Blue Star Collection System Assessment and
41 Maintenance Program.—

42 (1) DEFINITIONS.—As used in this section, the term:

43 (a) "Domestic wastewater" has the same meaning as in s.
44 367.021.

45 (b) "Domestic wastewater collection system" has the same
46 meaning as in s. 403.866.

47 (c) "Program" means the Blue Star Collection System
48 Assessment and Maintenance Program.

49 (d) "Sanitary sewer overflow" means the unauthorized
50 overflow, spill, release, discharge, or diversion of untreated
51 or partially treated domestic wastewater.

52 (2) LEGISLATIVE FINDINGS.—The Legislature finds that:

53 (a) The implementation of domestic wastewater collection
54 system assessment and maintenance practices has been shown to
55 effectively limit sanitary sewer overflows and the unauthorized
56 discharge of pathogens.

57 (b) The voluntary implementation of domestic wastewater
58 collection system assessment and maintenance practices beyond

Page 2 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02706A-19

2019286c1

those required by law has the potential to further limit
sanitary sewer overflows.

(c) The unique geography, community, growth, size, and age
of domestic wastewater collection systems across the state
require diverse responses, using the best professional judgment
of local utility operators, to ensure that programs designed to
limit sanitary sewer overflows are effective.

(3) ESTABLISHMENT AND PURPOSE.—There is established in the
department a Blue Star Collection System Assessment and
Maintenance Program. The purpose of this voluntary incentive
program is to assist public and private utilities in limiting
sanitary sewer overflows and the unauthorized discharge of
pathogens.

(4) APPROVAL AND STANDARDS.—

(a) The department shall adopt rules to administer the
program, including the certification standards for the program
in paragraph (b), and shall review and approve public and
private domestic wastewater utilities that apply for
certification or renewal under the program and that demonstrate
maintenance of program certification pursuant to paragraph (c)
based upon the certification standards.

(b) A utility must provide reasonable documentation of the
following certification standards in order to be certified under
the program:

1. The implementation of periodic collection system and
pump station structural condition assessments and the
performance of as-needed maintenance and replacements.

2. The rate of reinvestment as determined necessary by the
utility to fully implement its collection system and pump

592-02706A-19

2019286c1

station structural condition assessment and maintenance and
replacement program.

3. The implementation of a program designed to limit the
presence of fats, roots, oils, and grease in the collection
system.

4. If the applicant is a public utility, a local law or
building code requiring the private pump stations and lateral
lines connecting to the public system to be free of:

a. Cracks, holes, missing parts, or similar defects; and

b. Direct stormwater connections that allow the direct
inflow of stormwater into the private system and the public
domestic wastewater collection system.

5. A power outage contingency plan that addresses
mitigation of the impacts of power outages on the utility's
collection system and pump stations.

(c) Program certifications shall expire after 5 years. A
utility shall document its implementation of the program on an
annual basis with the department and must demonstrate that the
utility meets all program standards in order to maintain its
program certification. The approval of an application for
renewal certification must be based on the utility demonstrating
maintenance of program standards. A utility applying for renewal
certification must demonstrate maintenance of program standards
and progress in implementing the program.

(5) PUBLICATION.—The department shall annually publish on
its website a list of certified blue star utilities beginning on
January 1, 2021.

(6) FEDERAL PROGRAM PARTICIPATION.—The department shall
allow public and nonprofit utilities to participate in the Clean

592-02706A-19

2019286c1

Water State Revolving Fund Program for any purpose of the program that is consistent with federal requirements for participating in the Clean Water State Revolving Fund Program.

(7) REDUCED PENALTIES.—In the calculation of penalties pursuant to s. 403.161 for a sanitary sewer overflow, the department may reduce the penalty based on a utility's status as a certified blue star utility in accordance with this section. The department may also reduce a penalty based on a certified blue star utility's investment in assessment and maintenance activities to identify and address conditions that may cause sanitary sewer overflows or interruption of service to customers due to a physical condition or defect in the system.

Section 2. Paragraph (c) of subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural

592-02706A-19

2019286c1

nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. ~~When~~ where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12)(b) must be verified at representative sites by the department. The department shall use best

592-02706A-19

2019286c1

175 professional judgment in making the initial verification that
 176 the best management practices are reasonably expected to be
 177 effective and, where applicable, must notify the appropriate
 178 water management district or the Department of Agriculture and
 179 Consumer Services of its initial verification before the
 180 adoption of a rule proposed pursuant to this paragraph.
 181 Implementation, in accordance with rules adopted under this
 182 paragraph, of practices that have been initially verified to be
 183 effective, or verified to be effective by monitoring at
 184 representative sites, by the department, shall provide a
 185 presumption of compliance with state water quality standards and
 186 release from the provisions of s. 376.307(5) for those
 187 pollutants addressed by the practices, and the department is not
 188 authorized to institute proceedings against the owner of the
 189 source of pollution to recover costs or damages associated with
 190 the contamination of surface water or groundwater caused by
 191 those pollutants. Research projects funded by the department, a
 192 water management district, or the Department of Agriculture and
 193 Consumer Services to develop or demonstrate interim measures or
 194 best management practices shall be granted a presumption of
 195 compliance with state water quality standards and a release from
 196 the provisions of s. 376.307(5). The presumption of compliance
 197 and release is limited to the research site and only for those
 198 pollutants addressed by the interim measures or best management
 199 practices. Eligibility for the presumption of compliance and
 200 release is limited to research projects on sites where the owner
 201 or operator of the research site and the department, a water
 202 management district, or the Department of Agriculture and
 203 Consumer Services have entered into a contract or other

Page 7 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02706A-19

2019286c1

204 agreement that, at a minimum, specifies the research objectives,
 205 the cost-share responsibilities of the parties, and a schedule
 206 that details the beginning and ending dates of the project.

207 4. ~~When~~ where water quality problems are demonstrated,
 208 despite the appropriate implementation, operation, and
 209 maintenance of best management practices and other measures
 210 required by rules adopted under this paragraph, the department,
 211 a water management district, or the Department of Agriculture
 212 and Consumer Services, in consultation with the department,
 213 shall institute a reevaluation of the best management practice
 214 or other measure. Should the reevaluation determine that the
 215 best management practice or other measure requires modification,
 216 the department, a water management district, or the Department
 217 of Agriculture and Consumer Services, as appropriate, shall
 218 revise the rule to require implementation of the modified
 219 practice within a reasonable time period as specified in the
 220 rule.

221 5. Agricultural records relating to processes or methods of
 222 production, costs of production, profits, or other financial
 223 information held by the Department of Agriculture and Consumer
 224 Services pursuant to subparagraphs 3. and 4. or pursuant to any
 225 rule adopted pursuant to subparagraph 2. are confidential and
 226 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 227 Constitution. Upon request, records made confidential and exempt
 228 pursuant to this subparagraph shall be released to the
 229 department or any water management district provided that the
 230 confidentiality specified by this subparagraph for such records
 231 is maintained.

232 6. ~~The provisions of~~ Subparagraphs 1. and 2. do not

Page 8 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02706A-19

2019286c1

preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

7. For the sole purpose of establishing a total maximum daily load for pathogens in a surface water, the department must provide a domestic wastewater utility with a defensible expectation of compliance with state water quality standards for fecal indicator bacteria when the utility implements and maintains a program as a certified blue star utility in accordance with s. 403.1839 and demonstrates a history of compliance with wastewater disinfection requirements incorporated in the utility's operating permit for any discharge into the impaired surface water.

Section 3. Subsection (11) is added to section 403.087, Florida Statutes, to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(11) Subject to the permit duration limits for a utility permitted pursuant to s. 403.0885, a blue star utility certified pursuant to s. 403.1839 shall be issued a 10-year permit for the same fee and under the same conditions as a 5-year permit upon approval of its application for permit renewal by the department if the certified blue star utility demonstrates that it:

(a) Is in compliance with any consent order or an

592-02706A-19

2019286c1

accompanying administrative order to its permit;

(b) Does not have any pending enforcement action against it by the United States Environmental Protection Agency, the department, or a local program; and

(c) If applicable, has submitted annual program implementation reports demonstrating progress in the implementation of the program.

Section 4. Present subsection (6) of section 403.161, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

403.161 Prohibitions, violation, penalty, intent.—

(6) Notwithstanding any other law, the department may reduce the amount of a penalty based on the person's investment in the assessment, maintenance, rehabilitation, or expansion of the permitted facility.

Section 5. Subsection (2) and paragraphs (a) and (b) of subsection (3) of section 403.1838, Florida Statutes, are amended to read:

403.1838 Small Community Sewer Construction Assistance Act.—

(2) The department shall use funds specifically appropriated to award grants under this section to assist financially disadvantaged small communities with their needs for adequate sewer facilities. The department may use funds specifically appropriated to award grants under this section to assist nonprofit utilities providing wastewater services to financially disadvantaged small communities. For purposes of this section, the term "financially disadvantaged small community" means a county, municipality, or special district

592-02706A-19

2019286c1

that has a population of 10,000 or fewer, according to the latest decennial census, and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce. For purposes of this subsection, the term "special district" has the same meaning as provided in s. 189.012 and includes only those special districts whose public purpose includes water and sewer services, utility systems and services, or wastewater systems and services. The department may waive the population requirement for an independent special district that serves fewer than 10,000 wastewater customers, is located within a watershed with an adopted total maximum daily load or basin management action plan for pollutants associated with domestic wastewater pursuant to s. 403.067, and is wholly located within a rural area of opportunity as defined in s. 288.0656.

(3) (a) In accordance with rules adopted by the ~~department Environmental Regulation Commission~~ under this section, the department may provide grants, from funds specifically appropriated for this purpose, to financially disadvantaged small communities and to nonprofit utilities serving financially disadvantaged small communities for up to 100 percent of the costs of planning, assessing, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses. Grants issued pursuant to this section may also be used for planning and implementing domestic wastewater collection system assessment and maintenance programs to identify conditions that may cause sanitary sewer overflows or interruption of service to customers due to a

592-02706A-19

2019286c1

physical condition or defect in the system.

(b) The rules of the ~~department Environmental Regulation Commission~~ must:

1. Require that projects to plan, assess, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.

2. Require appropriate user charges, connection fees, and other charges sufficient to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant.

3. Require grant applications to be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained.

4. Establish a system to determine eligibility of grant applications.

5. Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution abatement.

6. Establish requirements for competitive procurement of engineering and construction services, materials, and equipment.

7. Provide for termination of grants when program requirements are not met.

Section 6. This act shall take effect July 1, 2019.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.9.19

Meeting Date

286

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1674 Univ. Pkwy #286
Street

Phone 941-323-2404

SARASOTA FL 34243
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-9-19
Meeting Date

SB 286
Bill Number (if applicable)

Topic Waste water

Amendment Barcode (if applicable)

Name RICHARD GENTRY

Job Title _____

Address 2305 BRAEBURN CIR.
Street

Phone 251-1837

Tall. FL 32309
City State Zip

Email rgentry@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing STAND UP FOR NORTH FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.9.19

Meeting Date

SB 286

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ROB WILLIAMSON

Job Title CEO HOLLEY-NAVARRE WATER SYSTEM

Address 8574 TURKEY BLUFF ROAD

Phone 850-377-2006

Street

NAVARRE

FL

32566

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

04/09/19

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

286

Meeting Date

Bill Number (if applicable)

Topic Domestic Wastewater Collection

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 222-9684

Street

Tallahassee

FL

32302

Email rohara@flcities.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/9/19

Meeting Date

CS/HB 286

Bill Number (if applicable)

Topic Domestic Wastewater

Amendment Barcode (if applicable)

Name Drinda Merritt

Job Title Mayor

Address 135 Hwy 40 West

Street

Phone 352-229-0477

Englis FL 34449

City

State

Zip

Email drindamerritt@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Town of Englis

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 9, 2019

Meeting Date

286

Bill Number (if applicable)

Topic "Blue Star" Legislation

Amendment Barcode (if applicable)

Name DAVID CHILDS

Job Title Legal Counsel

Address 119 S. Monroe St Suite 300

Phone 850 222-7500

Tallahassee FL 32301

City

State

Zip

Email DAVIDC@HSLAW.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FWEA Utility Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

04/09/2019

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

286

Bill Number (if applicable)

Topic Domestic Wastewater Collection System Assessment and Mair

Amendment Barcode (if applicable)

Name Mark Thomasson

Job Title Associate

Address 2282 Killearn Center Boulevard, Suite C

Phone 850-510-2226

Street

Tallahassee

FL

32309

Email mark@littlejohnmann.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Conservation and Environmental Quality Committee of Florida Engineering Society

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Debbie Mayfield, Chair
Appropriations Subcommittee on Agriculture, Environment, and General Government

Subject: Committee Agenda Request

Date: March 13, 2019

I respectfully request that **Senate Bill #286**, relating to Domestic Wastewater Collection System Assessment and Maintenance, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: CS/SB 538

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Nonadmitted Insurance Market Reform

DATE: April 8, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Billmeier	Knudson	BI	Fav/CS
2. Sanders	Betta	AEG	Recommend: Favorable
3. _____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 538 makes various changes to laws related to surplus lines insurance. The bill:

- Repeals the \$35 limit on the policy fee that surplus lines agents may charge when they sell a surplus lines policy, but requires that the fee be reasonable.
- Requires the policy fee be itemized separately for the customer before purchase of the policy and be enumerated in the policy.
- Repeals the requirement that a surplus lines agent file a quarterly affidavit with the Florida Surplus Lines Service Office (FSLSO).
- Extends the exemption from the diligent effort requirement for surplus lines agents exporting flood coverage to an eligible surplus lines insurer from July 1, 2019, until July 1, 2025.

The bill has no fiscal impact on state revenues or expenditures.

The bill has an effective date of July 1, 2019.

II. Present Situation:

Surplus Lines Insurance Agents

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance may cover exotic risks or it may cover

day-to-day risks that fall outside the underwriting guidelines of the standard market.¹ Surplus lines insurance is sold by surplus lines insurance agents. Coverage cannot be placed in the surplus lines market unless, among other things “the full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state.”²

Surplus lines agents must verify that a diligent effort has been made by requiring a properly documented statement of diligent effort from the retail or producing agent.³ The surplus lines agent’s reliance must be reasonable under the particular circumstances surrounding the export of that particular risk.⁴ “Diligent effort” means seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.⁵

Surplus lines agents are required to report and file with the FLSO⁶ specified information on each surplus lines insurance policy within 30 days of the effective date of the transaction, must transmit service fees to the FLSO each month, and must transmit assessment and tax payments to the FLSO quarterly.⁷ When requested by the Department of Financial Services or the FLSO, surplus lines agents are also required to submit a copy of any policy and certain other information.⁸ Surplus lines agents are required to maintain each surplus lines contract, including applications and all certificates, and other detailed information about each surplus lines policy, in their agency office for a period of five years.⁹ Florida law requires a surplus lines agent to file a quarterly affidavit with the FLSO to document all surplus lines insurance transacted in the quarter.¹⁰ The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.¹¹ To account for the administrative costs surplus lines agents incur to comply with reporting requirements, the agent may charge a reasonable per-policy fee, not to exceed \$35, for each policy exported.¹² This fee has not been adjusted since it was raised from \$25 to \$35 in 2001.¹³

¹ See <https://www.fslso.com/About> (last visited March 5, 2019).

² s. 626.916(1)(a), F.S.

³ A sample “Statement of Diligent Effort” can be found here: <https://www.fslso.com/BusinessForms/DiligentEffort> (last visited March 7, 2019).

⁴ See s. 626.961(1)(a), F.S.

⁵ See s. 626.914(4), F.S.

⁶ The Florida Surplus Lines Service Office was created by the Legislature as a surplus lines self-regulating organization to permit better access by consumers to approved unauthorized insurers. The FLSO collects information from agents about surplus lines transactions in Florida and collects premium taxes for payment to the state.

⁷ See s. 626.921(2), F.S.

⁸ See s. 626.923, F.S.

⁹ See s. 626.930, F.S.

¹⁰ See s. 626.931, F.S.

¹¹ See s. 626.931, F.S.

¹² See s. 626.916(4), F.S.

¹³ See ch. 2001-213, L.O.F.

Flood Insurance

The National Flood Insurance Program (NFIP)

The NFIP was created by the passage of the National Flood Insurance Act of 1968.¹⁴ The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government.

Private Market Flood Insurance in Florida

In 2014, the Legislature created s. 627.715, F.S., governing the sale of personal lines residential flood insurance.¹⁵ “Flood” is defined as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.¹⁶

Flood insurance is a separate line of insurance from homeowner’s property insurance and is not included in such a policy.¹⁷ In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the homeowner’s property insurance policy does not cover the flood damage.¹⁸ If the homeowner does not separately purchase flood insurance through the National Flood Insurance Program or an admitted Florida flood insurer, such losses will be uninsured.

A surplus lines agent may export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers. This exemption from the diligent effort requirement expires July 1, 2019, or on the date on which the Commissioner of Insurance Regulation determines that there is an adequate admitted market to provide flood coverage, whichever date occurs first.

The Office of Insurance Regulation reports there are 29 admitted insurance companies currently writing private flood insurance in the state.¹⁹

¹⁴ <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (Last accessed January 29, 2019).

¹⁵ Ch. 2014-80, Laws of Fla.

¹⁶ s. 627.715(1)(b), F.S.

¹⁷ Part X, ch. 627, F.S.

¹⁸ Flood insurance covers rising water that sits or flows on the ground and damages property by inundation and flow. Windstorm insurance covers water falling or driven by wind that damages property by infiltration of the structure from above or laterally while carried by the wind. In short, flood insurance covers damage related to rising water and windstorm insurance covers damage related to airborne water.

¹⁹ Presentation by OIR “Flood Facts & Florida’s Flood Insurance Market” January 2019. (On file with the Banking and Insurance Committee).

III. Effect of Proposed Changes:

Section 1 repeals the \$35 limit on the policy fee contained in s. 626.916, F.S., that surplus lines agents may charge when they sell a surplus lines policy. The bill requires the fee to be itemized separately for the customer before purchase of the policy and enumerated in the policy.

Section 2 repeals the requirement in s. 626.931, F.S., that a surplus lines agent file a quarterly affidavit with the FLSO stating that all surplus lines insurance transacted by the agent during the calendar quarter has been submitted to the FLSO. The affidavit requirement pre-dates the FLSO. Now, the FLSO requires agents to electronically file each policy transaction with the FLSO. The FLSO believes the affidavit is no longer necessary because FLSO staff audits agents to verify the accuracy of submitted information with original source documents.²⁰ Agents will still be subject to discipline by the Department of Financial Services if they fail to file required information with the FLSO.

Sections 3, 4, and 5 make technical changes to conform to the repeal of the affidavit requirement.

Section 6 amends s. 627.715, F.S., to extend the exemption from the diligent effort requirement for surplus lines agents exporting flood coverage to an eligible surplus lines insurer from July 1, 2019, until July 1, 2025.

Section 7 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

²⁰ Email from Gary Pullen, Executive Director of the FLSO dated March 2, 2015 (on file with the Committee on Banking and Insurance).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Surplus lines agents will be able to charge a per-policy fee exceeding \$35, so long as the fee is reasonable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.916, 626.931, 626.932, 626.935, 629.401, and 627.715.

IX. 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 on March 11, 2019:

The CS removes provisions changing the surplus lines tax.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Brandes

597-02928-19

2019538c1

1 A bill to be entitled
 2 An act relating to nonadmitted insurance market
 3 reform; amending s. 626.916, F.S.; deleting a
 4 limitation on per-policy fees charged by surplus lines
 5 agents for exporting certified policies; requiring
 6 that such fees be itemized separately for the customer
 7 before purchase and enumerated in the policy; amending
 8 s. 626.931, F.S.; deleting a requirement for surplus
 9 lines agents to quarterly file a certain affidavit
 10 with the Florida Surplus Lines Service Office;
 11 amending s. 626.932, F.S.; conforming a provision to
 12 changes made by the act; amending ss. 626.935 and
 13 629.401, F.S.; conforming provisions to changes made
 14 by the act; amending s. 627.715, F.S.; extending the
 15 expiration date of a provision authorizing surplus
 16 lines agents to export contracts or endorsements
 17 providing flood coverage to eligible surplus lines
 18 insurers without making a certain diligent effort to
 19 seek coverage from authorized insurers; providing an
 20 effective date.
 21
 22 Be It Enacted by the Legislature of the State of Florida:
 23
 24 Section 1. Subsection (4) of section 626.916, Florida
 25 Statutes, is amended to read:
 26 626.916 Eligibility for export.—
 27 (4) A reasonable per-policy fee, ~~not to exceed \$35,~~ may be
 28 charged by the filing surplus lines agent for each policy
 29 certified for export. The fee must be itemized separately for

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02928-19

2019538c1

30 the customer before purchase and enumerated in the policy.
 31 Section 2. Section 626.931, Florida Statutes, is amended to
 32 read:
 33 626.931 ~~Agent affidavit and~~ Insurer reporting
 34 requirements.—
 35 ~~(1) Each surplus lines agent that has transacted business~~
 36 ~~during a calendar quarter shall on or before the 45th day~~
 37 ~~following the calendar quarter file with the Florida Surplus~~
 38 ~~Lines Service Office an affidavit, on forms as prescribed and~~
 39 ~~furnished by the Florida Surplus Lines Service Office, stating~~
 40 ~~that all surplus lines insurance transacted by him or her during~~
 41 ~~such calendar quarter has been submitted to the Florida Surplus~~
 42 ~~Lines Service Office as required.~~
 43 ~~(2) The affidavit of the surplus lines agent shall include~~
 44 ~~efforts made to place coverages with authorized insurers and the~~
 45 ~~results thereof.~~
 46 (1)(3) Each foreign insurer accepting premiums shall, on or
 47 before the end of the month following each calendar quarter,
 48 file with the Florida Surplus Lines Service Office a verified
 49 report of all surplus lines insurance transacted by such insurer
 50 for insurance risks located in this state during such calendar
 51 quarter.
 52 (2)(4) Each alien insurer accepting premiums shall, on or
 53 before June 30 of each year, file with the Florida Surplus Lines
 54 Service Office a verified report of all surplus lines insurance
 55 transacted by such insurer for insurance risks located in this
 56 state during the preceding calendar year.
 57 (3)(5) The department may waive the filing requirements
 58 described in subsections (1) ~~(3)~~ and (2) ~~(4)~~.

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-02928-19

2019538c1

~~(4)(6)~~ Each insurer's report and supporting information shall be in a computer-readable format as determined by the Florida Surplus Lines Service Office or shall be submitted on forms prescribed by the Florida Surplus Lines Service Office and shall show for each applicable agent:

(a) A listing of all policies, certificates, cover notes, or other forms of confirmation of insurance coverage or any substitutions thereof or endorsements thereto and the identifying number; and

(b) Any additional information required by the department or Florida Surplus Lines Service Office.

Section 3. Paragraph (a) of subsection (2) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(2)(a) The surplus lines agent shall make payable to the department the tax related to each calendar quarter's business as reported to the Florida Surplus Lines Service Office, and remit the tax to the Florida Surplus Lines Service Office at the same time as the remittance required under s. 626.9325 provided ~~for the filing of the quarterly affidavit, under s. 626.931.~~ The Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b), within 10 days of receipt.

Section 4. Paragraph (d) of subsection (1) of section 626.935, Florida Statutes, is amended, and present paragraphs (e) through (i) of subsection (1) of that section are redesignated as paragraphs (d) through (h), respectively, to read:

626.935 Suspension, revocation, or refusal of surplus lines

597-02928-19

2019538c1

agent's license.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew the appointment of a surplus lines agent and all other licenses and appointments held by the licensee under this code, on any of the following grounds:

~~(d) Failure to make and file his or her affidavit or reports when due as required by s. 626.931.~~

Section 5. Paragraph (a) of subsection (1) of section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(1) There may be created one or more insurance exchanges, with one or more offices each, subject to such rules as are adopted by the commission. For the purposes of this section, the term "exchange" applies to any such insurance exchange proposed or created under this section. The purposes of the exchange are:

(a) To provide a facility for the underwriting of:

1. Reinsurance of all kinds of insurance.

2. Direct insurance of all kinds on risks located entirely outside the United States.

3. Surplus lines insurance for risks located in this state eligible for export under s. 626.916 or s. 626.917 and placed through a licensed Florida surplus lines agent subject to compliance with ~~the provisions of~~ ss. 626.921, 626.922, 626.923, 626.924, 626.929, 626.9295, and 626.930, ~~and 626.931.~~ With respect to compliance with s. 626.924, the required legend may refer to any coverage provided for by a security fund established under paragraph (3)(d).

4. Surplus lines insurance in any other state subject to the applicable surplus lines laws of such other state for risks

597-02928-19

2019538c1

located entirely outside of this state.

Section 6. Subsection (4) of section 627.715, Florida Statutes, is amended to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) A surplus lines agent may export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a). This subsection expires July 1, 2025 ~~2019~~, or on the date on which the Commissioner of Insurance Regulation determines in writing that there is an adequate admitted market to provide coverage for the peril of flood consistent with this section, whichever date occurs first. If there are fewer than three admitted insurers on the date this subsection expires, the number of declinations necessary to meet the diligent-effort requirement shall be no fewer than the number of authorized insurers providing flood coverage.

Section 7. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.9.19

Meeting Date

538

Bill Number (if applicable)

Topic nonadmitted mktg

Amendment Barcode (if applicable)

Name Ashley Kalifeh

Job Title lobbyist/attorney

Address 101 E Collyer Ave #502

Phone 222 9070

Tallahassee FL 32303

City State Zip

Email akalifeh@capitol.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Surplus Lines Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/9

Meeting Date

538

Bill Number (if applicable)

Topic NONADMITTED INSURANCE MARKET REFORM

Amendment Barcode (if applicable)

Name DONOVAN BROWN

Job Title _____

Address 113 E COLLEGE AVE
Street

Phone 850.815.6010

TLH
City

FL
State

32312
Zip

Email donovan@suskeyconsulting.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing WHOLESALE & SPECIALTY INSURANCE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/9/19

Meeting Date

538

Bill Number (if applicable)

Topic non-Admitted Insurance

Amendment Barcode (if applicable)

Name Amanda Ruppel

Job Title Managing Director

Address 18302 Highwoods pasture pkwy #3W

Street

Tampa

City

FL

State

33647

Zip

Phone 8134221502

Email Anruppel@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Burns & Wilcox

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/9/19

Meeting Date

SB538

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name MICHAEL FRANZESE

Job Title Senior Vice President

Address 101 E Kennedy Blvd #2175

Street

Tampa

FL

State

33606

Zip

Phone 813 230 9706

Email Michael.franze@rt

Specialty.com

Speaking: ☐ For ☐ Against ☐ Information

★ Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing RT Specialty

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Debbie Mayfield
Appropriations Subcommittee on Agriculture,
Environment, and General Government

Subject: Committee Agenda Request

Date: February 8, 2019

I respectfully request that **Senate Bill #538**, relating to **Non-admitted Insurance Market Reform**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: PCS/CS/SB 1278 (263818)

INTRODUCER: Appropriations Subcommittee on Agriculture, Environment, and General Government; Environment and Natural Resources Committee; and Senator Mayfield

SUBJECT: Biosolids Management

DATE: April 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.	Reagan	Betta	AEG	Recommend: Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1278 creates a real-time water quality monitoring program subject to appropriation.

The bill provides legislative findings that it is in the best interest of the state to:

- Regulate biosolids management in order to minimize the migration of nutrients that impair waterbodies;
- Expedite the implementation of the recommendations of the Department of Environmental Protection Biosolids Technical Advisory Committee, including permitting according to site-specific application conditions, an increased inspection rate, groundwater and surface water monitoring protocols, and nutrient management research, will improve biosolids management and assist in protecting the state's water resources and water quality; and
- Expedite the implementation of innovative technologies in biosolids processing to improve biosolids management and to protect the state's water resources and water quality.

The bill prohibits the land application of biosolids, on sites where the biosolids application zone interacts with the seasonal high water table, beginning July 1, 2020. The bill does not apply to Class AA biosolids that are marketed and distributed as fertilizer products.

The bill requires the Department of Environmental Protection (DEP) to adopt rules for biosolids management, including rules to:

- Permit the use of biosolids in a manner that minimizes the migration of nutrients that impair waterbodies, including site-specific land application and agronomic rates; and
- Establish site-specific monitoring requirements.

The bill authorizes a county or municipality to enact or retain in effect an ordinance, moratorium, or regulation relating to the land application of Class B biosolids that was adopted before February 1, 2019. The bill establishes that such an ordinance, moratorium, or regulation shall remain in effect until the local government repeals the ordinance, moratorium, or regulation or until the effective date of the rules adopted by the DEP. The bill does not limit the ability of a municipality or county to extend an ordinance, moratorium, resolution, or regulation until the effective date of rules adopted by the DEP.

The DEP can absorb within existing resources the costs to adopt rules to implement the bill.

The bill takes effect July 1, 2019.

II. Present Situation:

Approximately two-thirds of Florida's population is served by around 2,000 domestic wastewater facilities permitted by the DEP.¹ When domestic wastewater is treated, solid, semisolid, or liquid residue known as biosolids² accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly.³ Biosolids also include products and treated material from biosolids treatment facilities and septage management facilities regulated by the DEP.⁴ The collected residue is high in organic content and contains moderate amounts of nutrients.⁵

The DEP has stated that wastewater treatment facilities produce about 340,000 dry tons of biosolids each year.⁶ Biosolids can be disposed of in several ways: transfer to another facility, placement in a landfill, distribution and marketing as fertilizer, incineration, bioenergy, and land application to pasture or agricultural lands.⁷ About one-third of the total amount of biosolids produced is used for land application⁸ and is subject to regulatory requirements established by the DEP to protect public health and the environment.⁹

¹ DEP, *General Facts and Statistics about Wastewater in Florida*, <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited Mar. 7, 2019).

² Section 373.4595, F.S. Biosolids are the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility and include products and treated material from biosolids treatment facilities and septage management facilities. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.

³ DEP, *Domestic Wastewater Biosolids*, <https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids> (last visited Mar. 7, 2019).

⁴ Fla. Admin. Code R. 62-640.200(6).

⁵ *Id.*

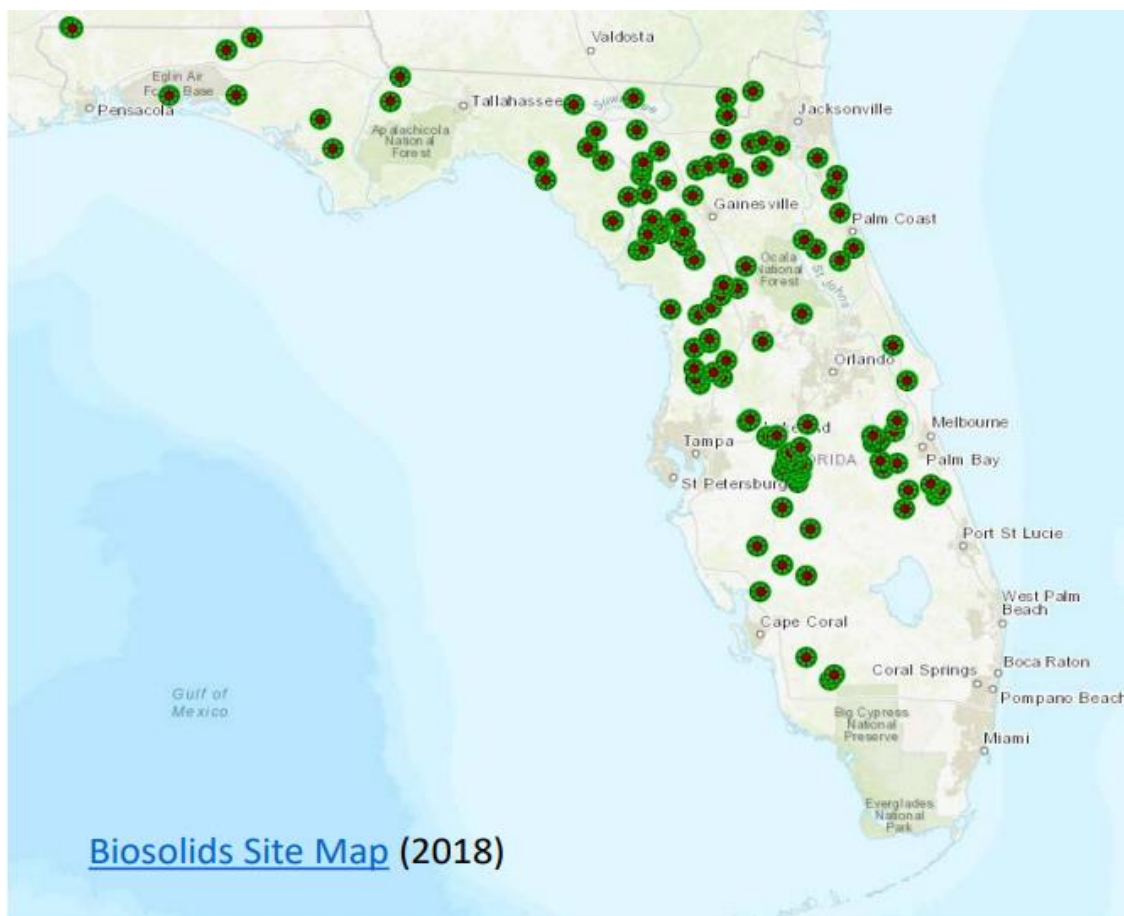
⁶ DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida Presentation*, 5 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Mar. 7, 2019).

⁷ *Id.* at 4.

⁸ *Id.* at 5.

⁹ Fla. Admin. Code R. 62-640.

Land application is the use of biosolids at a permitted site to provide nutrients or organic matter to the soil, such as agricultural land, golf courses, forests, parks, or reclamation sites. Biosolids are applied in accordance with restrictions based on crop nutrient needs, phosphorus limits in the area, and soil fertility.¹⁰ Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of these nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.¹¹ To prevent odor or the contamination of soil, crops, livestock, and humans, land application sites must meet site management requirements such as site slopes, setbacks, and proximity to groundwater restrictions.¹² There are approximately 140 permitted land application sites in Florida, with waste haulers being the most common site permittees.¹³



¹⁰ DEP Technical Advisory Committee, *Biosolids Use and Regulations in Florida*, 8 (Sept. 2018), available at <https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf> (last visited Mar. 9, 2019); see also, United States EPA, A Plain English Guide to the EPA Part 503 Biosolids Rule, 26 (Sept. 1994), available at <https://www.epa.gov/sites/production/files/2018-12/documents/plain-english-guide-part503-biosolids-rule.pdf> (last visited Mar. 9, 2019).

¹¹ *Id.* at 20.

¹² *Id.* at 9.

¹³ *Id.* at 20. Wastewater treatment facilities commonly contract with waste haulers instead of applying the biosolids themselves.

Regulation of Biosolids by DEP

The DEP regulates three classes of biosolids for beneficial use.

- Class B - minimum level of treatment;
- Class A - intermediate level of treatment; and
- Class AA - highest level of treatment.¹⁴

The DEP categorizes the classes based on treatment and quality. Treatment of biosolids must:

- Reduce or completely eliminate pathogens;
- Reduce the attractiveness of the biosolids for pests (such as insects and rodents); and
- Reduce the amount of toxic metals in the biosolids.¹⁵

Class AA biosolids can be distributed and marketed as fertilizer. Because they are the highest quality, they are not subject to the same regulations as Class A and Class B biosolids and are exempt from nutrient restrictions.¹⁶ Typically, Class B biosolids are used in land application.¹⁷

Biosolids are regulated under Rule 62-640 of the Florida Administrative Code. The rules provide minimum requirements, including monitoring and reporting requirements, for the treatment, management, use, and disposal of biosolids. The rules are applicable to wastewater treatment facilities, applicators, and distributors¹⁸ and include permit requirements for both treatment facilities and biosolids application sites.¹⁹

Each permit application for a biosolids application site must include a site-specific nutrient management plan (NMP) that establishes the specific rates of application and procedures to land apply biosolids.²⁰ Biosolids may only be applied to land application sites that are permitted by the DEP and have a valid NMP.²¹ Biosolids must be applied at rates established in accordance with the nutrient management plan and may be applied to a land application site only if all concentrations of minerals do not exceed ceiling and cumulative concentrations determined by rule.²² According to the St. Johns Water Management District, application rates of biosolids are determined by crop nitrogen demand, which can often result in the overapplication of phosphorus to the soil and can increase the risk of nutrient runoff into nearby surface waters.²³

Once a facility or site is permitted, it is subject to monitoring, record-keeping, reporting, and notification requirements.²⁴ The requirements are site-specific and can be increased or reduced by the DEP based on the quality or quantity of wastewater or biosolids treated; historical

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 6.

¹⁸ Fla. Admin. Code R. 62-640.100.

¹⁹ Fla. Admin. Code R. 62-640.300.

²⁰ Fla. Admin. Code R. 62-640.500.

²¹ *Id.*

²² Fla. Admin. Code R. 62-640.700.

²³ Victoria R. Hoge, Environmental Scientist IV, St. Johns River Water Management District, *Developing a Biosolids Database for Watershed Modeling Efforts*, abstract available at

http://archives.waterinstitute.ufl.edu/symposium2018/abstract_detail.asp?AssignmentID=1719 (last visited Mar. 8, 2019).

²⁴ Fla. Admin. Code R. 62-640.650.

variations in biosolids characteristics; industrial wastewater or sludge contributions to the facility; the use, land application, or disposal of the biosolids; the water quality of surface and ground water and the hydrogeology of the area; wastewater or biosolids treatment processes; and the compliance history of the facility or application site.²⁵

State Bans on the Land Application of Biosolids

Section 373.4595, F.S., sets out the statutory guidelines for the Northern Everglades and Estuaries Protection Program. This statute is designed to protect and promote the hydrology of Lake Okeechobee, the Caloosahatchee and St. Lucie Rivers, and their estuaries. As part of those protections, the Legislature banned the disposal of domestic wastewater biosolids within the Lake Okeechobee, Caloosahatchee River, and St. Lucie River watersheds unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to nutrient loadings in the watershed.²⁶ The prohibition against land application in these watersheds does not apply to Class AA biosolids that are distributed as fertilizer products in accordance with Rule 62-640.850 of the Florida Administrative Code.²⁷

The land application of Class A and Class B biosolids is also prohibited within priority focus areas in effect for Outstanding Florida Springs if the land application is not in accordance with a NMP that has been approved by the DEP.²⁸ The NMP must establish the rate at which all biosolids, soil amendments, and nutrient sources at the land application site can be applied to the land for crop production while minimizing the amount of pollutants and nutrients discharged into groundwater and waters of the states.²⁹

Local Regulation of Biosolids

The Indian River County Code addresses land application of biosolids by providing criteria for designated setbacks, reporting requirements, and required approval. In July 2018, the Indian River County Commission voted for a six-month moratorium on the land application of Class B biosolids on all properties within the unincorporated areas of the county.³⁰ The ordinance also directs the County Administrator to coordinate with the DEP on a study to report the findings and recommendations concerning Class B biosolids land application activities and potential adverse effects.³¹ The County Commission voted in January 2019 to extend the moratorium for an additional six months.³²

The City Council of Fellsmere adopted a similar moratorium, Ordinance 2018-06, in August 2018 authorizing a temporary moratorium for 180 days or until a comprehensive review

²⁵ *Id.*

²⁶ Chapter 2016-1, Laws of Florida; *see* section 373.4595, F.S.

²⁷ *Id.*

²⁸ Section 373.811(4), F.S.

²⁹ *Id.*

³⁰ Indian River County Commission Ordinance 18-2020 (Jul. 17, 2018), *available at* http://ircgov.granicus.com/player/clip/183?view_id=1&meta_id=64650 (last visited Mar. 9, 2019).

³¹ *Id.*

³² Indian River County Commission Ordinance 18-2642 (Jan. 14, 2019), *available at* http://ircgov.granicus.com/player/clip/204?view_id=1&meta_id=77302 (last visited Mar. 9, 2019).

of the impact on the city's ecosystem is completed.³³ In January 2019, the ordinance was extended for an additional 180 days.³⁴

The Treasure Coast Regional Planning Council held a Regional Biosolids Symposium in June 2018, where regional representatives and stakeholders discussed biosolids and alternative techniques for disposal.³⁵ At its meeting in July, the Treasure Coast Regional Planning Council adopted a resolution encouraging state and local governments to prioritize the reduction and eventual elimination of the land application of human wastewater biosolids.³⁶ It also encouraged the state to establish a Pilot Projects Program to incentivize local utilities to implement new wastewater treatment technologies which would allow more efficient use of biosolids.³⁷

DEP Biosolids Technical Advisory Committee

In 2018, the DEP created a Biosolids Technical Advisory Committee (TAC) to establish an understanding of potential nutrient impacts of the land application of biosolids, evaluate current management practices, and explore opportunities to better protect Florida's water resources. The TAC members represent various stakeholders including environmental and agricultural industry experts, large and small utilities, waste haulers, consultants, and academics.³⁸

The TAC convened on four occasions from September 2018 to January 2019 and discussed the current options for biosolids management in the state, ways to manage biosolids to improve the protection of water resources, and research needs to build upon and improve biosolid management.³⁹ Based on the presentations and discussion, the TAC made the following recommendations:

- Permit biosolids in a manner that minimizes migration of nutrients to prevent impairment to waterbodies. The DEP should modify current permitting rules to:
 - Establish the rate of biosolids application based on site specifics, such as soil characteristics/adsorption capacity, water table, hydrogeology, site use, and distance to surface water to better prevent nutrient pollution offsite;
 - Evaluate the percentage of water extractable phosphorus in all biosolids to inform the appropriate application rate; and

³³ Fellsmere City Council Meeting, *Agenda* (Aug. 16, 2018), available at https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/8301/co20180816agenda.pdf (last visited Mar. 8, 2019).

³⁴ Fellsmere City Council Meeting, *Agenda* (Feb. 7, 2019), available at https://www.cityoffellsmere.org/sites/default/files/fileattachments/city_council/meeting/14391/co20190221agenda.pdf (last visited Mar. 8, 2019).

³⁵ Treasure Coast Regional Planning Council Regional Biosolids Symposium, *Charting the Future of Biosolids Management Executive Summary* (Jun. 18, 2018), available at <http://www.tcrpc.org/announcements/Biosolids/summit%20summary.pdf> (last visited Mar. 9, 2019).

³⁶ Treasure Coast Regional Planning Council Resolution 18-03 (Jul. 20, 2018), available at <http://www.flregionalcouncils.org/wp-content/uploads/2019/01/Treasure-Coast-Resolution-No.-18-03.pdf> (last visited Mar. 9, 2019).

³⁷ *Id.*

³⁸ The seven members of TAC included two academic representatives from the University of Florida, two representatives of small and large utilities, and one representative each for environmental interests, agricultural interests, and waste haulers.

³⁹ DEP, *DEP Biosolids Technical Advisory Committee*, <https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee> (last visited Mar. 6, 2019).

- Establish criteria for low, medium, and high-risk sites that guide application practices and required water quality monitoring;
- Increase the inspection rate of land application;
- Develop site specific groundwater and/or surface water monitoring protocols to detect nutrient migration;
- Develop and conduct biosolid and nutrient management research on nutrient runoff through surface and groundwater flow with various application rates, types of biosolid application, and geologic conditions; and
- Promote innovative technology pilot projects for biosolids processing that could provide a wider range of beneficial end products.⁴⁰

III. Effect of Proposed Changes:

The bill requires the Department of Environmental Protection (DEP) to create a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired water bodies and coastal resources. The DEP is encouraged to form public-private partnerships with established scientific entities that possess proven water quality monitoring equipment to expedite the creation and implementation of the program.

The bill provides legislative findings that it is in the best interest of the state to:

- Regulate biosolids management in order to minimize the migration of nutrients that impair waterbodies;
- Expedite the implementation of the recommendations of the DEP Biosolids Technical Advisory Committee, including permitting according to site-specific application conditions, an increased inspection rate, groundwater and surface water monitoring protocols, and nutrient management research, will improve biosolids management and assist in protecting the state's water resources and water quality; and
- Expedite implementation of innovative technologies in biosolids processing to improve biosolids management and to protect the state's water resources and water quality.

The bill defines the term “biosolids” to mean the “solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as “domestic wastewater residuals” or “residuals,” and includes products and treated material from biosolids treatment facilities and septage management facilities regulated by the department. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.”

The bill prohibits, beginning July 1, 2020, the land application of biosolids on any site where the biosolids application zone interacts with the seasonal high water table. The DEP may not issue a new permit or renew an existing permit for the land application of biosolids if the application zone interacts with the seasonal high water table.

⁴⁰ *Id.*

For sites that are not subject to this prohibition, the bill requires the DEP to adopt rules for biosolids management to:

- Permit the use of biosolids in a manner that minimizes the migration of nutrients and prevents impairment of surface water and groundwater quality, including:
 - Site-specific land application rates of biosolids based on soil characteristics, soil absorption capacity, water table characteristics, hydrogeology, site use, and distance to surface water;
 - An evaluation of the percentage of water-extractable phosphorous in all biosolids to inform the appropriate application rate;
 - Criteria for low, medium and high risk sites that guide application practices and required water quality monitoring; and
 - Site-specific agronomic rates based on soil and plant tissue tests. The application volume is limited to the amount necessary to meet the agronomic need demonstrated by the test.
- Establish site-specific groundwater and surface water monitoring requirements.

The DEP is directed to initiate rulemaking by August 1, 2019.

The bill requires the DEP to implement an offsite water quality monitoring program sufficient to determine impacts from the land application of biosolids on downstream and nearby surface water and groundwater quality.

The bill clarifies that the proposed legislation does not conflict with or supersede statutes governing the Northern Everglades and Estuaries Protection Program or prohibited activities within a priority focus area for an Outstanding Florida Spring.

The bill does not apply to Class AA biosolids that are marketed and distributed as fertilizer products in accordance with the DEP rule.

The bill authorizes a county or municipality to enact or retain in effect an ordinance, moratorium, or regulation, adopted before February 1, 2019, relating to the land application of Class B biosolids. The bill establishes that such an ordinance, moratorium, or regulation shall remain in effect until the local government repeals the ordinance, moratorium, or regulation or until the effective date of the rules adopted by the DEP.

The bill does not limit the ability of a municipality or county to extend an ordinance, moratorium, resolution, or regulation adopted before February 1, 2019, relating to the land application of Class B biosolids until the effective date of the rules adopted by the DEP.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

There may be a negative fiscal impact on wastewater treatment facilities and waste haulers if they have to change their practices to comply with new or revised rules adopted by the DEP.

C. Government Sector Impact:

The DEP can absorb within existing resources the costs to adopt rules to implement the bill. In addition, the DEP may experience a positive fiscal impact if the rules adopted by the DEP improve water quality and result in decreased expenditures on water cleanup.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 403.0616 and 403.08715.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Agriculture, Environment, and General Government on April 9, 2019:

- Requires the Department of Environmental Protection (DEP) to create a real-time water quality monitoring program.
- Prohibits, beginning July 1, 2020, the land application of biosolids on any site where the biosolids application zone interacts with the seasonal high water table.
- Removes the requirement for ratification by the Legislature if the adverse impact or regulatory costs of an adopted rule are in excess of \$1 million in the aggregate within five years after the implementation of the rule.
- Removes the requirement that the DEP complete a study for submission to the Environmental Regulation Commission of the economic and environmental impact, which includes the benefits and costs to the public of any proposed standards that would be stricter than applicable federal standards.
- Clarifies that the bill does not conflict with or supersede statutes governing prohibited activities within a priority focus area for an Outstanding Florida Spring.
- Provides that the bill does not apply to Class AA biosolids.
- Clarifies that the bill does not limit the ability of a municipality or county to extend an ordinance, moratorium, resolution, or regulation adopted before February 1, 2019, relating to the land application of Class B biosolids until the effective date of the rules adopted by the DEP.

CS by Environment and Natural Resources Committee on March 12, 2019:

- Clarifies that the DEP must adopt rules establishing land application rates that ensure nutrients do not add to an existing impairment of surface or groundwater quality, in addition to land application rates that ensure nutrients do not impair water quality.
- Clarifies that a local government may enact a new ordinance, moratorium, or regulation relating to the land application of Class B biosolids, in addition to allowing an existing ordinance, moratorium, or regulation to remain in effect.

- B. **Amendments:**

None.



778974

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2019	.	
	.	
	.	
	.	

Appropriations Subcommittee on Agriculture, Environment, and
General Government (Mayfield) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 403.0616, Florida Statutes, is created
to read:

403.0616 Real-time water quality monitoring program.-

(1) Subject to appropriation, the department shall
establish a real-time water quality monitoring program to assist
in the restoration, preservation, and enhancement of impaired



778974

water bodies and coastal resources.

(2) In order to expedite the creation and implementation of the program, the department is encouraged to form public-private partnerships with established scientific entities with existing, proven real-time water quality monitoring equipment and experience in deploying such equipment.

Section 2. Section 403.08715, Florida Statutes, is created to read:

403.08715 Biosolids management.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds it is in the best interest of the state to:

(a) Regulate biosolids management to minimize the migration of nutrients that impair or contribute to the impairment of water bodies.

(b) Expedite implementation of the recommendations of the Biosolids Technical Advisory Committee, which includes permitting based on site-specific application conditions, increased inspection frequencies, groundwater and surface water monitoring protocols, and nutrient management research to improve the management of biosolids and protect this state's water resources and water quality.

(c) Expedite the implementation of biosolids processing innovative technologies as a means to improve biosolids management and protect water resources and water quality.

(2) DEFINITION.—As used in this section, the term "biosolids" has the same meaning as in s. 373.4595(2).

(3) PROHIBITED LAND APPLICATION.—

(a) Beginning July 1, 2020, the land application of biosolids is prohibited on any site where the biosolids



778974

application zone interacts with the seasonal high water table.

(b) The department may not issue a new permit or renew an existing permit for the land application of biosolids for any site where the land application of biosolids is prohibited pursuant to paragraph (a).

(4) RULEMAKING.—

(a) For sites that are not subject to the prohibition under subsection (3), the department shall adopt rules for biosolids management to:

1. Permit the use of biosolids in a manner that minimizes the migration of nutrients and that prevents impairment of surface water and groundwater quality, including:

a. Site-specific land application rates of biosolids based on soil characteristics, soil adsorption capacity, water table characteristics, hydrogeology, site use, and distance to surface water;

b. An evaluation of the percentage of water-extractable phosphorus in all biosolids to inform the appropriate application rate;

c. Criteria for low-, medium-, and high-risk sites that guide application practices and required water quality monitoring; and

d. Site-specific agronomic rates based on soil and plant tissue tests. The application volume is limited to the amount necessary to meet the agronomic need demonstrated by the soil and plant tissue test.

2. Establish site-specific groundwater and surface water monitoring requirements.

(b) The department shall initiate rulemaking by August 1,



778974

2019.

(5) WATER QUALITY MONITORING.—The department shall implement an offsite water quality monitoring program sufficient to determine impacts from the land application of biosolids on downstream and nearby surface water and groundwater quality.

(6) APPLICABILITY.—

(a) This section does not conflict with or supersede s. 373.4595 or s. 373.811.

(b) This section does not apply to Class AA biosolids that are marketed and distributed as fertilizer products in accordance with department rule.

(c)1. An ordinance, moratorium, or regulation adopted by a municipality or county before February 1, 2019, relating to the land application of Class B biosolids shall remain in effect until the ordinance, moratorium, or regulation is repealed by the municipality or county or until the effective date of the rules adopted by the department pursuant to subsection (4).

2. This section does not limit the ability of a municipality or county to extend an ordinance, moratorium, resolution, or regulation adopted before February 1, 2019, relating to the land application of Class B biosolids until the effective date of the rules adopted by the department pursuant to subsection (4).

Section 3. This act shall take effect July 1, 2019.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:



778974

98 A bill to be entitled
99 An act relating to biosolids management; creating s.
100 403.0616, F.S.; requiring the Department of
101 Environmental Protection, subject to appropriation, to
102 establish a real-time water quality monitoring
103 program; encouraging the formation of public-private
104 partnerships; creating s. 403.08715, F.S.; providing
105 legislative findings; defining the term "biosolids";
106 prohibiting the land application of biosolids on
107 certain sites; prohibiting the department from issuing
108 or renewing certain permits; directing the department
109 to initiate rulemaking by a specified date, adopt
110 specified rules for biosolids management, and
111 implement a specified water quality monitoring
112 program; providing applicability; providing an
113 effective date.

By the Committee on Environment and Natural Resources; and
Senator Mayfield

592-02966-19

20191278c1

A bill to be entitled

An act relating to biosolids management; creating s. 403.0855, F.S.; providing legislative findings and intent; defining the term "biosolids"; requiring the Department of Environmental Protection to adopt rules for biosolids management which meet certain requirements; exempting the rulemaking from specified requirements; providing applicability; authorizing a county or municipality to enact or retain in effect certain ordinances, moratoriums, or regulations; providing that certain ordinances, moratoriums, or regulations remain in effect until they are repealed or expire; defining the term "biosolids"; providing an effective date.

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

Section 1. Section 403.0855, Florida Statutes, is created to read:

403.0855 Biosolids management.—

(1) The Legislature finds that it is in the best interest of this state to regulate biosolids management in order to minimize the migration of nutrients that impair waterbodies. The Legislature further finds that the expedited implementation of the recommendations of the Biosolids Technical Advisory Committee, including permitting according to site-specific application conditions, an increased inspection rate, groundwater and surface water monitoring protocols, and nutrient management research, will improve biosolids management and

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

592-02966-19

20191278c1

assist in protecting this state's water resources and water quality. The Legislature intends for innovative technologies in biosolids processing to be implemented as a means to improve biosolids management and to protect this state's water resources and water quality.

(2) As used in this section, the term "biosolids" has the same meaning as in s. 373.4595(2).

(3) The department shall adopt rules for biosolids management which include, but are not limited to, the following:

(a) Biosolids land application rates that ensure that nutrients do not impair or add to an existing impairment of surface water quality or groundwater quality in nearby or downstream waterbodies;

(b) Site-specific land application criteria; and

(c) Monitoring requirements.

(4) Rules adopted pursuant to this section are not subject to ss. 120.541(3) and 403.804(2).

(5) Nothing herein shall be construed to conflict with or supersede s. 373.4595.

Section 2. A county or municipality may enact or retain in effect an ordinance, moratorium, or regulation relating to the land application of Class B biosolids. An ordinance, moratorium, or regulation relating to the land application of Class B biosolids adopted by a county or municipality shall remain in effect until the county or municipality repeals or lets expire the ordinance, moratorium, or regulation. The term "biosolids" has the same meaning as in s. 373.4595(2), Florida Statutes.

Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/9/19

Meeting Date

SB 1278

Bill Number (if applicable)

778974

Amendment Barcode (if applicable)

Topic Biosolids

Name Pepper Uchino

Job Title Lobbyist

Address 201 W. Park Ave
Street

Phone (850) 727-9040

City

State

Zip

Email pepper@anfieldflorida.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Indian River County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.9.19

Meeting Date

1278

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1674 UNIVERSITY AVE #202
Street
SARASOTA FL 34243
City State Zip

Phone 941-333-2404

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-9-19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1278

Bill Number (if applicable)

Topic

BIO SOLIDS

Amendment Barcode (if applicable)

Name

KURT SPITZER

Job Title

Address

693 FOREST LANE

Street

Phone

228-6212

Email

KURTSPITZER@KSFMT.NET

City

T

State

32312

Zip

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Representing

FLA. STORMWATER ASSOCIATION

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/9/19

Meeting Date

1278

Bill Number (if applicable)

Topic Biosolids Mgt.

Amendment Barcode (if applicable)

Name Trish Neely

Job Title Board Member

Address 2024 Shangri La Lane

Phone 850 322 3317

Street

Tally FL 32303

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing League Women Voters

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: SB 1502

INTRODUCER: Senator Bradley

SUBJECT: Department of Environmental Protection

DATE: April 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Favorable
2.	Reagan	Betta	AEG	Recommend: Favorable
3.			AP	

I. Summary:

SB 1502 creates the Division of Law Enforcement within the Department of Environmental Protection (DEP), which will employ state law enforcement officers.

The bill requires the DEP and the Fish and Wildlife Conservation Commission (FWC) to develop a new memorandum of agreement detailing the respective responsibilities of the two agencies with regard to at least all of the following:

- Support and response for oil spills, hazardous spills, and natural disasters.
- Law enforcement patrol and investigative services for all state-owned lands managed by the DEP.
- Law enforcement services, including investigative services, for all criminal law violations of chapters 161, 258, 373, 376, 377, 378, and 403, F.S.
- Enforcement services for civil violations of the DEP's administrative rules related to all of the following program areas:
 - The Division of Recreation and Parks.
 - The Office of Coastal and Aquatic Managed Areas.
 - The Office of Greenways and Trails.
- Current and future funding, training, or other support for positions and equipment being transferred from the FWC to the DEP which are funded through any trust fund.

As determined by the new memorandum of agreement, the bill transfers the primary powers and duties of the FWC with regard to investigating certain environmental crimes and enforcing related laws to the DEP. The bill states that the FWC will retain law enforcement authority over the patrol of state-owned land managed by the DEP.

Senate Bill 2500, Eng., the Senate's 2019-2020 General Appropriations Bill transfers 19 full time employees and \$1,991,722 in trust fund budget authority from the FWC to the DEP. There may be additional, indeterminate negative costs associated with this transfer to the DEP.

The bill takes effect July 1, 2019.

II. Present Situation:

Environmental Law Enforcement Organizational Structure

The DEP is Florida's lead agency for environmental management and stewardship.¹ The DEP's activities are primarily divided into three areas: land and recreation, regulatory programs, and ecosystem restoration.² There are currently eight divisions established within the DEP.³ Currently, the DEP does not have any law enforcement officers. The DEP previously had a Division of Law Enforcement.⁴ This division was responsible for statewide environmental law enforcement, providing law enforcement services to Florida's state parks and trails, and providing assistance for disasters such as hurricanes or chemicals spills.⁵ This division oversaw four bureaus: Emergency Response, Criminal Investigations, Park Police, and the Office of Training and Professional Standards.⁶

The FWC is authorized to exercise regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life, and in these areas the FWC's staff is authorized to conduct management, research, and enforcement.⁷ The FWC currently has a Division of Law Enforcement with 1,051 members, including 853 sworn personnel, operating in six regions throughout the state.⁸ The FWC's Division of Law Enforcement has broad areas of responsibility including enforcing laws that protect Florida's wildlife and habitats, conducting environmental crime investigations, and protecting the public and environment from illegal environmental violations.⁹

In 2011, the Legislature created a Law Enforcement Consolidation Task Force.¹⁰ The task force was directed to evaluate any duplication of law enforcement functions throughout state government and identify any functions that are appropriate for possible consideration.¹¹ If the task force concluded that any consolidation of state law enforcement was appropriate then recommendations and a plan would be submitted.¹² In December of 2011, the task force recommended integrating the entire DEP Division of Law Enforcement into the Division of Law

¹ Section 20.255, F.S.; DEP, *About DEP*, <https://floridadep.gov/about-dep> (last visited Mar. 22, 2019).

² *Id.*

³ Section 20.255, F.S.; see DEP, *Divisions*, <https://floridadep.gov/divisions> (last visited Mar. 22, 2019).

⁴ DEP, *DEP Law Enforcement Personnel Awarded for Outstanding Performance and Commitment to the Environment*, <https://content.govdelivery.com/accounts/FLDEP/bulletins/22db55> (last visited Mar. 22, 2019).

⁵ *Id.*

⁶ *Id.*

⁷ FLA. CONST. art. IV, s. 9.

⁸ Section 20.331, (4)(a)4., F.S.; FWC, *What We Do*, <https://myfwc.com/about/inside-fwc/le/what-we-do/> (last visited Mar. 22, 2019).

⁹ Section 20.331, (7)(e), F.S.; FWC, *What We Do*, <https://myfwc.com/about/inside-fwc/le/what-we-do/> (last visited Mar. 22, 2019).

¹⁰ Ch. 2011-66, s. 31, Laws of Fla.

¹¹ *Id.*

¹² *Id.*

Enforcement within the FWC.¹³ The reasons for the recommendation included overlapping duties, cost efficiencies and reductions, and enhanced recovery and response times.¹⁴

In 2012, the Legislature transferred all powers, duties, functions, records, offices, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to the DEP's Division of Law Enforcement, excluding the Bureau of Emergency Response, to the FWC's Division of Law Enforcement through a type two transfer.¹⁵ The DEP was also required to transfer to the FWC a number of administrative, auditing, inspector general, attorney, and operational support positions proportional to the DEP's Division of Law Enforcement being transferred.¹⁶ The legislation required the DEP and the FWC to develop a memorandum of agreement detailing the responsibilities of the FWC to the DEP regarding law enforcement, emergency response, and funding.¹⁷

The DEP and the FWC have a memorandum of agreement identifying the responsibilities of the FWC with regard to the DEP. The FWC provides law enforcement services for the DEP. The DEP transfers funds to the FWC to compensate for these services.

In 2018, the following appropriations were made to the FWC's Marine Resources Conservation Trust Fund or State Game Trust Fund for law enforcement:

- \$11,310,256 from the Coastal Protection Trust Fund
- \$1,991,722 from the Inland Protection Trust Fund
- \$2,822,599 from the Solid Waste Management Trust Fund.¹⁸

In January of 2019, Governor DeSantis issued Executive Order 2019-12.¹⁹ The order directed the DEP to take all necessary actions to move the Environmental Crimes Enforcement Unit from the FWC to the DEP, to align resources focused on environmental protection and ensure strong enforcement of Florida's environmental laws.²⁰

Severability

When a court decides that a portion of a statute is unconstitutional, this does not necessarily mean all provisions of that statute are unconstitutional.²¹ Under Florida law, when part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions; (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those

¹³ Law Enforcement Consolidation Task Force, *Task Force Report Pursuant to SB 2160 Enacted by the 2011 Legislature*, 5 (Dec. 21, 2011), available at <https://www.flhsmv.gov/lectaskforce/LECTFReport.pdf> (last visited Mar. 22, 2019).

¹⁴ *Id.*

¹⁵ Ch. 2012-88, Laws of Fla.; see s. 20.06(2), F.S.; see DEP, *Office of Emergency Response*, <https://floridadep.gov/oer> (last visited Mar. 22, 2019).

¹⁶ Ch. 2012-88, Laws of Fla.

¹⁷ *Id.*

¹⁸ Ch. 2018-9, Special Appropriation 1536, Laws of Fla.

¹⁹ Office of the Governor, *Executive Order Number 19-12* (2019), available at https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf (last visited Mar. 22, 2019).

²⁰ *Id.* at 5.

²¹ *Cramp v. Bd. of Pub. Instruction of Orange Cnty.*, 137 So.2d 828, 830 (Fla. 1962).

which are void; (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other; and (4) an act complete in itself remains valid after the invalid provisions are stricken.²²

A severability clause in a statute, stating that any of its provisions found to be invalid should be severed from the remaining sections, may be considered by a court applying the test for severability.²³ When a severability clause is included in a statute, the courts hold that the expressed legislative intent should be carried out unless doing so would produce an unreasonable, unconstitutional, or absurd result.²⁴ If the valid and the void parts of a statute are mutually connected and dependent upon each other, then severance would effect a result not contemplated by the Legislature, in which case applying the severability clause to save the valid parts of the statute is not compatible with the legislative intent.²⁵

III. Effect of Proposed Changes:

Section 1 transfers the primary powers and duties of the FWC with regard to the investigation of certain environmental crimes and the enforcement of related laws to the DEP, as specified in the memorandum of agreement developed under the bill. The bill states that the FWC will retain law enforcement authority over the patrol of state-owned lands managed by the DEP, and the FWC will coordinate with the DEP in that regard.

The bill requires the FWC and the DEP to develop a new memorandum of agreement detailing the respective responsibilities of the FWC and the DEP with regard to at least all of the following:

- Support and response for oil spills, hazardous spills, and natural disasters.
- Law enforcement patrol and investigative services for all state-owned lands managed by the DEP.
- Law enforcement services, including investigative services, for all criminal law violations of chapters 161, 258, 373, 376, 377, 378, and 403, F.S.
- Enforcement services for civil violations of the DEP's administrative rules related to all of the following program areas:
 - The Division of Recreation and Parks.
 - The Office of Coastal and Aquatic Managed Areas.
 - The Office of Greenways and Trails.
- Current and future funding, training, or other support for positions and equipment being transferred from the FWC to the DEP which are funded through any trust fund.

Section 2 requires that all of the personnel and equipment assigned to the DEP's Office of Emergency Response be reassigned to the DEP's Division of Law Enforcement.

Section 3 requires the Secretary of the DEP and the Executive Director of the FWC to each appoint two staff members to a transition advisory working group to review the administrative

²² *Id.*; see *Booker v. State*, 244 So. 3d 1151, 1167 (Fla. Dist. Ct. App. 2018).

²³ *Smith v. Dep't of Ins.*, 507 So. 2d 1080, 1090 (Fla. 1987).

²⁴ *Small v. Sun Oil Co.*, 222 So. 2d 196, 199 (Fla. 1969).

²⁵ *Id.* at 199-200.

rules promulgated by the DEP and the FWC to identify any rules that must be amended to reflect the changes made by the bill.

Section 4 requires that, notwithstanding ch. 60L-34 F.A.C., or any law to the contrary, employees transferred from the FWC to fill positions transferred to the DEP shall retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balance. The bill requires that the employees retain their current position status, including permanent status, upon transfer to the DEP.

Section 5 amends s. 20.255, F.S., which establishes the organizational structure of the DEP. The bill adds the Division of Law Enforcement to the list of the DEP's divisions. The bill states that law enforcement officers of the DEP, who meet the minimum qualification requirements for a law enforcement officer in s. 943.13, F.S., are constituted law enforcement officers of the state with full power to investigate and arrest for any violation of the laws of the state and the rules of the DEP and the Board of Trustees of the Internal Improvement Trust Fund. The general laws applicable to investigations, searches, and arrests by peace officers of the state apply to such law enforcement officers.

Section 6 amends s. 258.004, F.S., which establishes the duties of the DEP's Division of Recreation and Parks. The bill requires that ch. 258, F.S., State Parks and Preserves, be enforced by the DEP's Division of Law Enforcement and its officers, and by the FWC's Division of Law Enforcement and its officers.

Section 7 amends s. 258.008, F.S., which establishes the fines and penalties for violating rules adopted under ch. 258, F.S. The bill requires that fines paid for violations of rules adopted under ch. 258, F.S., will go into either the FWC's State Game Trust Fund or the DEP's State Park Trust Fund, "as applicable."

Section 8 amends s. 258.501, F.S., by authorizing "officers" of the DEP to enforce certain DEP rules.

Section 9 amends s. 282.709, F.S., which authorizes a statewide radio communications system to serve state and local law enforcement units. The bill requires that the Secretary of the DEP appoint a representative of the DEP's Division of Law Enforcement to serve as a member of the Joint Task Force on State Agency Law Enforcement Communications, which advises on agency needs relating to the planning, designing, and establishment of the statewide communication system.

Section 10 amends s. 316.640, F.S., which vests authority for the enforcement of Florida's traffic laws. The bill authorizes the DEP's Division of Law Enforcement to enforce all of the traffic laws of the state on all of the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

Section 11 amends s. 376.3071, F.S., which establishes the Inland Protection Trust Fund and programs for its use. The bill provides that when the DEP determines that incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the public health, safety, welfare, water resources, or the environment, the DEP is required to spend

available money from the Inland Protection Trust Fund to provide for enforcement of related laws by the FWC and the DEP. The bill authorizes, but does not require, the DEP to disburse money to the FWC for this purpose.

Section 12 amends s. 403.413, F.S., which is Florida's litter law. The bill changes the section's definition of "law enforcement officer" to include any officer of the DEP.

Section 13 amends s. 784.07, F.S., which establishes the penalties for assault or battery of law enforcement officers. The bill expands the section's definition of law enforcement officer to include law enforcement personnel of the DEP.

Section 14 amends s. 843.08, F.S., which establishes penalties for falsely impersonating or pretending to be a law enforcement officer. The bill expands the scope of the section to include officers of the DEP.

Section 15 amends s. 843.085, F.S., which prohibits the unlawful use of badges or indicia of authority. The bill prohibits wearing or displaying any item containing the words "Department of Environmental Protection Officer" with the intent to mislead or cause another person to believe that he or she is a member of the agency or is authorized to wear or display the item. The bill prohibits a person from owning or operating a vehicle marked or identified by the words "Department of Environmental Protection Officer." The bill prohibits a person from selling, transferring, or giving away an authorized badge bearing the words "Department of Environmental Protection Officer." Violation of any of these prohibitions is a misdemeanor of the first degree. The bill provides exceptions for fraternal, benevolent, or labor organizations using the words.

Section 16 amends s. 870.04, F.S., and authorizes an officer or agent of the DEP to go among people that are rioting or tumultuously assembled and command those people in the name of the state to immediately and peaceably disperse.

Section 17 amends s. 932.7055, F.S., which determines the disposition of liens and property when a seizing agent has obtained a judgement granting forfeiture. The bill provides that if the seizing agency is the DEP then proceeds accrued pursuant to the Florida Contraband Forfeiture Act must be deposited into one of five trust funds, as specified in the statute under which the violation occurs:

- The Internal Improvement Trust Fund;
- The Water Quality Assurance Trust Fund;
- The Inland Protection Trust Fund;
- The Coastal Protection Trust Fund; or
- The Solid Waste Management Trust Fund.

Section 18 reenacts s. 790.166(8)(a), F.S., relating to an exclusion from the definition of weapons of mass destruction for devices or instruments lawfully used by state law enforcement.

Section 19 states that if any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can

be given effect without the invalid provisions or applications. To this end, the provisions of the act are severable.

Section 20 states that the bill shall take effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The separation of powers doctrine prevents the Legislature from delegating its constitutional duties.²⁶ Legislative power involves the exercise of policy-related discretion over the content of law.²⁷ The Florida Supreme Court, in *Askew v. Cross Key Waterways*, provided a framework for measuring the constitutionality of legislative power delegations.²⁸ The court adopted a formal interpretation of the delegation of powers doctrine. Where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine. However, when legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law.²⁹

Until such time as the FWC and the DEP create a new memorandum of agreement there are many outstanding questions regarding the size and role of the DEP's new Division of Law Enforcement.

²⁶ *Florida State Bd. Of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

²⁷ *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719, 720-721 (Fla. 1937).

²⁸ 372 So.2d 913 (Fla. 1978).

²⁹ *Id.* at 918-19; *see also Conner v. Joe Hatton, Inc.*, 216 So.2d 209, 211 (Fla. 1968) (“[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.”).

While the bill itself does not answer these questions, both the Senate's and House of Representative's proposed budgets for Fiscal Year 2019-2020 anticipate a transfer of 19 full-time equivalent positions with an approved salary rate of \$1,076,218 and other associated financial transfers. Furthermore, the bill is drafted in many ways to reverse the transfer of the DEP's law enforcement functions by Ch. 2012-88, L.O.F. Those provisions were similar to the provisions set out in this bill, and that transfer was in part effectuated by a memorandum of agreement analogous to the one that the DEP and the FWC are directed to carryout in this bill. Therefore, there may be enough context to provide adequate legislative guidance for this to be a constitutional delegation.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a new division of law enforcement within the DEP and adds significant new duties and responsibilities to the DEP.

The FWC's bill analysis states that revenues collected in the Inland Protection Trust Fund currently provide for the functions described in the bill.³⁰ The FWC's analysis states that the costs for the functions described in the bill are covered by the FWC's base budget and that those expenditures would be made by the DEP.³¹

Senate Bill 2500, Eng., the Senate's 2019-2020 General Appropriations Bill, transfers 19 full time employees and \$1,991,722 in trust fund budget authority from the FWC to the DEP.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁰ FWC, 2019 Agency Legislative Bill Analysis, *Senate Bill (SB) 1502*, 5 (2019) (on file with the Senate Committee on Environment and Natural Resources).

³¹ *Id.*

³² *Senate Bill 2500, Eng., the Senate's 2019-2020 General Appropriations Bill, Specific Appropriations 1782 through 1787 and House Bill 5001, Eng., the House's 2019-2020 General Appropriations Bill, Specific Appropriations 1782 through 1787.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.255, 258.004, 258.008, 258.501, 282.709, 316.640, 376.3071, 403.413, 784.07, 843.08, 843.085, 870.04, and 932.7055.

This bill reenacts section 790.166 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of 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.

By Senator Bradley

5-01683B-19

20191502__

1 A bill to be entitled
 2 An act relating to the Department of Environmental
 3 Protection; transferring and reassigning functions and
 4 responsibilities of the Division of Law Enforcement
 5 relating to investigators of environmental crimes
 6 within the Fish and Wildlife Conservation Commission
 7 to the Division of Law Enforcement of the Department
 8 of Environmental Protection; providing requirements
 9 for a memorandum of agreement between the department
 10 and the commission regarding the responsibilities of
 11 the department and the commission; transferring
 12 personnel and equipment within the department's Office
 13 of Emergency Response to the department's Division of
 14 Law Enforcement; providing for a transition advisory
 15 working group; providing for the retention and
 16 transfer of specified benefits for employees who are
 17 transferred from the commission to fill positions
 18 transferred to the department; amending s. 20.255,
 19 F.S.; establishing the Division of Law Enforcement
 20 within the department; providing law enforcement
 21 officers of the department who meet certain
 22 requirements with specified authority, subject to
 23 applicable law; amending ss. 258.004, 258.008,
 24 258.501, 282.709, 316.640, 376.3071, 403.413, 784.07,
 25 843.08, 843.085, 870.04, and 932.7055, F.S.;
 26 conforming provisions to changes made by the act;
 27 reenacting s. 790.166(8)(a), F.S., relating to the
 28 manufacture, possession, sale, delivery, display, use
 29 or attempted or threatened use of a weapon of mass

Page 1 of 19

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

5-01683B-19

20191502__

30 destruction or hoax weapon of mass destruction
 31 prohibited, to incorporate the amendment made to s.
 32 784.07, F.S., in a reference thereto; providing
 33 severability; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:

36
 37 Section 1. (1) The primary powers and duties of the Fish
 38 and Wildlife Conservation Commission with regard to the
 39 investigation of certain environmental crimes and the
 40 enforcement of related laws, as specified in the new memorandum
 41 of agreement developed as required under subsection (2), are
 42 transferred from the commission to the Department of
 43 Environmental Protection. The commission retains law enforcement
 44 authority over the patrol of state-owned lands managed by the
 45 department and shall coordinate with the department in that
 46 regard.

47 (2) A new memorandum of agreement must be developed between
 48 the commission and the department detailing the respective
 49 responsibilities of the department and the commission with
 50 regard to at least all of the following:

51 (a) Support and response for oil spills, hazardous spills,
 52 and natural disasters.

53 (b) Law enforcement patrol and investigative services for
 54 all state-owned lands managed by the department.

55 (c) Law enforcement services, including investigative
 56 services, for all criminal law violations of chapters 161, 258,
 57 373, 376, 377, 378, and 403, Florida Statutes.

58 (d) Enforcement services for civil violations of department

Page 2 of 19

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

5-01683B-19

20191502

administrative rules related to all of the following program areas:

1. The Division of Recreation and Parks.
2. The Office of Coastal and Aquatic Managed Areas.
3. The Office of Greenways and Trails.

(e) Current and future funding, training, or other support for positions and equipment being transferred from the commission to the department which are funded through any trust fund.

Section 2. All personnel and equipment assigned to the Department of Environmental Protection's Office of Emergency Response are reassigned to the Division of Law Enforcement of the department.

Section 3. The Secretary of Environmental Protection and the Executive Director of the Fish and Wildlife Conservation Commission shall each appoint two staff members to a transition advisory working group to review the administrative rules promulgated by the department and the commission to identify any rules that must be amended to reflect the changes made by this act.

Section 4. Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Fish and Wildlife Conservation Commission to fill positions transferred to the Department of Environmental Protection shall retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances. The employees shall retain their current position status, including permanent status, upon transfer to the Department of Environmental Protection.

5-01683B-19

20191502

Section 5. Subsection (3) of section 20.255, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(3) The following divisions of the Department of Environmental Protection are established:

- (a) Division of Administrative Services.
- (b) Division of Air Resource Management.
- (c) Division of Water Resource Management.
- (d) Division of Environmental Assessment and Restoration.
- (e) Division of Waste Management.
- (f) Division of Recreation and Parks.
- (g) Division of State Lands, the director of which is

appointed by the secretary of the department, subject to confirmation by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

- (h) Division of Water Restoration Assistance.

- (i) Division of Law Enforcement.

In order to ensure statewide and intradepartmental consistency, the department's divisions shall direct the district offices and bureaus on matters of interpretation and applicability of the department's rules and programs.

(10) Law enforcement officers of the Department of Environmental Protection who meet the requirements of s. 943.13 are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of this state and the rules of the department and the Board of

5-01683B-19 20191502__

117 Trustees of the Internal Improvement Trust Fund. The general
 118 laws applicable to investigations, searches, and arrests by
 119 peace officers of this state apply to such law enforcement
 120 officers.

121 Section 6. Subsection (8) is added to section 258.004,
 122 Florida Statutes, to read:

123 258.004 Duties of division.—

124 (8) This chapter shall be enforced by the Division of Law
 125 Enforcement within the Department of Environmental Protection
 126 and its officers and by the Division of Law Enforcement within
 127 the Fish and Wildlife Conservation Commission and its officers.

128 Section 7. Subsection (1) of section 258.008, Florida
 129 Statutes, is amended to read:

130 258.008 Prohibited activities; penalties.—

131 (1) Except as provided in subsection (3), any person who
 132 violates or otherwise fails to comply with the rules adopted
 133 under this chapter commits a noncriminal infraction for which
 134 ejection from all property managed by the Division of Recreation
 135 and Parks and a fine of up to \$500 may be imposed by the
 136 division. Fines paid under this subsection shall be paid to the
 137 Fish and Wildlife Conservation Commission and deposited in the
 138 State Game Trust Fund as provided in ss. 379.338, 379.339, and
 139 379.3395 or to the Department of Environmental Protection and
 140 deposited into the State Park Trust Fund, as applicable.

141 Section 8. Subsection (16) of section 258.501, Florida
 142 Statutes, is amended to read:

143 258.501 Myakka River; wild and scenic segment.—

144 (16) ENFORCEMENT.—Officers of the department and the Fish
 145 and Wildlife Conservation Commission shall have full authority

5-01683B-19 20191502__

146 to enforce any rule adopted by the department.

147 Section 9. Paragraph (a) of subsection (2) of section
 148 282.709, Florida Statutes, is amended to read:

149 282.709 State agency law enforcement radio system and
 150 interoperability network.—

151 (2) The Joint Task Force on State Agency Law Enforcement
 152 Communications is created adjunct to the department to advise
 153 the department of member-agency needs relating to the planning,
 154 designing, and establishment of the statewide communication
 155 system.

156 (a) The Joint Task Force on State Agency Law Enforcement
 157 Communications shall consist of the following members:

158 1. A representative of the Division of Alcoholic Beverages
 159 and Tobacco of the Department of Business and Professional
 160 Regulation who shall be appointed by the secretary of the
 161 department.

162 2. A representative of the Division of Florida Highway
 163 Patrol of the Department of Highway Safety and Motor Vehicles
 164 who shall be appointed by the executive director of the
 165 department.

166 3. A representative of the Department of Law Enforcement
 167 who shall be appointed by the executive director of the
 168 department.

169 4. A representative of the Fish and Wildlife Conservation
 170 Commission who shall be appointed by the executive director of
 171 the commission.

172 5. A representative of the Division of Law Enforcement of
 173 the Department of Environmental Protection who shall be
 174 appointed by the secretary of the department.

5-01683B-19

20191502__

~~6.5-~~ A representative of the Department of Corrections who shall be appointed by the secretary of the department.

~~7.6-~~ A representative of the Department of Financial Services who shall be appointed by the Chief Financial Officer.

~~8.7-~~ A representative of the Department of Agriculture and Consumer Services who shall be appointed by the Commissioner of Agriculture.

~~9.8-~~ A representative of the Florida Sheriffs Association who shall be appointed by the president of the Florida Sheriffs Association.

Section 10. Paragraph (a) of subsection (1) of section 316.640, Florida Statutes, is amended to read:

316.640 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a)1.a. The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles; the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; the Division of Law Enforcement of the Department of Environmental Protection; and the agents, inspectors, and officers of the Department of Law Enforcement each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

b. University police officers may enforce all of the traffic laws of this state when violations occur on or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of a state

5-01683B-19

20191502__

university, a direct-support organization of such state university, or any other organization controlled by the state university or a direct-support organization of the state university, or when such violations occur within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225(1). Traffic laws may also be enforced off-campus when hot pursuit originates on or within 1,000 feet of any such property or facilities, or as agreed upon in accordance with the mutual aid agreement.

c. Florida College System institution police officers may enforce all the traffic laws of this state only when such violations occur on or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of the Florida College System institution, or when such violations occur within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225. Traffic laws may also be enforced off-campus when hot pursuit originates on or within 1,000 feet of any such property or facilities, or as agreed upon in accordance with the mutual aid agreement.

d. Police officers employed by an airport authority may enforce all of the traffic laws of this state only when such violations occur on any property or facilities that are owned or operated by an airport authority.

(I) An airport authority may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking

5-01683B-19 20191502__

enforcement specialists but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under s. 943.12. This sub-sub-subparagraph may not be construed to permit the carrying of firearms or other weapons, nor shall such parking enforcement specialist have arrest authority.

(II) A parking enforcement specialist employed by an airport authority may enforce all state, county, and municipal laws and ordinances governing parking only when such violations are on property or facilities owned or operated by the airport authority employing the specialist, by appropriate state, county, or municipal traffic citation.

e. The Office of Agricultural Law Enforcement of the Department of Agriculture and Consumer Services may enforce traffic laws of this state.

f. School safety officers may enforce all of the traffic laws of this state when such violations occur on or about any property or facilities that are under the guidance, supervision, regulation, or control of the district school board.

2. Any disciplinary action taken or performance evaluation conducted by an agency of the state as described in subparagraph 1. of a law enforcement officer's traffic enforcement activity must be in accordance with written work-performance standards. Such standards must be approved by the agency and any collective bargaining unit representing such law enforcement officer. A violation of this subparagraph is not subject to the penalties provided in chapter 318.

3. The Division of the Florida Highway Patrol may employ as a traffic accident investigation officer any individual who

5-01683B-19 20191502__

successfully completes instruction in traffic accident investigation and court presentation through the Selective Traffic Enforcement Program as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration or a similar program approved by the commission, but who does not necessarily meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic accident investigation officer who makes an investigation at the scene of a traffic accident may issue traffic citations, based upon personal investigation, when he or she has reasonable and probable grounds to believe that a person who was involved in the accident committed an offense under this chapter, chapter 319, chapter 320, or chapter 322 in connection with the accident. This subparagraph does not permit the officer to carry firearms or other weapons, and such an officer does not have authority to make arrests.

Section 11. Paragraph (p) of subsection (4) of section 376.3071, Florida Statutes, is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the public health, safety, or welfare, water resources, or the environment, the department shall obligate moneys available in the fund to provide for:

(p) Enforcement of this section and ss. 376.30-376.317 by

5-01683B-19 20191502__

the Fish and Wildlife Conservation Commission and the Department
of Environmental Protection. The department may ~~shall~~ disburse
 moneys to the commission for such purpose.

The issuance of a site rehabilitation completion order pursuant
 to subsection (5) or paragraph (12)(b) for contamination
 eligible for programs funded by this section does not alter the
 project's eligibility for state-funded remediation if the
 department determines that site conditions are not protective of
 human health under actual or proposed circumstances of exposure
 under subsection (5). The Inland Protection Trust Fund may be
 used only to fund the activities in ss. 376.30-376.317 except
 ss. 376.3078 and 376.3079. Amounts on deposit in the fund in
 each fiscal year must first be applied or allocated for the
 payment of amounts payable by the department pursuant to
 paragraph (n) under a service contract entered into by the
 department pursuant to s. 376.3075 and appropriated in each year
 by the Legislature before making or providing for other
 disbursements from the fund. This subsection does not authorize
 the use of the fund for cleanup of contamination caused
 primarily by a discharge of solvents as defined in s.
 206.9925(6), or polychlorinated biphenyls when their presence
 causes them to be hazardous wastes, except solvent contamination
 which is the result of chemical or physical breakdown of
 petroleum products and is otherwise eligible. Facilities used
 primarily for the storage of motor or diesel fuels as defined in
 ss. 206.01 and 206.86 are not excluded from eligibility pursuant
 to this section.

Section 12. Paragraph (e) of subsection (2) of section

5-01683B-19 20191502__

403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.—

(2) DEFINITIONS.—As used in this section:

(e) "Law enforcement officer" means any officer of the
 Florida Highway Patrol, a county sheriff's department, a
 municipal law enforcement department, a law enforcement
 department of any other political subdivision, the Department of
Environmental Protection, or the Fish and Wildlife Conservation
 Commission. In addition, and solely for the purposes of this
 section, "law enforcement officer" means any employee of a
 county or municipal park or recreation department designated by
 the department head as a litter enforcement officer.

Section 13. Paragraph (d) of subsection (1) of section
 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers,
 firefighters, emergency medical care providers, public transit
 employees or agents, or other specified officers;
 reclassification of offenses; minimum sentences.—

(1) As used in this section, the term:

(d) "Law enforcement officer" includes a law enforcement
 officer, a correctional officer, a correctional probation
 officer, a part-time law enforcement officer, a part-time
 correctional officer, an auxiliary law enforcement officer, and
 an auxiliary correctional officer, as those terms are
 respectively defined in s. 943.10, and any county probation
 officer; an employee or agent of the Department of Corrections
 who supervises or provides services to inmates; an officer of
 the Florida Commission on Offender Review; a federal law
 enforcement officer as defined in s. 901.1505; and law

5-01683B-19 20191502__

349 enforcement personnel of the Fish and Wildlife Conservation
350 Commission, the Department of Environmental Protection, or the
351 Department of Law Enforcement.

352 Section 14. Section 843.08, Florida Statutes, is amended to
353 read:

354 843.08 False personation.—A person who falsely assumes or
355 pretends to be a firefighter, sheriff, officer of the Florida
356 Highway Patrol, officer of the Fish and Wildlife Conservation
357 Commission, officer of the Department of Environmental
358 Protection, fire or arson investigator of the Department of
359 Financial Services, officer of the Department of Financial
360 Services, officer of the Department of Corrections, correctional
361 probation officer, deputy sheriff, state attorney or assistant
362 state attorney, statewide prosecutor or assistant statewide
363 prosecutor, state attorney investigator, coroner, police
364 officer, lottery special agent or lottery investigator, beverage
365 enforcement agent, or watchman, or any member of the Florida
366 Commission on Offender Review and any administrative aide or
367 supervisor employed by the commission, or any personnel or
368 representative of the Department of Law Enforcement, or a
369 federal law enforcement officer as defined in s. 901.1505, and
370 takes upon himself or herself to act as such, or to require any
371 other person to aid or assist him or her in a matter pertaining
372 to the duty of any such officer, commits a felony of the third
373 degree, punishable as provided in s. 775.082, s. 775.083, or s.
374 775.084. However, a person who falsely personates any such
375 officer during the course of the commission of a felony commits
376 a felony of the second degree, punishable as provided in s.
377 775.082, s. 775.083, or s. 775.084. If the commission of the

5-01683B-19 20191502__

378 felony results in the death or personal injury of another human
379 being, the person commits a felony of the first degree,
380 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
381 The term "watchman" means a security officer licensed under
382 chapter 493.

383 Section 15. Section 843.085, Florida Statutes, is amended
384 to read:

385 843.085 Unlawful use of badges or other indicia of
386 authority.—

387 (1) It is unlawful for any person, unless appointed by the
388 Governor pursuant to chapter 354, authorized by the appropriate
389 agency, or displayed in a closed or mounted case as a collection
390 or exhibit, to wear or display any authorized indicia of
391 authority, including any badge, insignia, emblem, identification
392 card, or uniform, or any colorable imitation thereof, of any
393 federal, state, county, or municipal law enforcement agency, or
394 other criminal justice agency as defined in s. 943.045, with the
395 intent to mislead or cause another person to believe that he or
396 she is a member of that agency or is authorized to display or
397 wear such item, or to wear or display any item that displays in
398 any manner or combination the word or words "police,"
399 "patrolman," "agent," "sheriff," "deputy," "trooper," "highway
400 patrol," "commission officer," "Wildlife Officer," "Marine
401 Patrol Officer," "state attorney," "public defender," "marshal,"
402 "constable," "bailiff," ~~or~~ "fire department," or "Department of
403 Environmental Protection officer," with the intent to mislead or
404 cause another person to believe that he or she is a member of
405 that agency or is authorized to wear or display such item.

406 (2) It is unlawful for a person to own or operate a motor

5-01683B-19

20191502__

407 vehicle marked or identified in any manner or combination by the
 408 word or words "police," "patrolman," "sheriff," "deputy,"
 409 "trooper," "highway patrol," "commission officer," "Wildlife
 410 Officer," "Marine Patrol Officer," "marshal," "constable,"
 411 "bailiff," ~~or~~ "fire department," or "Department of Environmental
 412 Protection officer," or by any lettering, marking, or insignia,
 413 or colorable imitation thereof, including, but not limited to,
 414 stars, badges, or shields, officially used to identify the
 415 vehicle as a federal, state, county, or municipal law
 416 enforcement vehicle or a vehicle used by a criminal justice
 417 agency as defined in s. 943.045, or a vehicle used by a fire
 418 department with the intent to mislead or cause another person to
 419 believe that such vehicle is an official vehicle of that agency
 420 and is authorized to be used by that agency, unless such vehicle
 421 is owned or operated by the appropriate agency and its use is
 422 authorized by such agency, or the local law enforcement agency
 423 or fire department authorizes the use of such vehicle, or the
 424 person is appointed by the Governor pursuant to chapter 354.

425 (3) It is unlawful for a person to sell, transfer, or give
 426 away the authorized badge, or colorable imitation thereof,
 427 including miniatures, of any criminal justice agency as defined
 428 in s. 943.045, or bearing in any manner or combination the word
 429 or words "police," "patrolman," "sheriff," "deputy," "trooper,"
 430 "highway patrol," "commission officer," "Wildlife Officer,"
 431 "Marine Patrol Officer," "marshal," "constable," "agent," "state
 432 attorney," "public defender," "bailiff," ~~or~~ "fire department,"
 433 or "Department of Environmental Protection officer," with the
 434 intent to mislead or cause another person to believe that he or
 435 she is a member of that agency or is authorized to wear or

Page 15 of 19

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

5-01683B-19

20191502__

436 display such item, except for agency purchases or upon the
 437 presentation and recordation of both a driver license and other
 438 identification showing any transferee to actually be a member of
 439 such criminal justice agency or unless the person is appointed
 440 by the Governor pursuant to chapter 354. A transferor of an item
 441 covered by this subsection is required to maintain for 2 years a
 442 written record of such transaction, including records showing
 443 compliance with this subsection, and if such transferor is a
 444 business, it shall make such records available during normal
 445 business hours for inspection by any law enforcement agency
 446 having jurisdiction in the area where the business is located.

447 (4) This section does not prohibit a fraternal, benevolent,
 448 or labor organization or association, or their chapters or
 449 subsidiaries, from using the following words, in any manner or
 450 in any combination, if those words appear in the official name
 451 of the organization or association: "police," "patrolman,"
 452 "sheriff," "deputy," "trooper," "highway patrol," "commission
 453 officer," "Wildlife Officer," "Marine Patrol Officer,"
 454 "marshal," "constable," "bailiff," "fire department," or
 455 "Department of Environmental Protection officer." ~~or "fire~~
 456 ~~department."~~

457 (5) Violation of any provision of this section is a
 458 misdemeanor of the first degree, punishable as provided in s.
 459 775.082 or s. 775.083. This section is cumulative to any law now
 460 in force in the state.

461 Section 16. Section 870.04, Florida Statutes, is amended to
 462 read:

463 870.04 Specified officers to disperse riotous assembly.—If
 464 any number of persons, whether armed or not, are unlawfully,

Page 16 of 19

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

5-01683B-19

20191502__

465 riotously, or tumultuously assembled in any county, city, or
 466 municipality, the sheriff or the sheriff's deputies, or the
 467 mayor, or any commissioner, council member, alderman, or police
 468 officer of the city or municipality, or any officer or member of
 469 the Florida Highway Patrol, or any officer or agent of the Fish
 470 and Wildlife Conservation Commission or the Department of
 471 Environmental Protection, any beverage enforcement agent, any
 472 personnel or representatives of the Department of Law
 473 Enforcement or its successor, or any other peace officer, shall
 474 go among the persons so assembled, or as near to them as may be
 475 done with safety, and shall in the name of the state command all
 476 the persons so assembled immediately and peaceably to disperse.
 477 If such persons do not thereupon immediately and peaceably
 478 disperse, such officers shall command the assistance of all such
 479 persons in seizing, arresting, and securing such persons in
 480 custody. If any person present being so commanded to aid and
 481 assist in seizing and securing such rioter or persons so
 482 unlawfully assembled, or in suppressing such riot or unlawful
 483 assembly, refuses or neglects to obey such command, or, when
 484 required by such officers to depart from the place, refuses and
 485 neglects to do so, the person shall be deemed one of the rioters
 486 or persons unlawfully assembled, and may be prosecuted and
 487 punished accordingly.

488 Section 17. Present paragraphs (b) through (l) of
 489 subsection (6) of section 932.7055, Florida Statutes, are
 490 redesignated as paragraphs (c) through (m), respectively, and a
 491 new paragraph (b) is added to that subsection, to read:

492 932.7055 Disposition of liens and forfeited property.—

493 (6) If the seizing agency is a state agency, all remaining

5-01683B-19

20191502__

494 proceeds shall be deposited into the General Revenue Fund.
 495 However, if the seizing agency is:

496 (b) The Department of Environmental Protection, the
 497 proceeds accrued pursuant to the Florida Contraband Forfeiture
 498 Act shall be deposited into the Internal Improvement Trust Fund,
 499 the Water Quality Assurance Trust Fund, the Inland Protection
 500 Trust Fund, the Coastal Protection Trust Fund, or the Solid
 501 Waste Management Trust Fund, as specified by the statute under
 502 which the violation occurs.

503 Section 18. For the purpose of incorporating the amendment
 504 made by this act to section 784.07, Florida Statutes, in a
 505 reference thereto, paragraph (a) of subsection (8) of section
 506 790.166, Florida Statutes, is reenacted to read:

507 790.166 Manufacture, possession, sale, delivery, display,
 508 use, or attempted or threatened use of a weapon of mass
 509 destruction or hoax weapon of mass destruction prohibited;
 510 definitions; penalties.—

511 (8) For purposes of this section, the term "weapon of mass
 512 destruction" does not include:

513 (a) A device or instrument that emits or discharges smoke
 514 or an offensive, noxious, or irritant liquid, powder, gas, or
 515 chemical for the purpose of immobilizing, incapacitating, or
 516 thwarting an attack by a person or animal and that is lawfully
 517 possessed or used by a person for the purpose of self-protection
 518 or, as provided in subsection (7), is lawfully possessed or used
 519 by any member or employee of the Armed Forces of the United
 520 States, a federal or state governmental agency, or a private
 521 entity. A member or employee of a federal or state governmental
 522 agency includes, but is not limited to, a law enforcement

5-01683B-19

20191502__

523 officer, as defined in s. 784.07; a federal law enforcement
524 officer, as defined in s. 901.1505; and an emergency service
525 employee, as defined in s. 496.404.

526 Section 19. If any provision of this act or the application
527 thereof to any person or circumstance is held invalid, the
528 invalidity does not affect other provisions or applications of
529 the act which can be given effect without the invalid provisions
530 or applications, and to this end the provisions of this act are
531 severable.

532 Section 20. This act shall take effect July 1, 2019.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/19

Meeting Date

1502

Bill Number (if applicable)

Topic

Department of Environment

Amendment Barcode (if applicable)

Name

D Linda Merritt

Job Title

Mayor

Address

135 Hwy 40 West

Street

Phone

352-229-0477

City

Englis Fl

State

34449

Zip

Email

mayordlinda.merritt@gmail.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Town of Englis

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Finance and Tax
Innovation, Industry, and Technology
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR ROB BRADLEY
5th District

March 27, 2019

Senator Debbie Mayfield, Chairman
Subcommittee on Agriculture, Environment, and General Government
201 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Madam Chairman:

I respectfully request that Senate Bill 1502 be placed on the committee's agenda at your earliest convenience. The bill transfers certain law enforcement duties from the Fish and Wildlife Commission to the Florida Department of Environmental Protection.

Thank you for your consideration.

Sincerely,


Rob Bradley

SENATE APPROPRIATIONS
RECEIVED
19 MAR 28 AM 8:47
SENT TO CHAIRMAN
STAFF DIR. STAFF

REPLY TO:

- ☐ 1279 Kingsley Avenue, Suite 107, Orange Park, Florida 32073 (904) 278-2085
- ☐ 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: SB 1552

INTRODUCER: Senators Gruters and Hooper

SUBJECT: Florida Red Tide Mitigation and Technology Development Initiative

DATE: April 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Favorable
2.	Reagan	Betta	AEG	Recommend: Favorable
3.			AP	

I. Summary:

SB 1552 establishes the Florida Red Tide Mitigation and Technology Development Initiative as a partnership between the Fish and Wildlife Conservation Commission's Fish and Wildlife Research Institute and Mote Marine Laboratory. The purpose of the initiative is to develop technologies and approaches needed to address the control and mitigation of red tide and its impacts. The bill requires funds specifically appropriated by the Legislature for the initiative to be awarded by the Fish and Wildlife Research Institute to Mote Marine Laboratory to achieve the goals of the initiative. The bill establishes within the initiative the Initiative Technology Advisory Council.

The bill requires the Florida Red Tide Mitigation and Technology Development Initiative to submit an annual report, beginning January 15, 2021, containing an overview of the initiative's accomplishments and priorities to the Governor, the President of the Senate, and Speaker of the House of Representatives, the Secretary of Environmental Protection, and the executive director of the Fish and Wildlife Conservation Commission. The section authorizing the initiative expires on June 30, 2025.

The bill appropriates \$3 million annually from the General Revenue Fund beginning in the 2019-2020 fiscal year through the 2024-2025 fiscal year to the Fish and Wildlife Conservation Commission for the purpose of implementing the bill. SB 2500, the Senate's 2019-2020 General Appropriations Bill, appropriates \$6.6 million from the General Revenue Fund for red tide research.

The bill takes effect July 1, 2019.

II. Present Situation:

Red Tide

Algae is a diverse group of plant-like organisms that produce oxygen and form the base of aquatic food webs, and they range from microscopic, single-celled organisms to large seaweeds.¹ When algae reproduce or accumulate far beyond their normal levels for a specific geographic area it is known as a bloom.² When blooms occur they can have harmful effects such as smothering other marine life or blocking the sun, producing dangerous toxins, and depleting oxygen levels as the algae decays.³ These events are known as harmful algal blooms.⁴ In the waters around Florida, particularly in the Gulf of Mexico, such high concentrations of algae occur that the water turns red or brown.⁵ These harmful algal blooms are known as “red tide,” and have been observed for centuries.⁶ In the Gulf of Mexico and around Florida, the species that causes most red tide is *Karenia brevis* (*K. brevis*).⁷

K. brevis is a single-celled algae that occurs in marine and estuarine waters in Florida.⁸ *K. brevis* is always present in low concentrations in the Gulf of Mexico with no apparent adverse effects.⁹ However, when it blooms, typically in the late summer or early fall, this species can cause large-scale harmful algal blooms.¹⁰ *K. brevis* produces neurotoxins called brevetoxins that can sicken or kill fish, seabirds, turtles, and marine mammals.¹¹ Wave action can break open *K. brevis* cells and release the brevetoxins into the air, and with winds blowing onshore this can lead to respiratory irritation in humans, and potentially serious illness for people with severe or chronic respiratory conditions.¹² The red tide toxins can also accumulate in animals such as oysters and clams, which can lead to Neurotoxic Shellfish Poisoning in people who consume contaminated

¹ NOAA, *What is a Harmful Algal Bloom?*, <https://www.noaa.gov/what-is-harmful-algal-bloom> (last visited Mar. 15, 2019); FWC, *What Is a Harmful Algal Bloom*, <https://myfwc.com/research/redtide/general/harmful-algal-bloom/> (last visited Mar. 2019). Microscopic algae produce around half of the oxygen we breathe.

² FWC, *What Is a Harmful Algal Bloom?*, <https://myfwc.com/research/redtide/general/harmful-algal-bloom/> (last visited Mar. 2019).

³ *Id.*; NOAA, *What is a Harmful Algal Bloom?*, <https://www.noaa.gov/what-is-harmful-algal-bloom> (last visited Mar. 15, 2019).

⁴ Gulf of Mexico Alliance, *A Primer on Gulf of Mexico Harmful Algal Blooms*, 2-5 (2013), available at <https://myfwc.com/media/15902/habprimer.pdf> (last visited Mar. 17, 2019). The term “harmful algal bloom” is sometimes abbreviated as “HAB.”

⁵ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Mar. 15, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ FWC, *Karenia Brevis: Fact Sheet*, <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf> (last visited Mar. 15, 2019); Mote Marine Laboratory, *Phytoplankton Ecology*, <https://mote.org/research/program/phytoplankton-ecology> (last visited Mar. 15, 2019). *K. brevis* is a “phytoplankton” because it does photosynthesis like a plant.

⁹ R. H. Pierce and M. S. Henry, *Harmful Algal Toxins of the Florida Red Tide (Karenia brevis): Natural Chemical Stressors In South Florida Coastal Ecosystems*, ECOTOXICOLOGY, vol. 17, 7 (2008): 623-631, 2 (2008), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2683401/pdf/nihms101414.pdf> (last visited Mar. 15, 2019).

¹⁰ FWC, *Karenia Brevis: Fact Sheet*, <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf> (last visited Mar. 15, 2019); FWC, *Red Tide Current Status*, <https://myfwc.com/research/redtide/statewide/> (last visited Mar. 15, 2019). FWC reports the current status of red tide using the concentration of *K. brevis* cells per liter of water.

¹¹ FWC, *Karenia Brevis: Fact Sheet*, <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf> (last visited Mar. 15, 2019).

¹² Mote Marine Laboratory, *Florida Red Tide FAQ's*, <https://mote.org/news/florida-red-tide> (last visited Mar. 15, 2019).

shellfish.¹³ Though this is less common, blooms of *K. brevis* can also contribute to fish kills by depleting the water of dissolved oxygen.¹⁴

K. brevis cannot tolerate low-salinity waters for very long, so while red tide is found in bays and estuaries, it is not found in freshwater systems such as lakes or rivers.¹⁵ The algae causing red tide is different from the cyanobacteria (often called “blue-green algae”) found in freshwater systems such as Lake Okeechobee.¹⁶ Cyanobacteria is found in lakes, rivers, and estuaries, and it too is toxic and harmful.¹⁷

Red tides can last as little as a few weeks or longer than a year.¹⁸ The duration of a *K. brevis* bloom depends on the conditions that influence its growth and persistence, including sunlight, nutrients, and salinity, as well as the speed and direction of wind and water currents.¹⁹ *K. brevis* is found almost exclusively in the Gulf of Mexico from Mexico to Florida. However, it is transported as coastal waters move with winds and currents. Florida’s red tides can reach the Atlantic Ocean and be transported along the eastern coast of the United States.²⁰ Florida’s red tides develop 10-40 miles offshore.²¹ There is no demonstrated direct link between nutrient pollution and *K. brevis* red tide formation or frequency, and red tide has been observed since before Florida’s coastlines were heavily developed.²² However, once red tides are transported to shore, they are capable of using human-caused nutrient pollution for their growth.²³ Currently, there is no practical and acceptable way to control or kill red tide blooms.²⁴

An unusually persistent red tide affected portions of the coast of Florida between 2017 and 2018.²⁵ In 2018, the Governor issued executive orders declaring a state of emergency in 14 counties for red tide algae blooms.²⁶ The Department of Environmental Protection established a grant funding program for targeted algal bloom cleanup and took other measures to respond to the situation.²⁷ In addition to threatening public safety and harming the environment, red tide can

¹³ FWC, *Karenia Brevis: Fact Sheet*, <https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf> (last visited Mar. 15, 2019).

¹⁴ *Id.*

¹⁵ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Mar. 15, 2019).

¹⁶ *Id.*

¹⁷ FWC, *Cyanobacteria in Florida’s Waters*, <https://myfwc.com/research/redtide/general/cyanobacteria/> (last visited Mar. 15, 2019); U.S. EPA, *Harmful Algal Blooms & Cyanobacteria Research*, <https://www.epa.gov/water-research/harmful-algal-blooms-cyanobacteria-research> (last visited Mar. 15, 2019). Although they are often called “blue-green algae” and exhibit characteristics of algae, cyanobacteria are classified as bacteria.

¹⁸ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Mar. 15, 2019).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Mote Marine Laboratory, *Florida Red Tide FAQ’s*, <https://mote.org/news/florida-red-tide> (last visited Mar. 15, 2019).

²² *Id.*

²³ *Id.*

²⁴ FWC, *Red Tide FAQ*, <https://myfwc.com/research/redtide/faq/> (last visited Mar. 15, 2019).

²⁵ NOAA, *Red Tide in Florida and Texas*, <https://oceanservice.noaa.gov/news/redtide-florida/> (last visited Mar. 15, 2019).

²⁶ Office of Economic & Demographic Research, *Annual Assessment of Florida’s Water Resources and Conservation Lands, 2019 Edition*, 154 (2019) available at http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2019Edition.pdf (available at Mar. 16, 2019).

²⁷ DEP, *Emergency Authorizations Implement Measures To Address South Florida Algal Blooms*, <https://floridadep.gov/dear/algal-bloom/content/emergency-authorizations-implement-measures-address-south-florida-algal> (last visited Mar. 15, 2019).

have a variety of economic consequences.²⁸ Harmful algal blooms can result in significant costs associated with public health, commercial fishery reduction, decreases in recreation and tourism, and management and monitoring.²⁹

Fish and Wildlife Research Institute

The Fish and Wildlife Conservation Commission (FWC) derives its authority from the State Constitution and chapter 379 of the Florida Statutes.³⁰ The FWC is authorized to exercise regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life, and in these areas the FWC's staff is authorized to conduct management, research, and enforcement.³¹ The Fish and Wildlife Research Institute (Institute) is the principal unit for research services within the FWC.³²

Over half of the Institute's more than 600 staff work at its headquarters in St. Petersburg, Florida.³³ The groups comprising it have been generating quality science for over 50 years.³⁴ The Institute's annual operating budget of approximately \$50 million supports around 300 research projects.³⁵ The FWC is authorized to expend money through grants and contracts to fund research with the Institute.³⁶

The FWC assigns to the Institute all of the following responsibilities and functions:

- Serve as the primary source of research and technical information and expertise on the status of marine life, freshwater aquatic life, and wild animal life resources in this state.
- Monitor the status and health of marine life, freshwater aquatic life, and wild animal life species and their habitat.
- Develop restoration and management techniques for habitat and enhancement of plant and animal populations.
- Respond to and provide critical technical support for catastrophes including oil spills, ship groundings, major species die-offs, hazardous spills, and natural disasters.
- Identify and monitor harmful algal blooms including red tides, evaluate their impacts, and provide technical support concerning state and local public health concerns.
- Provide state and local governments with technical information and research results concerning fish and wild animal life.³⁷

In 1999, the Legislature established a Harmful Algal Bloom Task Force for the purpose of determining research, monitoring, control, and mitigation strategies for red tide and other

²⁸ Office of Economic & Demographic Research, *Annual Assessment of Florida's Water Resources and Conservation Lands, 2019 Edition*, 156 (2019) available at http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2019Edition.pdf (available at Mar. 16, 2019).

²⁹ *Id.*

³⁰ FLA CONST. art. IV, s. 9; see chapter 379, F.S.; see also s. 20.331, F.S.

³¹ FLA CONST. art. IV, s. 9.

³² Section 20.331(4)(b), F.S.; FWC, *Fish and Wildlife Research Institute*, <https://myfwc.com/about/inside-fwc/fwri/> (last visited Mar. 15, 2019).

³³ FWC, *Fish and Wildlife Research Institute*, <https://myfwc.com/about/inside-fwc/fwri/> (last visited Mar. 15, 2019).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Section 379.2202, F.S.; see s. 379.2201(1)(c), F.S.

³⁷ Section 20.331(7)(a), F.S.

harmful algal blooms in Florida waters.³⁸ The Institute appointed the members of the group.³⁹ The task force was required to develop priorities and strategies for mitigation and control of harmful algal blooms and to make recommendations to the Institute regarding harmful algal blooms.⁴⁰ The Legislature also required the Institute to implement a program designed to improve understanding and allow for early detection of harmful algal blooms, including red tide, to facilitate accurate predictions and successful efforts to control and mitigate the effects of harmful algal blooms.⁴¹ The Harmful Algal Bloom Task Force is not currently active, but reconvening the task force has been suggested.⁴²

The Institute provides many services and resources pertaining to red tide. It publishes detailed information every day on the status of red tide in the state.⁴³ The Institute's teams of experts conduct cutting-edge ecological research and analysis on the organisms in Florida's waters, advancing the collective understanding of red tide and its impacts on the state.⁴⁴ The FWC scientists combine field sampling with tools maintained by state and federal partners to track red tide and its effects.⁴⁵ The Institute's Harmful Algal Bloom Monitoring Database contains detailed scientific information and continually recorded datasets on red tide from 1954 to the present.⁴⁶ Through its webpages on the FWC's website, the Institute provides comprehensive information and resources to the public relating to red tide.⁴⁷ This includes resources for learning what causes red tide, tools for tracking red tide, and information for reporting on red tide and its effects.⁴⁸

Mote Marine Laboratory

The Mote Marine Laboratory is a Florida nonprofit organization that was founded in 1955.⁴⁹ Today, the Mote Marine Laboratory includes a 10.5-acre campus and aquarium in Sarasota, Florida, with various facilities known as field stations in Key West, eastern Sarasota County, Summerland Key, and Charlotte Harbor.⁵⁰ It has over 200 employees, including more than 30 Ph.D. scientists, working in numerous research programs involving marine biology, marine

³⁸ Section 379.2271(1), F.S.

³⁹ *Id.*

⁴⁰ Section 379.2271, F.S.

⁴¹ Section 379.2272, (1)(a), F.S.

⁴² *Letter from Governor Rick Scott to Chairman of the Florida Fish and Wildlife Conservation Bo Rivard*, 2 (Sept. 20, 2018), available at <https://www.flgov.com/wp-content/uploads/2018/09/SGS-BIZHUB18092014370.pdf> (last visited Mar. 15, 2019).

⁴³ FWC, *Red Tide Current Status*, <https://myfwc.com/research/redtide/statewide/> (last visited Mar. 15, 2019).

⁴⁴ FWC, *Labs and People: About*, <https://myfwc.com/research/redtide/labs-people/about/> (last visited Mar. 15, 2019).

⁴⁵ FWC, *Tools For Tracking Red Tides*, <https://myfwc.com/research/redtide/tools/> (last visited Mar. 15, 2019).

⁴⁶ FWC, *HAB Monitoring Database*, <https://myfwc.com/research/redtide/monitoring/database/> (last visited Mar. 15, 2019).

⁴⁷ FWC, *Research: Red Tide*, <https://myfwc.com/research/redtide/> (last visited Mar. 15, 2019).

⁴⁸ FWC, *Red Tide-Related Hotlines and Information Sources*, <https://myfwc.com/research/redtide/contact/> (last visited Mar. 15, 2019).

⁴⁹ Mote Marine Laboratory, *2020 Vision & Strategic Plan, Version 2.0*, 7, 11, 28 (2016) available at <https://mote.org/about-us#2020> (last visited Mar. 15, 2019) (download the document by scrolling to the box where it appears and clicking the "Download" arrow in the top left corner). The laboratory was created by Dr. Eugenie Clark in 1955, and it was originally known as the Cape Haze Marine Laboratory, until it was later renamed Mote Marine Laboratory.

⁵⁰ Mote Marine Laboratory, *Mote Marine Laboratory and Aquarium*, <https://mote.org/locations/details/mote-marine-laboratory-aquarium> (last visited Mar. 15, 2019); Mote Marine Laboratory, *Mote Field Stations*, <https://mote.org/locations> (last visited Mar. 15, 2019).

ecology, environmental health, and technology.⁵¹ The Mote Marine Laboratory's mission statement is: "[t]he advancement of marine and environmental sciences through scientific research, education and public outreach, leading to new discoveries, revitalization and sustainability of our oceans and greater public understanding of our marine resources."⁵²

The nonprofit organization is funded through federal, state, and local grants and through individual donors and foundations.⁵³ The FWC is authorized to expend certain money through grants and contracts to fund research with the Mote Marine Laboratory.⁵⁴ The proceeds of the annual use fee for the "Protect Our Reefs" license plates are distributed to the Mote Marine Laboratory.⁵⁵

Since early on in its development, the Mote Marine Laboratory has been conducting research on red tide.⁵⁶ Its experts are conducting research on red tide with the goal of understanding how the blooms form, how they dissipate into the environment, and what effects it has on humans and marine animals.⁵⁷ The Mote Marine Laboratory monitors red tide by taking samples, including with the use of technology such as detectors specially developed by the laboratory and autonomous underwater vehicles, providing continuous data that is communicated back to the laboratory for analysis.⁵⁸ The laboratory's Beach Conditions Report provides detailed information, updated twice daily by trained observers, on the conditions of 26 Florida beaches along the Gulf of Mexico.⁵⁹ Several of the laboratory's research programs cover areas of science related to red tide, such as the effects of toxins on aquatic organisms, the environmental health aspects of airborne toxins in coastal areas, and phytoplankton ecology.⁶⁰

In 2018, the laboratory announced that its establishing the Red Tide Institute at the Mote Marine Laboratory.⁶¹ The Red Tide Institute will apply the knowledge gained on the ecological dynamics of red tide blooms to develop and test innovative, science-based technologies for attacking red tide blooms and reducing their impacts.⁶² Also in 2018, the state invested over \$2 million in the testing and development of innovative red tide mitigation technologies, including

⁵¹ Mote Marine Laboratory, *Research Programs*, <https://mote.org/research> (last visited Mar. 15, 2019).

⁵² Mote Marine Laboratory, *Annual Report 2017*, 1 (2018), available at <https://mote.org/about-us#Annual> (last visited Mar. 15, 2019).

⁵³ Mote Marine Laboratory, *Mote Marine Laboratory and Aquarium*, <https://mote.org/locations/details/mote-marine-laboratory-aquarium> (last visited Mar. 15, 2019).

⁵⁴ Section 379.2202, F.S.; Section 379.2201(1)(c), F.S. The section authorizes money from saltwater license and permit fees to be used for marine research and management; see s. 379.354, F.S.

⁵⁵ Section 320.08058(39), F.S.

⁵⁶ Kumar Mahadevan, Mote Marine Laboratory, *Exploring the Secrets of the Sea Since 1955*, 3 (Nov. 19, 2010) available at <https://mote.org/media/uploads/files/MoteMarineLaboratory-history.pdf> (last visited Mar. 15, 2019).

⁵⁷ Mote Marine Laboratory, *Red Tide Research*, <https://mote.org/news/red-tide-research> (last visited Mar. 15, 2019).

⁵⁸ *Id.*

⁵⁹ Mote Marine Laboratory, Sarasota Operations Coastal Oceans Observation Lab, *Beach Conditions Reporting System*, <https://visitbeaches.org/#> (last visited Mar. 15, 2019).

⁶⁰ Mote Marine Laboratory, *Red Tide Research*, <https://mote.org/news/red-tide-research> (last visited Mar. 15, 2019).

⁶¹ Mote Marine Laboratory, *Mote Launches Red Tide Institute for Mitigation and Control, Thanks to Founding Donor* (Oct. 23, 2018), <https://mote.org/news/article/mote-launches-red-tide-institute-for-mitigation-and-control-thanks-to-found> (last visited Mar. 16, 2019).

⁶² Mote Marine Laboratory, *Mote's Red Tide Institute Welcomes Renowned Scientific Director* (Nov. 13, 2018), <https://mote.org/news/article/motes-red-tide-institute-welcomes-renowned-scientific-director> (last visited Mar. 16, 2019).

technologies being developed by the Mote Marine Laboratory.⁶³

The Mote Marine Laboratory and the Institute have been collaborating in the area of harmful algal blooms for years. Previously, both institutions participated in the five year, federally-funded “Ecology and Oceanography of Harmful Algal Blooms” program.⁶⁴ This collaborative research led to new scientific understanding of how coastal pollution and nutrients affect red tide.⁶⁵ Today, the Mote Marine Laboratory and the Institute work together continuously to monitor waters around southwestern Florida for the organisms that cause red tide, often in collaboration with county government partners.⁶⁶ The sampling done through this collaboration is combined with satellite imagery and modeling of water currents in the Gulf of Mexico to develop the constant updates that the Institute provides to the public.⁶⁷

The Mote Marine Laboratory’s website describes the “Mote-FWRI Cooperative Red Tide Program.”⁶⁸ The goals of the program include the following:

- Protecting public health, the economy and living natural resources through increased education and outreach.
- Mitigating the effects of red tide by monitoring and tracking *Karenia brevis*.
- Supporting bloom modeling and forecast efforts by providing information on the environmental factors that influence *K. brevis*.
- Investigating toxin persistence in recreationally harvested shellfish.⁶⁹

III. Effect of Proposed Changes:

Section 1 creates s. 379.2273, F.S., which establishes the Florida Red Tide Mitigation and Technology Development Initiative (Initiative) and Initiative Technology Advisory Council. The section expires on June 30, 2025.

The bill states that it is the intent of the Legislature to establish an independent and coordinated effort among public and private research entities to develop prevention, control, and mitigation technologies and approaches to address the impacts of red tide on coastal environmental and communities in the state.

⁶³ Mote Marine Laboratory, *Scientists, Resource Managers Share Major Updates on Tackling Florida Red Tide* (Sept. 26, 2018), <https://mote.org/news/article/scientists-resource-managers-share-major-updates-on-tackling-florida-red-ti> (last visited Mar. 17, 2019).

⁶⁴ FWC, *ECO HAB: Florida*, <https://myfwc.com/research/redtide/research/scientific-products/ecohab-florida/> (last visited Mar. 15, 2019); see s. 379.2272(1)(c); see also NOAA, *Harmful Algal Bloom and Hypoxia Research and Control Act*, <https://coastalscience.noaa.gov/research/stressor-impacts-mitigation/habhrca/> (last visited Mar. 15, 2019). Federal legislation exists for harmful algal blooms and programs that address them.

⁶⁵ Mote Marine Laboratory, *News & Press: Nutrients that Feed Red Tide “Under the Microscope” in Major Study*, <https://mote.org/news/article/nutrients-that-feed-red-tide-under-the-microscope-in-major-study> (last visited Mar. 15, 2019).

⁶⁶ Mote Marine Laboratory and Aquarium, *Red Tide Research*, <https://mote.org/news/red-tide-research> (last visited Mar. 15, 2019).

⁶⁷ Mote Marine Laboratory, *Mote-FWRI Cooperative Red Tide Program*, <https://mote.org/pages/mote-fwri-cooperative-red-tide-program> (last visited Mar. 15, 2019).

⁶⁸ *Id.*

⁶⁹ *Id.*

The bill establishes the Initiative as a partnership between the Institute and the Mote Marine Laboratory. The purpose of the Initiative is to lead the development of innovative technologies and approaches to address the control and mitigation of red tide and its impacts by building upon the ongoing cooperative red tide research and monitoring program between the Institute and the Mote Marine Laboratory. The goal of the Initiative is to develop, test, and implement innovative, effective, and environmentally sustainable technologies and approaches for controlling and mitigating the impacts of red tide.

The bill states that funds which the Legislature specifically appropriates for the Initiative's red tide mitigation technology development projects must be awarded by the Institute to the Mote Marine Laboratory. The bill authorizes the Mote Marine Laboratory, with the agreement of the Institute, to use a portion of the awarded funds to facilitate additional engagement with other pertinent marine science and technology development organizations in Florida and around the world to pursue applied research and technology for the control and mitigation of the impacts of red tide. The bill prohibits the Mote Marine Laboratory from using more than five percent of its awarded funds for direct annual initiative administration coordination costs. The bill requires the Initiative to leverage state-appropriated funds with additional funds from private and federal sources.

Beginning on January 15, 2021, and each January thereafter until January 15, 2025, the bill requires the Initiative to submit a report containing an overview of the Initiative's accomplishments up until that date and its priorities for subsequent years. The reports must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of the Department of Environmental Protection, and the executive director of the FWC.

The bill establishes within the Initiative the Initiative Technology Advisory Council (Council). The bill states that the Council will be an advisory council as defined in s. 20.03(7), F.S., which defines "advisory council" as "an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives."⁷⁰ The Council will include marine science, technology development, and natural resource management representatives from governmental entities, private organizations, and public or private research institutions. The bill requires the Council to meet at least twice per year. The bill requires that the Council be chaired by the president and chief executive officer of the Mote Marine Laboratory, and consist of the following:

- One member from a private commercial enterprise, appointed by the Governor.
- One member from a public or private university in Florida, appointed by the President of the Senate.
- One member from a non-university public or private marine environmental organization, appointed by the Speaker of the House of Representatives.
- One member from the Department of Environmental Protection who has expertise in red tide, appointed by the Secretary of Environmental Protection.
- One member from the Institute who has expertise in red tide, appointed by the executive director of the Institute.

⁷⁰ Section 20.03(7), F.S.

The bill requires that the members of the Council serve staggered two year terms, and authorizes reappointment. The bill requires that the members of the Council serve without compensation. The bill requires each organization represented by a member on the Council to cover all of the expenses of its respective representatives.

Section 2 provides for an appropriation. The bill appropriates \$3 million annually, beginning in Fiscal Year 2019-2020 and continuing until Fiscal Year 2024-2025, from the General Revenue Fund to the FWC for the purpose of implementing s. 379.2273, F.S.

Section 3 states that the act shall take effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Red tide negatively impacts Florida's economy, by harming industries such as commercial fisheries, recreation, and tourism. If the Initiative and the Council create technologies or approaches that prevent or mitigate Red Tide and its impacts, this could prevent harm to such industries. Therefore, this bill may have an indeterminate, positive fiscal impact on the private sector.

C. Government Sector Impact:

The bill requires an annual appropriation to the FWC of \$3 million from the General Revenue Fund from the 2019-2020 fiscal year to the 2024-2025 fiscal year. SB 2500, the Senate's 2019-2020 General Appropriations Bill, appropriates \$6.6 million from the General Revenue Fund for red tide research.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 379.2273 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

By Senator Gruters

23-00549B-19

20191552__

1 A bill to be entitled
 2 An act relating to the Florida Red Tide Mitigation and
 3 Technology Development Initiative; creating s.
 4 379.2273, F.S.; providing legislative intent;
 5 establishing the Florida Red Tide Mitigation and
 6 Technology Development Initiative; providing the
 7 purpose and goal of the initiative; providing for
 8 funding; requiring the initiative to submit an annual
 9 report by a specified date to the Governor, the
 10 Legislature, the Secretary of Environmental
 11 Protection, and the executive director of the Fish and
 12 Wildlife Conservation Commission; establishing the
 13 Initiative Technology Advisory Council; providing for
 14 the meetings, membership, terms of office, and
 15 compensation of the council; providing for expiration
 16 of the initiative; providing appropriations; providing
 17 an effective date.
 18
 19 Be It Enacted by the Legislature of the State of Florida:
 20
 21 Section 1. Section 379.2273, Florida Statutes, is created
 22 to read:
 23 379.2273 Florida Red Tide Mitigation and Technology
 24 Development Initiative; Initiative Technology Advisory Council.-
 25 (1) It is the intent of the Legislature to establish an
 26 independent and coordinated effort among public and private
 27 research entities to develop prevention, control, and mitigation
 28 technologies and approaches to address the impacts of red tide
 29 on coastal environments and communities in this state.

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

23-00549B-19

20191552__

30 (2) The Florida Red Tide Mitigation and Technology
 31 Development Initiative is established as a partnership between
 32 the Fish and Wildlife Research Institute within the commission
 33 and Mote Marine Laboratory.
 34 (a) The purpose of the initiative is to lead the
 35 development of innovative technologies and approaches that are
 36 critically needed to address the control and mitigation of red
 37 tide and its impacts by building upon the ongoing cooperative
 38 red tide research and monitoring program between the Fish and
 39 Wildlife Research Institute and Mote Marine Laboratory.
 40 (b) The goal of the initiative is to develop, test, and
 41 implement innovative, effective, and environmentally sustainable
 42 technologies and approaches for controlling and mitigating the
 43 impacts of red tide.
 44 (c) Funds specifically appropriated by the Legislature for
 45 red tide mitigation technology development projects shall be
 46 awarded by the Fish and Wildlife Research Institute to Mote
 47 Marine Laboratory to achieve the goals of the initiative.
 48 1. Mote Marine Laboratory may, with the concurrence of the
 49 Fish and Wildlife Research Institute, use a portion of the
 50 awarded funds to facilitate additional engagement with other
 51 pertinent marine science and technology development
 52 organizations in this state and around the world to pursue
 53 applied research and technology for the control and mitigation
 54 of the impacts of red tide.
 55 2. Mote Marine Laboratory may not use more than 5 percent
 56 of its awarded funds for direct annual initiative administration
 57 coordination costs.
 58 3. The initiative shall leverage state-appropriated funds

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

23-00549B-19

20191552__

with additional funds from private and federal sources.

(d) Beginning January 15, 2021, and each January 15 thereafter until its expiration, the initiative shall submit a report that contains an overview of its accomplishments to date and priorities for subsequent years to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Environmental Protection, and the executive director of the Fish and Wildlife Conservation Commission.

(3) There is established within the initiative the Initiative Technology Advisory Council, an advisory council as defined in s. 20.03(7), that includes marine science, technology development, and natural resource management representatives from governmental entities, private organizations, and public or private research institutions. The council shall meet at least twice annually.

(a) The council shall be chaired by the president and chief executive officer of Mote Marine Laboratory and shall consist of the following:

1. One member from a private commercial enterprise, appointed by the Governor.

2. One member from a public or private university in this state, appointed by the President of the Senate.

3. One member from a nonuniversity public or private marine environmental organization, appointed by the Speaker of the House of Representatives.

4. One member from the Department of Environmental Protection who has expertise in red tide, appointed by the Secretary of Environmental Protection.

23-00549B-19

20191552__

5. One member from the Fish and Wildlife Research Institute who has expertise in red tide, appointed by the executive director of the Fish and Wildlife Research Institute.

(b) Council members shall serve staggered 2-year terms and may be reappointed.

(c) Council members shall serve without compensation, and each organization represented shall cover all expenses of its respective representative.

(4) This section expires June 30, 2025.

Section 2. Beginning in the 2019-2020 fiscal year, and for each fiscal year thereafter through the 2024-2025 fiscal year, there is appropriated the sum of \$3 million from the General Revenue Fund to the Fish and Wildlife Conservation Commission for the purpose of implementing s. 379.2273, Florida Statutes.

Section 3. This act shall take effect July 1, 2019.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-9-19
Meeting Date

*FOCUS on mitigation -
if - not poll-permentation -
after this KRU*

1353
Bill Number (if applicable)

Topic _____ Amendment Barcode (if applicable)

Name David Cohen

Job Title _____

Address 1674 Univ. Pkwy #286
Street
SARASOTA FL 34243
City State Zip

Phone 941-323-2404

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/9/14

Meeting Date

SB 1552

Bill Number (if applicable)

Topic

Red Tide Mitigation

Amendment Barcode (if applicable)

Name

David Shepp

Job Title

Lobbyist

Address

P.O. Box 3739

Phone

863 581-4250

Street

Lakeland

FL

33802

City

State

Zip

Email

sheppesstrategy.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Mote Marine Laboratory

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/19
Meeting Date

SB 1552
Bill Number (if applicable)

Topic Red Tide Mitigation

Amendment Barcode (if applicable)

Name Jennifer Goen

Job Title Dir of Gov Relations

Address 1051 FGCU Blvd
Street

Phone 239-833-5718

Ft. Myers, FL 33965
City State Zip

Email jgoen@fgcu.edu

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Gulf Coast University

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/19

Meeting Date

1552

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Diana Ferguson

Job Title Attorney

Address 119 S Monroe St Ste 202

Phone 1-81-4788

Street

Taco

FL

32301

City

State

Zip

Email dfergusma@adudge-ecemib.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

March 25, 2019

The Honorable Debbie Mayfield, Chair
Appropriations Subcommittee on Agriculture, Environment and General Government
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Mayfield:

I am writing to request that Senate Bill 1552, Florida Red Tide Mitigation and Technology Development Initiative, be placed on the agenda of the next Appropriations Subcommittee on Agriculture, Environment and General Government meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

cc: Giovanni Betta, Staff Director
Lisa Waddell, Committee Administrative Assistant

SENATE APPROPRIATIONS
RECEIVED
19 MAR 25 AM 11:50
SENT TO CLERK
STAFF DIR. STAFF

REPLY TO:

- ☐ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

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 Appropriations Subcommittee on Agriculture, Environment, and General Government

BILL: CS/SB 1646

INTRODUCER: Agriculture Committee and Senator Albritton

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 8, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Akhavein	Becker	AG	Fav/CS
2. Blizzard	Betta	AEG	Recommend: Favorable
3. _____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1646 addresses issues related to agriculture and powers and duties of the Department of Agriculture and Consumer Services (department). Specifically, the bill:

- Clarifies the definition of a food establishment to be consistent with the current regulatory structure and eliminates unused defined terms, without modifying existing regulatory responsibilities of the department;
- Realigns ch. 502, F.S., with recent updates to the Grade A Pasteurized Milk Ordinance;
- Clarifies the preexisting distinction between wholesale and retail frozen dessert sellers;
- Eliminates a report that documents the number of gallons of frozen dessert produced by a dessert plant permit holder;
- Revises the authority of the department to conduct onsite inspections of facilities used to distribute milk and milk products and to collect samples of those products for testing;
- Removes prohibitions against certain testing for milkfat content and for repasteurizing milk;
- Postpones the sunset date for certain Pest Control Trust Fund expenditures;
- Makes revisions to the agriculture water conservation program and expands the types of cost-share projects that can be considered and funded;
- Establishes a waiver process by rule for school nutrition program sponsors;
- Defines “raw agricultural commodity fumigation” and clarifies the applicability of related licensure requirements;
- Enables the department to consider whether an entity performs raw agricultural commodity fumigation when making license classification decisions;

- Clarifies the submission deadline for food establishment license fees;
- Revises the Florida Forest Service's training requirements and certifications for firefighters;
- Repeals the Healthy Food Financing Initiative on October 1, 2020; and
- Provides the option for horse owners to include a covenant on the sale of a horse, requiring any subsequent owner to call a contracted third party to pick up a horse that is ready to be retired rather than destroying the animal.

The department can absorb within existing resources the costs relating to rulemaking to implement the bill.

The effective date of the bill is July 1, 2019.

II. Present Situation:

Fumigants

A fumigant is a gas with pesticidal action. Fumigants are gases, or form gases, after application. In a high enough concentration, a fumigant can kill insects and other pests. Fumigants may be odorless, and usually cannot be seen. A wide range of pests infest soil and agricultural products. Insects, mites, nematodes, diseases, and rodents can all harm soil-grown crops and stored commodities. Insects are the most common pests of raw agricultural products but only a few cause serious damage. Fumigation is reserved for the most damaging insect pests and pest situations.¹

Pest control activities are statutorily regulated by the Structural Pest Control Act in ch. 482, F.S., and rules that pertain to pesticides are enacted under its granted authority. The definition of fumigant in ch. 482, F.S., is limited since a statutory definition of fumigation for agricultural activities does not exist.

Florida Food Safety and Food Defense Advisory Council

The Florida Food Safety and Food Defense Advisory Council creates an infrastructure for enhancing outreach, response, and information sharing of food safety issues at the state level. It also provides a dynamic forum for stakeholder collaboration regarding food safety issues protecting public health. Council members include representatives from academia, regulatory, industry, and consumer groups.²

Food Establishment Permits

To open a food establishment in Florida, you must obtain a food establishment permit from the department. Permitted retail food establishments include supermarkets, grocery stores, convenience stores, coffee shops, bakeries, retail meat markets, retail seafood markets, juice and smoothie bars, ice/water vending machines, food salvage stores, businesses selling prepackaged

¹ "General Fumigation," *University of Alabama Division of Agriculture Research & Extension*, accessed at <https://www.uaex.edu/farm-ranch/pest-management/docs/training-manuals/AG1161.pdf> (Last visited March 22, 2019).

² See <https://www.freshfromflorida.com/About/Advisory-Councils-and-Committees/Florida-Food-Safety-and-Food-Defense-Advisory-Council> (Last visited March 22, 2019).

foods, and certain mobile food units selling only prepackaged foods or non-potentially hazardous food items. Wholesale food establishments include bottled water plants, food processing plants, and food storage warehouses.³ Section 500.12, F.S., contains food permit requirements for food establishments and allows the department to charge a late fee. If the applicant misses the annual December 31 deadline and fails to remit payment during January of the next year, the applicant may be charged a late fee not exceeding \$100.

Healthy Food Financing Initiative

The 2016 Legislature directed the department to establish the Healthy Food Financing Initiative to provide financial assistance for the development or expansion of grocery retail outlets operating in underserved and low-income communities. The department is to implement and monitor the program through public-private partnerships. It must also report annually to the President of the Senate and the Speaker of the House of Representatives on the projects funded, geographic distribution of projects, program costs, and program outcomes.⁴

Milk, Milk Products and Frozen Desserts

The Grade A Pasteurized Milk Ordinance is a collection of rules assembled by the federal Food and Drug Administration that prescribes a baseline for products sold across the United States. The ordinance has been adopted by department rule. Recent revisions require the definitions in the Florida Statutes to be updated, along with the types of facilities listed in the powers and duties section to realign them with the ordinance. The products and facility types listed in s. 502.14, F.S., are not currently inclusive of all products or entities covered by the ordinance and therefore they are not under the department's existing regulatory authority.

Each frozen dessert plant, whether located in the state or outside the state, that manufactures frozen desserts or other products, and sells them in this state, must have a permit to operate. This bill requires wholesale entities to register for an operating permit because retailers must conform to other food safety regulations. The department uses many other mechanisms to ensure that the dairy supply and frozen desserts using dairy are safely produced. Currently, s. 502.053, F.S., requires frozen dessert plants that manufacture and/or wholesale these products to submit monthly, quarterly, semiannual and annual reports documenting the number of gallons of frozen dessert sold. The changes to this section will only require wholesaling entities to register for this license. Retailers must conform to other food safety regulations. The required reports are not consistently utilized to materially impact the regulatory process. The department uses many other mechanisms to ensure that the dairy supply and frozen desserts using dairy are safely produced.

Individuals and entities that wish to test for milkfat content are required to be permitted by the department but are not charged a fee. These milkfat testing results are not used or retained by the department and milkfat content does not affect food safety. Commercial entities commonly test milkfat to ensure that the products they receive from suppliers conform to contractual standards.

³ See <https://www.freshfromflorida.com/Business-Services/Food-Establishment-Inspections/Food-Establishment-Permit> (Last visited March 22, 2019).

⁴ Section 500.81, F.S.

The Grade A Pasteurization Ordinance requires Grade A products to be pasteurized at the final point of packaging, even if a supplier previously pasteurized them. Because of the current supply chain structure, dairy products are frequently repasteurized to comply with the ordinance requirements. Currently, it is unlawful to repasteurize in Florida.

Florida Pest Control Trust Fund

Section 570.44, F.S., authorizes the department to administer pesticide registration, regulate agricultural pesticide use, and regulate feed, seed, and fertilizer production. Section 570.441(4), F.S., allows revenues from the Pest Control Trust Fund to be used to carry out these duties. This provision will sunset on June 30, 2019. If this subsection expires, the uses of the trust fund will be limited to the provisions in ch. 482, F.S., which includes the licensing of pest control businesses, examinations for operators' certificates, and the education of the pest control industry.

Agricultural Water Conservation and Agricultural Water Supply Planning

In 2013, the Legislature directed the department to establish an agricultural water conservation program that includes a cost-share program consisting of federal, state, regional, and local agencies for irrigation system retrofits and the application of mobile irrigation laboratory evaluations for water conservation and nutrient reduction.

Forest Protection

The Florida Forest Service has the primary responsibility for prevention, detection, and the suppression of wildfires wherever they may occur. It must provide firefighting crews and develop a training curriculum for forestry firefighters. The training curriculum must contain the basic volunteer structural fire training course approved by the Florida State Fire College of the Division of State Fire Marshal (DSFM) and a minimum of 250 hours of wildfire training.

Pursuant to s. 590.02(1)(e), F.S., the DSFM must establish a structural firefighting training program of not less than 206 hours. Individuals who satisfy the DSFM's training requirement, pass the exam, and complete 250 hours of wildfire training will receive a Forestry Certificate of compliance.

School Food and Other Nutrition Programs

The school food and nutrition service programs that the department has responsibility over include, but are not limited to, the National School Lunch Program, the Special Milk Program, the School Breakfast Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and any other program that relates to school nutrition.⁵ Programs are conducted by sponsors under a current agreement with the department.⁶

Pursuant to s. 120.542, F.S., agencies are authorized to waive rules when the person subject to the rule demonstrates that the requirement has been achieved by other means and when the

⁵ s. 595.402(3), F.S.

⁶ s. 595.402(6), F.S.

application of a rule creates a substantial hardship or violates principles of fairness. Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), authorizes state administering agencies to request exemptions to specific School Lunch Program requirements if a program participant demonstrates a hardship and the request does not conflict with the U.S.C. requirements that cannot be waived.

Horse Care Covenants

Many horses, particularly in the racing and hunter jumper fields, are simply destroyed after they can no longer compete, because it costs thousands of dollars per year for continued care. Some horses are placed in less age-dependent disciplines, and some are sold to farms or families whose children want a horse to ride. Not all horses can be placed, and the American Society for the Prevention of Cruelty to Animals calculates that over 100,000 American horses are sent across the borders for slaughter each year.⁷ Currently, common law only allows covenants to travel with real property. Because a horse is “chattel,” a covenant does not travel with a horse.⁸

III. Effect of Proposed Changes:

Section 1 amends s. 487.021, F.S., to add and define the term “raw agricultural commodities fumigation,” which will clarify application regulations to the pest control and the agricultural commodity industries.

Section 2 amends s. 487.0435, F.S., to authorize the department to consider whether a fumigant can be used solely for raw agricultural commodities, as defined in s. 487.021, F.S., when making classification decisions. The amendment conforms this section to the change proposed in s. 487.021, F.S.

Section 3 amends s. 500.03, F.S., to revise and update definitions of the Florida Food Safety Act. It removes the unused definitions for “convenience store,” “food outlet,” “food service establishment,” and “retail food store.” It revises the definition of “food establishment” and updates the statute’s reference to the definition of bottled water contained in the Code of Federal Regulations. The meaning of the defined terms are clarified to assist the regulated community.

Section 4 amends s. 500.033, F.S., to revise the membership of the Florida Food Safety and Food Defense Advisory Council.

Section 5 amends s. 500.12, F.S., to conform this section to changes made in the bill. It also revises the date by which a late fee is imposed for nonpayment of a food permit fee.

Section 6 amends s. 500.121, F.S., to conform this section to the definitional changes made in the bill.

Section 7 amends s. 500.147, F.S., to conform this section to changes made in the bill.

⁷ See “What Happens to Retired Racehorses?,” accessed at <https://www.care2.com/causes/what-happens-to-retired-racehorses.html> (Last visited March 19, 2019).

⁸ “Any article of tangible property other than land, buildings, and other things annexed to land,” Webster’s Encyclopedic Unabridged Dictionary.

Section 8 repeals s. 500.81, F.S., relating to the Healthy Food Financing Initiative on October 1, 2020.

Section 9 amends s. 502.012, F.S., to realign the definitions in this section with the updated Grade A Pasteurized Milk Ordinance that was adopted by the department by rule. It adds definitions for the terms “bulk milk hauler and sampler,” “reconstituted milk or milk products” or “recombined milk or milk products,” “retail,” “ultra-pasteurization,” and “wholesale.”

Section 10 amends s. 502.014, F.S., to revise the department’s authority to conduct onsite inspections of facilities used to produce, process, and distribute milk and milk products and to collect samples of such for testing.

Section 11 amends s. 502.053, F.S., to clarify which business entities need frozen dessert plant licenses. It also eliminates the volume report documenting the number of gallons of frozen dessert or frozen dessert mix sold or manufactured by the permit holder that must be made monthly, quarterly, semiannually, or annually, as required by the department.

Section 12 amends s. 502.181, F.S., to eliminate the requirement that a person engaging in testing for milkfat content must first obtain a permit from the department. It also repeals the prohibition against repasteurizing milk. These changes allow Florida entities to conform to the Grade A Pasteurization Ordinance.

Section 13 amends s. 570.441, F.S., to extend the expiration dates for the use of funds from the Pest Control Trust Fund to carry out the duties of the Division of Agricultural Environmental Services.

Section 14 amends s. 570.93, F.S., to revise the agricultural water conservation program to enable cost-share funds to continue to be used for irrigation system retrofits and mobile irrigation lab evaluations. The revisions also permit the funds to be expended on additional water conservation activities pursuant to s. 403.067(7)(c), F.S.

Section 15 amends s. 590.02, F.S., to require the Florida Forest Service to restructure its training course to better meet its wildland firefighters’ specific training needs. The curriculum must include at least 40 hours of structural firefighter training and at least 40 hours of emergency medical training. The minimum number of wildfire training hours will go from 250 to 376.

Section 16 amends s. 595.404, F.S., to authorize the department to adopt and implement an exemption, variance, and waiver process, by rule, for school nutrition program sponsors.

Section 17 amends s. 633.406, F.S., to conform provisions of this section to changes made in the bill on wildland firefighter training.

Section 18 amends s. 633.408, F.S., to require the department to establish a structural fire training program of at least 40 hours instead of not less than 206 hours, to be consistent with the changes to s. 590.02, F.S., made by the bill.

Section 19 creates s. 828.261, F.S., to authorize a contract for the sale of a horse to include a covenant for the continuing care of the horse upon its retirement, for an actuarially appropriate charge. An owner will not be required to include such covenant, and a purchaser will not be required to purchase a horse that includes such a covenant. This section does not create any covenants that annex to or travel with any other chattel.

Section 20 provides that this act shall take effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department can absorb within existing resources the costs of rulemaking to implement the bill.⁹

⁹ Department of Agriculture and Consumer Services, *Senate Bill 1646 Bill Analysis* (March 5, 2019), on file with the Appropriations Subcommittee on Agriculture, Environment, and General Government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 487.021, 487.0435, 500.03, 500.033, 500.12, 500.121, 500.147, 500.81, 502.012, 502.014, 502.053, 502.181, 570.441, 570.93, 590.02, 595.404, 633.406, and 633.408.

This bill creates section 828.261 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Agriculture Committee on March 25, 2019:

The committee substitute:

- Makes a technical correction to the definition of “bottled water;”
- Extends the repeal date for the Healthy Food Financing Initiative until October 1, 2020; and
- Authorizes contracts for the sale of horses to include a covenant for continuing care of the horse.

B. Amendments:

None.

By the Committee on Agriculture; and Senator Albritton

575-03462-19

20191646c1

1 A bill to be entitled
 2 An act relating to the Department of Agriculture and
 3 Consumer Services; amending s. 487.021, F.S.; defining
 4 a term; amending s. 487.0435, F.S.; authorizing the
 5 Department of Agriculture and Consumer Services to
 6 consider the use of a fumigant as a pesticide for raw
 7 agricultural commodities; amending s. 500.03, F.S.;
 8 revising definitions; amending s. 500.033, F.S.;
 9 revising the membership of the Florida Food Safety and
 10 Food Defense Advisory Council; amending s. 500.12,
 11 F.S.; conforming provisions to changes made by the
 12 act; revising the date by which a late fee is imposed
 13 for nonpayment of a food permit fee; amending s.
 14 500.121, F.S.; conforming provisions to changes made
 15 by the act; amending s. 500.147, F.S.; conforming
 16 provisions to changes made by the act; amending s.
 17 500.81, F.S.; providing for the repeal of the Healthy
 18 Food Financing Initiative on a specified date;
 19 amending s. 502.012, F.S.; defining and redefining
 20 terms; amending s. 502.014, F.S.; revising the
 21 authority of the department to conduct onsite
 22 inspections of facilities used to produce and process
 23 milk and milk products and to collect samples of such
 24 for testing; amending s. 502.053, F.S.; requiring
 25 operation permits for wholesalers of frozen dessert
 26 products; providing an exemption from bulk milk hauler
 27 and sampler permit requirements; amending s. 502.181,
 28 F.S.; removing the prohibitions against certain
 29 testing for milkfat content and for repasteurizing

Page 1 of 29

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

575-03462-19

20191646c1

30 milk; amending s. 570.441, F.S.; extending the
 31 expiration for the use of funds from the Pest Control
 32 Trust Fund; amending s. 570.93, F.S.; revising
 33 requirements for the agricultural water conservation
 34 program; amending s. 590.02, F.S.; directing the
 35 Florida Forest Service to develop a training
 36 curriculum for wildland firefighting; amending s.
 37 595.404, F.S.; authorizing the department to adopt and
 38 implement an exemption, variance, and waiver process
 39 for school food and other nutrition programs; amending
 40 s. 633.406, F.S.; conforming provisions to changes
 41 made by the act; amending s. 633.408, F.S.; providing
 42 wildland firefighter training and certification for
 43 certain firefighters and volunteer firefighters;
 44 creating s. 828.261, F.S.; authorizing a contract for
 45 the sale of a horse to include a covenant for the
 46 continuing care of the horse; providing requirements
 47 for such a covenant; providing an effective date.
 48
 49 Be It Enacted by the Legislature of the State of Florida:
 50
 51 Section 1. Present subsections (57) through (67) of section
 52 487.021, Florida Statutes, are redesignated as subsections (58)
 53 through (68), respectively, and a new subsection (57) is added
 54 to that section, to read:
 55 487.021 Definitions.—For the purpose of this part:
 56 (57) "Raw agricultural commodities fumigation" means the
 57 use of a fumigant, in a lethal concentration to eliminate pests
 58 from fruits, vegetables, nuts, legumes, mushrooms, or other

Page 2 of 29

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

575-03462-19

20191646c1

nonanimal matter customarily consumed by humans or animals, under a tarpaulin or in a structure such as a storage facility, barn, silo, or warehouse that is not inhabited by human beings, agricultural livestock, or domestic pets and that is not connected by construction elements such as voids, pipes, conduits, drains, or ducts to a structure that is inhabited by human beings, agricultural livestock, or domestic pets that would allow the transfer of fumigant between the structures.

Section 2. Subsection (7) is added to section 487.0435, Florida Statutes, to read:

487.0435 License classification.—The department shall issue certified applicator licenses in the following classifications: certified public applicator; certified private applicator; and certified commercial applicator. In addition, separate classifications and subclassifications may be specified by the department in rule as deemed necessary to carry out the provisions of this part. Each classification shall be subject to requirements or testing procedures to be set forth by rule of the department and shall be restricted to the activities within the scope of the respective classification as established in statute or by rule. In specifying classifications, the department may consider, but is not limited to, the following:

(7) The use of a fumigant as a pesticide, solely in raw agricultural commodities fumigation as defined in s. 487.021.

Section 3. Subsection (1) of section 500.03, Florida Statutes, is amended to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(a) "Advertisement" means any representation disseminated

575-03462-19

20191646c1

in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food.

(b) "Approved laboratory" or "certified laboratory" means a laboratory of the department, a commercial laboratory certified by the Department of Health, or a competent commercial laboratory certified by an agency of another state or the United States Environmental Protection Agency to perform analyses of drinking water in accordance with the water quality testing procedures adopted by the United States Environmental Protection Agency.

(c) "Approved source" as it relates to water means a source of water, whether it is a spring, artesian well, drilled well, municipal water supply, or any other source, that complies with the Federal Safe Drinking Water Act, Pub. L. No. 93-523, as amended.

(d) "Bottled water" means a beverage, as described in 21 C.F.R. part 165 (2018) ~~(2006)~~, that is processed in compliance with 21 C.F.R. part 129 (2018) ~~(2006)~~.

(e) "Bottled water plant" means a food establishment in which bottled water is prepared for sale.

(f) "Color" includes black, white, and intermediate grays.

(g) 1. "Color additive" means a material which:

a. Is a dye pigment, or other substance, made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or

b. When added or applied to a food, is capable, alone or

575-03462-19

20191646c1

through reaction with another substance, of imparting color thereto;

except that such term does not include any material that is exempt under the federal act.

2. ~~Nothing in~~ Subparagraph 1. ~~does not shall be construed~~ to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(h) "Contaminated with filth" applies to any food not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, all foreign or injurious contamination.

~~(i) "Convenience store" means a business that is engaged primarily in the retail sale of groceries or motor fuels or special fuels and may offer food services to the public. Businesses providing motor fuel or special fuel to the public which also offer groceries or food service are included in the definition of a convenience store.~~

(i) ~~(j)~~ "Cottage food operation" means a natural person who produces or packages cottage food products at his or her residence and sells such products in accordance with s. 500.80.

(j) ~~(k)~~ "Cottage food product" means food that is not a potentially hazardous food as defined by department rule which is sold by a cottage food operation in accordance with s. 500.80.

575-03462-19

20191646c1

(k) ~~(l)~~ "Department" means the Department of Agriculture and Consumer Services.

(l) ~~(m)~~ "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. ss. 301 et seq.; 52 Stat. 1040 et seq.

(m) ~~(n)~~ "Food" includes:

1. Articles used for food or drink for human consumption;
2. Chewing gum;
3. Articles used for components of any such article;
4. Articles for which health claims are made, which claims are approved by the Secretary of the United States Department of Health and Human Services and which claims are made in accordance with s. 343(r) of the federal act, and which are not considered drugs solely because their labels or labeling contain health claims; and

5. Dietary supplements as defined in 21 U.S.C. s. 321(ff) (1) and (2).

The term includes any raw, cooked, or processed edible substance; ice; any beverage; or any ingredient used, intended for use, or sold for human consumption.

(n) ~~(o)~~ "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, transporting, or holding food and including any source of radiation intended for any such use), if such substance is not generally recognized, among

575-03462-19

20191646c1

experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures ~~for, in the case of a substance used in a food before prior to~~ January 1, 1958, through either scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use; except that such term does not include:

1. A pesticide chemical in or on a raw agricultural commodity;

2. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

3. A color additive; or

4. Any substance used in accordance with a sanction or approval granted before ~~prior to~~ the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. ss. 451 et seq.); or the Meat Inspection Act of March 4, 1967 (34 Stat. 1260), as amended and extended (21 U.S.C. ss. 71 et seq.).

(o) (p) "Food establishment" means a factory, food outlet, or other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term includes any establishment or section of an establishment at which food and food products are offered to the consumer and intended for off-premises consumption and any delicatessen that offers prepared food in bulk quantities only. The term does not include:

1. A business or activity that is regulated under s. 413.051, s. 500.80, chapter 509, or chapter 601;

575-03462-19

20191646c1

~~2. The term includes tomato packinghouses and repackers but does not include any other Establishments, except for tomato packinghouses and repackers,~~ that pack fruits and vegetables in their raw or natural states, including those fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled, natural form before they are marketed; or

3. Markets that offer only fresh fruits and fresh vegetables for sale.

~~(q) "Food outlet" means any grocery store; convenience store; minor food outlet; meat, poultry, or fish and related aquatic food market; fruit or vegetable market; food warehouse; refrigerated storage facility; freezer locker; salvage food facility; or any other similar place storing or offering food for sale.~~

~~(r) "Food service establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes delicatessens that offer prepared food in individual service portions. The term does not include schools, institutions, fraternal organizations, private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, cottage food operations, and supply vehicles, nor does the term include a research and development test kitchen limited to the use of employees and which is not open to the general public.~~

(p) (s) "Immediate container" does not include package

575-03462-19

20191646c1

liners.

(g) ~~(t)~~ "Label" means a display of written, printed, or graphic matter upon the immediate container of any article. A requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if there is any, of the retail package of such article or is easily legible through the outside container or wrapper.

(r) ~~(u)~~ "Labeling" means all labels and other written, printed, or graphic matters:

1. Upon an article or any of its containers or wrappers; or
2. Accompanying such article.

(s) ~~(v)~~ "Minor food outlet" means any food ~~retail~~ establishment that sells food groceries and may offer food service to the public, but neither business activity is a major ~~retail~~ function based on allocated space or gross sales.

(t) ~~(w)~~ "Natural water" means bottled spring water, artesian well water, or well water that has not been altered with water from another source or that has not been modified by mineral addition or deletion, except for alteration that is necessary to treat the water through ozonation or an equivalent disinfection and filtration process.

(u) ~~(x)~~ "Packaged ice" means ice that is enclosed in a container and is offered for sale for human consumption or for other use by the consumer. The term does not include ice that is manufactured by any business licensed under chapter 381 or chapter 509.

575-03462-19

20191646c1

(v) ~~(y)~~ "Packaged ice plant" means a food establishment in which packaged ice is manufactured or processed.

(w) ~~(z)~~ "Pesticide chemical" means any substance ~~that which~~, alone, in chemical combination, or in formulation with one or more other substances is a pesticide as defined in s. 487.021 ~~"pesticide" within the meaning of the Florida Pesticide Law, part I of chapter 487,~~ and that ~~which~~ is used in the production, storage, or transportation of raw agricultural commodities.

(x) ~~(aa)~~ "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form before ~~prior to~~ marketing.

~~(bb) "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, nonpotentially hazardous foods, roadside markets that offer only fresh fruits and fresh vegetables for sale, food service establishments, or food and beverage vending machines.~~

(y) ~~(ee)~~ "Vehicle" means a mode of transportation or mobile carrier used to transport food from one location to another, including, but not limited to, carts, cycles, vans, trucks, cars, trains and railway transport, and aircraft and watercraft transport.

Section 4. Subsection (1) of section 500.033, Florida Statutes, is amended to read:

500.033 Florida Food Safety and Food Defense Advisory

575-03462-19

20191646c1

291 Council.—

292 (1) There is created the Florida Food Safety and Food
 293 Defense Advisory Council for the purpose of serving as a forum
 294 for presenting, investigating, and evaluating issues of current
 295 importance to the assurance of a safe and secure food supply to
 296 the citizens of Florida. The Florida Food Safety and Food
 297 Defense Advisory Council shall consist of, but not be limited
 298 to+ the Commissioner of Agriculture or his or her designee; the
 299 State Surgeon General or his or her designee; the Secretary of
 300 Business and Professional Regulation or his or her designee; ~~the~~
 301 ~~person responsible for domestic security with the Department of~~
 302 ~~Law Enforcement~~; members representing the production,
 303 processing, distribution, and sale of foods; consumers or
 304 members of citizens groups; representatives of food industry
 305 groups; scientists or other experts in aspects of food safety
 306 from state universities; representatives from local, state, and
 307 federal agencies that are charged with responsibilities for food
 308 safety or food defense; and as ex officio members, the chairs of
 309 the Agriculture Committees of the Senate and the House of
 310 Representatives or their designees, ~~and~~ the chairs of the
 311 committees of the Senate and the House of Representatives with
 312 jurisdictional oversight of home defense issues or their
 313 designees, and the person responsible for domestic security with
 314 the Department of Law Enforcement or his or her designee. The
 315 Commissioner of Agriculture shall appoint the remaining members.
 316 The council shall make periodic reports to the Department of
 317 Agriculture and Consumer Services concerning findings and
 318 recommendations in the area of food safety and food defense.

319 Section 5. Paragraphs (a), (b), and (e) of subsection (1)

Page 11 of 29

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

575-03462-19

20191646c1

320 and subsection (2) of section 500.12, Florida Statutes, are
 321 amended to read:

322 500.12 Food permits; building permits.—

323 (1) (a) A food permit from the department is required of any
 324 person who operates a food establishment ~~or retail food store,~~
 325 except:

326 1. Persons operating minor food outlets that sell food that
 327 is commercially prepackaged, not potentially hazardous, and not
 328 time or temperature controlled for safety, if the shelf space
 329 for those items does not exceed 12 total linear feet and no
 330 other food is sold by the minor food outlet.

331 2. Persons subject to continuous, onsite federal or state
 332 inspection.

333 3. Persons selling only legumes in the shell, either
 334 parched, roasted, or boiled.

335 4. Persons selling sugar cane or sorghum syrup that has
 336 been boiled and bottled on a premise located within the state.
 337 Such bottles must contain a label listing the producer's name
 338 and street address, all added ingredients, the net weight or
 339 volume of the product, and a statement that reads, "This product
 340 has not been produced in a facility permitted by the Florida
 341 Department of Agriculture and Consumer Services."

342 (b) Each food establishment ~~and retail food store~~ regulated
 343 under this chapter must apply for and receive a food permit
 344 before operation begins. An application for a food permit from
 345 the department must be accompanied by a fee in an amount
 346 determined by department rule. The department shall adopt by
 347 rule a schedule of fees to be paid by each food establishment
 348 ~~and retail food store~~ as a condition of issuance or renewal of a

Page 12 of 29

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

575-03462-19

20191646c1

349 food permit. Such fees may not exceed \$650 and shall be used
 350 solely for the recovery of costs for the services provided,
 351 except that the fee accompanying an application for a food
 352 permit for operating a bottled water plant may not exceed \$1,000
 353 and the fee accompanying an application for a food permit for
 354 operating a packaged ice plant may not exceed \$250. The fee for
 355 operating a bottled water plant or a packaged ice plant shall be
 356 set by rule of the department. Food permits are not transferable
 357 from one person or physical location to another. Food permits
 358 must be renewed annually on or before January 1. If ~~an~~
 359 ~~application for renewal of~~ a food permit fee is not received in
 360 full by the department by January 1 ~~within 30 days after its due~~
 361 ~~date~~, a late fee not exceeding \$100 must be paid in addition to
 362 the food permit fee ~~before the department may issue the food~~
 363 ~~permit~~. The moneys collected shall be deposited in the General
 364 Inspection Trust Fund.

365 (e) The department is the exclusive regulatory and
 366 permitting authority for all ~~food outlets, retail food stores,~~
 367 ~~food establishments, convenience stores,~~ and minor food outlets
 368 in accordance with this section. Application for a food permit
 369 must be made on forms provided by the department, which forms
 370 must also contain provision for application for registrations
 371 and permits issued by other state agencies and for collection of
 372 the food permit fee and any other fees associated with
 373 registration, licensing, or applicable surcharges. The details
 374 of the application shall be prescribed by department rule.

375 (2) When any person applies for a building permit to
 376 construct, convert, or remodel any food establishment, ~~food~~
 377 ~~outlet, or retail food store~~, the authority issuing such permit

575-03462-19

20191646c1

378 shall make available to the applicant a printed statement,
 379 provided by the department, regarding the applicable sanitation
 380 requirements for such establishments. A building permitting
 381 authority, or municipality or county under whose jurisdiction a
 382 building permitting authority operates, may not be held liable
 383 for a food establishment, ~~food outlet, or retail food store~~ that
 384 does not comply with the applicable sanitation requirements due
 385 to failure of the building permitting authority to provide the
 386 information as provided in this subsection.

387 (a) The department shall furnish, for distribution, a
 388 statement that includes the checklist to be used by the food
 389 inspector in any preoperational inspections to assure that the
 390 food establishment is constructed and equipped to meet the
 391 applicable sanitary guidelines. Such preoperational inspection
 392 shall be a prerequisite for obtaining a food permit in
 393 accordance with this section.

394 (b) The department may provide assistance, when requested
 395 by the applicant, in the review of any construction or
 396 remodeling plans for food establishments. The department may
 397 charge a fee for such assistance which covers the cost of
 398 providing the assistance and which shall be deposited in the
 399 General Inspection Trust Fund for use in funding the food safety
 400 program.

401 (c) A building permitting authority or other subdivision of
 402 local government may not require the department to approve
 403 construction or remodeling plans for food establishments ~~and~~
 404 ~~retail food stores~~ as a condition of any permit or license at
 405 the local level.

406 Section 6. Subsection (1) of section 500.121, Florida

575-03462-19

20191646c1

Statutes, is amended to read:

500.121 Disciplinary procedures.—

(1) In addition to the suspension procedures provided in s. 500.12, if applicable, the department may impose an administrative fine in the Class II category pursuant to s. 570.971 against any ~~retail food store~~, food establishment, or cottage food operation that violates this chapter, which fine, when imposed and paid, shall be deposited by the department into the General Inspection Trust Fund. The department may revoke or suspend the permit of any such retail food store or food establishment if it is satisfied that the ~~retail food store or~~ food establishment has:

(a) Violated this chapter.

(b) Violated or aided or abetted in the violation of any law of this state governing or applicable to ~~retail food stores or~~ food establishments or any lawful rules of the department.

(c) Knowingly committed, or been a party to, any material fraud, misrepresentation, conspiracy, collusion, trick, scheme, or device whereby another person, lawfully relying upon the word, representation, or conduct of a ~~retail food store or~~ food establishment, acts to her or his injury or damage.

(d) Committed any act ~~that or conduct of the same or different character than that enumerated which~~ constitutes fraudulent or dishonest dealing.

Section 7. Paragraph (a) of subsection (3) of section 500.147, Florida Statutes, is amended to read:

500.147 Inspection of food establishments, food records, and vehicles.—

(3) For bottled water plants:

Page 15 of 29

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

575-03462-19

20191646c1

(a) Bottled water must be from an approved source. Bottled water must be processed in conformance with 21 C.F.R. part 129 ~~(2018)~~ ~~(2006)~~, and must conform to 21 C.F.R. part 165 ~~(2018)~~ ~~(2006)~~. A person operating a bottled water plant shall be responsible for all water sampling and analyses required by this chapter.

Section 8. Subsection (10) is added to section 500.81, Florida Statutes, to read:

500.81 Healthy Food Financing Initiative.—

(10) This section is repealed on October 1, 2020.

Section 9. Section 502.012, Florida Statutes, is amended to read:

502.012 Definitions.—As used in this chapter, the term:

(1) "Bulk milk hauler and sampler" means a person who collects official samples and may transport raw milk from a farm or raw milk products to or from a farm, milk plant, receiving station, or transfer station and has in his or her possession a permit to sample such products from any state regulatory agency charged in implementing the Grade "A" program.

(2)(1) "Bulk milk pickup tanker" means a vehicle, including the truck and tank, and necessary attachments for its use, used by a bulk milk hauler and sampler to transport bulk raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processing after packaging from a dairy farm to a milk plant, receiving station, or transfer station.

(3)(2) "Dairy farm" means any place or premises where one or more lactating animals, such as cows, goats, sheep, water buffalo, camels, or other hooved mammals, are kept for milking purposes and from which a part or all of the milk is provided,

Page 16 of 29

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

575-03462-19

20191646c1

465 sold, or offered for sale.

466 ~~(4)(3)~~ "Department" means the Department of Agriculture and
467 Consumer Services.

468 ~~(5)(4)~~ "Frozen dessert" means a specific standardized
469 frozen dessert described in 21 C.F.R. part 135 and any other
470 food defined by rule of the department that resembles such
471 standardized frozen dessert but does not conform to the specific
472 description of such standardized frozen dessert in 21 C.F.R.
473 part 135. The term includes, but is not limited to, a
474 quiescently frozen confection, a quiescently frozen dairy
475 confection, a frozen dietary dairy dessert, and a frozen dietary
476 dessert.

477 ~~(6)(5)~~ "Frozen desserts manufacturer" means a person who
478 manufactures, processes, converts, partially freezes, or freezes
479 any mix or frozen dessert for distribution or sale.

480 ~~(7)(6)~~ "Frozen desserts plant" means any location or
481 premises at which frozen desserts or mix are manufactured,
482 processed, or frozen for distribution or sale at wholesale.

483 ~~(8)(7)~~ "Frozen desserts retail establishment" means any
484 location or premises, including a retail store, stand, hotel,
485 boardinghouse, restaurant, vehicle, or mobile unit, at which
486 frozen desserts are frozen, partially frozen, or dispensed for
487 sale at retail.

488 ~~(9)(8)~~ "Frozen dietary dairy dessert" or "frozen dietary
489 dessert" means a food for any special dietary use, prepared by
490 freezing, with or without agitation, and composed of a
491 pasteurized mix that may contain fat, protein, carbohydrates,
492 natural or artificial sweeteners, flavoring, stabilizers,
493 emulsifiers, vitamins, and minerals.

575-03462-19

20191646c1

494 ~~(10)(9)~~ "Grade 'A' pasteurized milk ordinance" means the
495 document entitled "Grade 'A' Pasteurized Milk Ordinance, United
496 States Department of Health and Human Services, Public Health
497 Service, Food and Drug Administration," including all associated
498 appendices, as adopted by department rule.

499 ~~(11)(10)~~ "Imitation milk and imitation milk products" means
500 those foods that have the physical characteristics, such as
501 taste, flavor, body, texture, or appearance, of milk or milk
502 products as defined in this chapter and the Grade "A"
503 pasteurized milk ordinance but do not come within the definition
504 of "milk" or "milk products" and are nutritionally inferior to
505 the product imitated.

506 ~~(12)(11)~~ "Milk" means the lacteal secretion, practically
507 free from colostrum, obtained by the complete milking of one or
508 more healthy cows, goats, sheep, water buffalo, camels, or other
509 hooved mammals.

510 ~~(13)(12)~~ "Milk distributor" means any person who offers for
511 sale or sells to another person any milk or milk product.

512 ~~(14)(13)~~ "Milk products" means products made with milk that
513 is processed in some manner, including being whipped, acidified,
514 cultured, concentrated, lactose-reduced, or sodium-reduced or
515 aseptically processed, or having the addition or subtraction of
516 milkfat, the addition of safe and suitable microbial organisms,
517 or the addition of safe and suitable optional ingredients for
518 protein, vitamin, or mineral fortification. "Milk products" do
519 not include products such as evaporated milk, condensed milk,
520 eggnog in a rigid metal container, dietary products, infant
521 formula, or ice cream and other desserts.

522 ~~(15)(14)~~ "Milkfat" or "butterfat" means the fat contained

575-03462-19

20191646c1

in milk.

~~(16)-(15)~~ "Milk hauler" means any person who transports raw milk or raw milk products to or from a milk plant, receiving station, or transfer station.

~~(17)-(16)~~ "Milk plant" means any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, ultra-pasteurized, aseptically processed and packaged, retort processed after packaging, condensed, dried, packaged, bottled, or prepared for distribution.

~~(18)-(17)~~ "Milk plant operator" means any person responsible for receiving, processing, pasteurizing, or packaging milk and milk products, or performing any other related operation.

~~(19)-(18)~~ "Milk producer" means any person who operates a dairy farm and provides, sells, or offers for sale milk to a milk plant, receiving station, or transfer station.

~~(20)-(19)~~ "Milk tank truck" means either a bulk milk pickup tanker or a milk transport tank.

~~(21)-(20)~~ "Milk transport tank" means a vehicle, including the truck and tank, used by a bulk milk hauler and sampler or a milk hauler to transport bulk shipments of milk from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

~~(22)-(21)~~ "Quiescently frozen confection" means a clean and wholesome frozen, sweetened, flavored product that, while being frozen, was not stirred or agitated (generally known as quiescent freezing). The confection may be acidulated with food-grade acid, may contain milk solids or water, or may be made with or without added harmless pure or imitation flavoring and

575-03462-19

20191646c1

with or without harmless coloring. The finished product must not contain more than 0.5 percent by weight of stabilizer composed of wholesome, edible material and must not contain less than 17 percent by weight of total food solids. In the production of the confection, processing or mixing before quiescent freezing that develops in the finished confection mix any physical expansion in excess of 10 percent may not be used.

~~(23)-(22)~~ "Quiescently frozen dairy confection" means a clean and wholesome frozen product made from water, milk products, and sugar, with added harmless pure or imitation flavoring, with or without added harmless coloring, with or without added stabilizer, or with or without added emulsifier, that, while being frozen, was not stirred or agitated (generally known as quiescent freezing). The confection must not contain less than 13 percent by weight of total milk solids, less than 33 percent by weight of total food solids, more than 0.5 percent by weight of stabilizer, or more than 0.2 percent by weight of emulsifier. Stabilizer and emulsifier must be composed of wholesome, edible material. In the production of a quiescently frozen dairy confection, processing or mixing before quiescently freezing that develops in the finished confection mix any physical expansion in excess of 10 percent may not be used.

~~(24)-(23)~~ "Raw milk" means unpasteurized, unprocessed milk.

~~(25)-(24)~~ "Receiving station" means any place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and is prepared for further transporting.

~~(26)~~ "Reconstituted milk or milk products" or "recombined milk or milk products" means milk or milk products that result from reconstituting or recombining of milk constituents with

575-03462-19

20191646c1

581 potable water.

582 (27) "Retail" means the sale of goods to the public for use
 583 or consumption rather than for resale.

584 (28)-(25) "Substitute milk and substitute milk products"
 585 means those foods that have the physical characteristics, such
 586 as taste, flavor, body, texture, or appearance, of milk or milk
 587 products as defined in this chapter and the Grade "A"
 588 pasteurized milk ordinance but do not come within the definition
 589 of "milk" or "milk products" and are nutritionally equivalent to
 590 the product for which they are substitutes.

591 (29)-(26) "Transfer station" means any place, premises, or
 592 establishment where milk or milk products are transferred
 593 directly from one milk tank truck to another.

594 (30) "Ultra-pasteurization" means a thermal process by
 595 which milk or milk products are heated to 280 degrees Fahrenheit
 596 or above for at least 2 seconds, before or after packaging, to
 597 produce a milk or milk product that has an extended shelf-life
 598 under refrigerated conditions.

599 (31)-(27) "Washing station" means any place, premises, or
 600 establishment where milk tank trucks are cleaned and sanitized.

601 (32) "Wholesale" means the selling of goods in quantity to
 602 be retailed by others.

603 Section 10. Paragraph (a) of subsection (2) of section
 604 502.014, Florida Statutes, is amended to read:

605 502.014 Powers and duties.—

606 (2) (a) The department shall conduct onsite inspections of
 607 any facility used in the production, processing, and
 608 distribution of any milk or milk products under this chapter and
 609 shall collect samples of such products from such facilities for

575-03462-19

20191646c1

610 testing pursuant to dairy farms, milk plants, and frozen dessert
 611 plants and collect test samples of milk, milk products, and
 612 frozen desserts as required by this chapter.

613 Section 11. Paragraph (b) of subsection (1), paragraph (d)
 614 of subsection (3), and paragraph (a) of subsection (4) of
 615 section 502.053, Florida Statutes, are amended to read:

616 502.053 Permits and fees; requirements; exemptions;
 617 temporary permits.—

618 (1) PERMITS.—

619 (b) Each frozen dessert plant, whether located in the state
 620 or outside the state, that manufactures frozen desserts or other
 621 products defined in this chapter and offers these products at
 622 wholesale for sale in this state must apply to the department
 623 for a permit to operate. The application must be submitted on
 624 forms prescribed by the department. All frozen dessert permits
 625 expire on June 30 of each year.

626 (3) REQUIREMENTS.—

627 ~~(d) Each frozen dessert plant permit holder must report~~
 628 ~~monthly, quarterly, semiannually, or annually, as required by~~
 629 ~~the department, the number of gallons of frozen dessert or~~
 630 ~~frozen dessert mix sold or manufactured by the permit holder in~~
 631 ~~this state.~~

632 (4) EXEMPTIONS.—

633 (a) The following persons are ~~shall be~~ exempt from bulk
 634 milk hauler and sampler permit requirements:

635 1. Milk producers who transport milk or milk products only
 636 from their own dairy farms.

637 2. Employees of a milk distributor or milk plant operator
 638 who possesses a valid permit.

575-03462-19

20191646c1

3. Drivers of bulk milk tank trucks between locations who do not collect milk from farms.

Section 12. Subsections (1) and (4) of section 502.181, Florida Statutes, are amended to read:

502.181 Prohibited acts.—It is unlawful for any person in this state to:

(1) Engage in the business of producing, hauling, transferring, receiving, processing, packaging, or distributing milk, milk products, or frozen desserts or operating a washing station, manufacturing single-service containers, or manufacturing imitation or substitute milk or milk products, ~~or testing for milkfat content,~~ without first obtaining a permit or license from the department.

~~(4) Repasteurize milk.~~

Section 13. Subsection (4) of section 570.441, Florida Statutes, is amended to read:

570.441 Pest Control Trust Fund.—

(4) In addition to the uses authorized under subsection (2), moneys collected or received by the department under chapter 482 may be used to carry out the provisions of s. 570.44. This subsection expires June 30, 2024 ~~2019~~.

Section 14. Subsection (1) of section 570.93, Florida Statutes, is amended to read:

570.93 Department of Agriculture and Consumer Services; agricultural water conservation and agricultural water supply planning.—

(1) The department shall establish an agricultural water conservation program that includes the following:

(a) A cost-share program, coordinated ~~where appropriate~~

575-03462-19

20191646c1

with the United States Department of Agriculture and other federal, state, regional, and local agencies when appropriate, for irrigation system retrofit and application of mobile irrigation laboratory evaluations and for water conservation and ~~as provided in this section and, where applicable, for~~ water quality improvement pursuant to s. 403.067(7)(c).

(b) The development and implementation of voluntary interim measures or best management practices, adopted by rule, which provide for increased efficiencies in the use and management of water for agricultural production. In the process of developing and adopting rules for interim measures or best management practices, the department shall consult with the Department of Environmental Protection and the water management districts. Such rules may also include a system to ensure ~~assure~~ the implementation of the practices, including recordkeeping requirements. As new information regarding efficient agricultural water use and management becomes available, the department shall reevaluate and revise ~~as needed~~, the interim measures or best management practices as needed. The interim measures or best management practices may include irrigation retrofit, implementation of mobile irrigation laboratory evaluations and recommendations, water resource augmentation, and integrated water management systems for drought management and flood control and should, to the maximum extent practicable, be designed to qualify for regulatory incentives and other incentives, as determined by the agency having applicable statutory authority.

(c) Provision of assistance to the water management districts in the development and implementation, to the extent

575-03462-19

20191646c1

697 ~~practicable, of a consistent, to the extent practicable,~~
 698 methodology for the efficient allocation of water for
 699 agricultural irrigation.

700 Section 15. Subsection (1) of section 590.02, Florida
 701 Statutes, is amended to read:

702 590.02 Florida Forest Service; powers, authority, and
 703 duties; liability; building structures; Withlacoochee Training
 704 Center.—

705 (1) The Florida Forest Service has the following powers,
 706 authority, and duties to:

707 (a) Enforce the provisions of this chapter;

708 (b) Prevent, detect, and suppress wildfires wherever they
 709 may occur on public or private land in this state and do all
 710 things necessary in the exercise of such powers, authority, and
 711 duties;

712 (c) Provide firefighting crews, who shall be under the
 713 control and direction of the Florida Forest Service and its
 714 designated agents;

715 (d) Appoint center managers, forest area supervisors,
 716 forestry program administrators, a forest protection bureau
 717 chief, a forest protection assistant bureau chief, a field
 718 operations bureau chief, deputy chiefs of field operations,
 719 district managers, forest operations administrators, senior
 720 forest rangers, investigators, forest rangers, firefighter
 721 rotorcraft pilots, and other employees who may, at the Florida
 722 Forest Service's discretion, be certified as forestry
 723 firefighters pursuant to s. 633.408(8). Other law
 724 notwithstanding, center managers, district managers, forest
 725 protection assistant bureau chief, and deputy chiefs of field

575-03462-19

20191646c1

726 operations have Selected Exempt Service status in the state
 727 personnel designation;

728 (e) Develop a training curriculum for wildland forestry
 729 firefighters which must contain at least 40 hours of structural
 730 firefighter training, at least 40 hours of emergency medical
 731 training, and at least 376 the basic volunteer structural fire
 732 training course approved by the Florida State Fire College of
 733 the Division of State Fire Marshal and a minimum of 250 hours of
 734 wildfire training;

735 (f) Pay the cost of the initial commercial driver license
 736 examination fee for those employees whose position requires them
 737 to operate equipment requiring a license. This paragraph is
 738 intended to be an authorization to the department to pay such
 739 costs, not an obligation;

740 (g) Provide fire management services and emergency response
 741 assistance and set and charge reasonable fees for performance of
 742 those services. Moneys collected from such fees shall be
 743 deposited into the Incidental Trust Fund of the Florida Forest
 744 Service;

745 (h) Require all state, regional, and local government
 746 agencies operating aircraft in the vicinity of an ongoing
 747 wildfire to operate in compliance with the applicable state
 748 Wildfire Aviation Plan;

749 (i) Authorize broadcast burning, prescribed burning, pile
 750 burning, and land clearing debris burning to carry out the
 751 duties of this chapter and the rules adopted thereunder; and

752 (j) Make rules to accomplish the purposes of this chapter.

753 Section 16. Subsection (16) is added to section 595.404,
 754 Florida Statutes, to read:

575-03462-19

20191646c1

595.404 School food and other nutrition programs; powers and duties of the department.—The department has the following powers and duties:

(16) To adopt and implement an exemption, variance, and waiver process by rule, as required by federal regulations, for sponsors of the programs implemented pursuant to this chapter, notwithstanding s. 120.542.

Section 17. Paragraph (d) of subsection (1) of section 633.406, Florida Statutes, is amended to read:

633.406 Classes of certification.—

(1) The division may award one or more of the following certificates:

(d) Wildland Firefighter Forestry Certificate of Compliance.—A Wildland Firefighter Forestry Certificate of Compliance may be awarded to a person who has satisfactorily complied with a training program and successfully passed an examination as prescribed by rule, and who possesses the qualifications established in s. 590.02(1)(e).

Section 18. Subsection (8) of section 633.408, Florida Statutes, is amended to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(8)(a) Pursuant to s. 590.02(1)(e), the division shall establish a structural fire training program of at least 40 ~~not less than 206~~ hours. The division shall issue to a person satisfactorily complying with this training program and who has successfully passed an examination as prescribed by the division and who has met the requirements of s. 590.02(1)(e), a Wildland Firefighter Forestry Certificate of Compliance.

575-03462-19

20191646c1

(b) An individual who holds a current and valid Wildland Firefighter Forestry Certificate of Compliance is entitled to the same rights, privileges, and benefits provided for by law as a firefighter.

Section 19. Section 828.261, Florida Statutes, is created to read:

828.261 Ongoing horse care covenants.—

(1) Notwithstanding any other provision of law, a contract for the sale of a horse may include a covenant for the continuing care of the horse, subject to the following provisions:

(a) The obligations under the covenant may be satisfied by a third-party provider who is contractually obligated to provide continuing care for the horse upon its retirement, for an actuarially appropriate charge, which is not subject to chapter 624.

(b) The covenant is valid and annexed to the horse, runs with the horse, and is binding and enforceable upon all future purchasers, if notice is provided pursuant to paragraph (c).

(c) Written notice of the covenant must be provided to all purchasers before a sale and must be acknowledged in writing by all such purchasers before consummation of the sale of a covered horse.

(d) The covenant must include liability for liquidated damages for a purchaser's failure to comply with the covenant.

(e) The covenant must include the ability of an owner to retire the horse into the care of the third-party provider under the covenant.

(f) A third-party provider who is contracted to provide the

575-03462-19

20191646c1

813 continuing care of a horse under the covenant shall, at a
814 minimum, comply with the American Association of Equine
815 Practitioners care guidelines for equine rescue and retirement
816 facilities.

817 (2) An owner is not required to put in place a covenant for
818 the continuing care of a horse and a purchaser is not required
819 to purchase a horse that is subject to such a covenant.

820 (3) This section does not create any covenants that annex
821 to or travel with any other chattel.

822 Section 20. This act shall take effect July 1, 2019.

Date: 03/05/2019

Agency Affected:	<u>Dept. of Agriculture and Consumer Services</u>	Telephone: <u>850-617-7000</u>
Agency Contact:	<u>Emily Buckley, Legislative Affairs Director</u>	Telephone: <u>850-617-7700</u>
Respondent:	<u>Emily Koon</u>	Telephone: <u>850-410-2289</u>

RE: SENATE BILL # 1646 – Department of Agriculture and Consumer Services– By Sen. Albritton

I. SUMMARY

The proposed bill makes the following changes to the Department of Agriculture and Consumer Services' (department) statutory responsibilities.

Agriculture-focused:

- Clarifies the definition of food establishment to be consistent with the current regulatory structure and eliminates unused defined terms without modifying existing departmental regulatory responsibilities;
- Realigns Chapter 502 with recent updates to the Grade A Pasteurized Milk Ordinance;
- Clarifies the preexisting distinction between wholesale and retail frozen dessert sellers and phases out the frozen dessert plant number of gallons of frozen dessert produced reporting requirement;
- Revises the authority of the department to include the inspection of facilities used to distribute milk and milk products and collect samples of those products for testing;
- Eliminates the Milkfat Content Licensing requirement;
- Postpones a sunset provision for certain Pest Control Trust Fund expenditures;
- Revises the requirements for the agriculture water conservation program;
- Establishes a waiver process by rule for School Nutrition Program Sponsors; and
- Expands the types of cost-share projects that can be considered and funded.

Licensing-focused:

- Defines Raw Agricultural Commodity Fumigation and clarifies the applicability of licensure requirements;
- Enables the department to consider whether an entity performs Raw Agricultural Commodity Fumigation when making license classification decisions;
- Clarifies the food establishment licensee fee submission deadline and;
- Revises the Florida Forest Service's training requirements and certifications for firefighters.

Consumer Services-focused:

- Repeals the Healthy Food Financing Initiative.

Chapter 487—Pesticide Regulation and Safety **487.021, F.S., Definitions**

Present Situation

Pest control activities are statutorily regulated by Chapter 482 F.S., and the rules are enacted under its granted authority. Chapter 482's definition of fumigation is limiting when interpreting Chapter 482. Currently, a statutory definition of fumigation for agricultural activities does not exist.

Effect of Proposed Changes

The proposed statutory revisions provide further clarity on the applicable regulations to the pest control and the agricultural commodity industries. The department's existing regulatory responsibilities will remain the same with the incorporation of these changes.

Chapter 487—Pesticide Regulation and Safety

487.0435, F.S., License Classification

Present Situation

Section 487.0435, F.S., enables, but does not limit, the department's ability to consider numerous criteria when classifying applications for licensure.

Effect of Proposed Changes

The proposed change enables the department to consider whether the fumigant is being used solely for Raw Agricultural Commodities Fumigation (as defined in s. 487.021(57), F.S.) when making classification decisions. The revision conforms the change proposed to s. 487.021, F.S.

Chapter 500—Food Products

500.03, F.S., Definitions; Construction; Applicability

Present Situation

Section 500.03, F.S., contains the terms defined for use throughout the chapter.

Effect of Proposed Changes

The proposed bill removes unused defined terms in s.500.03, F.S., The proposed changes centralize the definition of food establishment and updates the statute's reference to the definition of bottled water contained in the Code of Federal Regulations. Centralizing the defined terms provides clarity to regulated entities. The department's existing regulatory responsibilities will remain the same with the incorporation of these proposed changes.

Chapter 500—Food Products

500.033, F.S., Florida Food Safety and Food Defense Advisory Council

Present Situation

The Florida Food Safety and Food Defense Advisory Council serves as a forum for evaluating issues that ensure a safe food supply in Florida. The council shall consist, but need not be limited to, the Commissioner of Agriculture or his or her designee; the State Surgeon General or his or her designee; the Secretary of the Department of Business and Professional Regulation or his or her designee; the person responsible for domestic security within the Department of Law Enforcement; members representing the food production, processing, distribution or sale industries; food industry group representatives; consumers or members of citizens groups; scientists or other experts from state universities; representatives from local, state and federal agencies; the chairs of the Florida House and the Senate Agriculture Committees or their designees; and the chairs of Florida House or Senate Committees with jurisdictional oversight over home defense issues. The list above describes the minimum membership but does not prevent the Commissioner of Agriculture from appointing additional members.

Effect of Proposed Changes

The proposed revisions to the statute makes the individual responsible for domestic security within the Department of Law Enforcement, the chairs of Florida House and Florida Senate agricultural committees or their designee, and the chairs of the committees of the Florida House and Florida Senate responsible for domestic security or their designees ex officio members. These proposed revisions do not impact the ability of other law enforcement representatives to be appointed, or the ability of the Commissioner of Agriculture to appoint these individuals or others in the future.

Chapter 500—Food Products

500.12, F.S., Food Permits; Building Permits

Present Situation

Section 500.12 F.S., contains food permit requirements for distinct types of food establishments and allows the department to charge a late fee. If the applicant misses the annual 31 December deadline and fails to remit payment during January of the next year, the applicant may be charged a late fee not exceeding \$100.

Effect of Proposed Changes

The proposed revisions will require food establishments to submit their payments by the annual 31 December deadline or pay a late fee not exceeding \$100. The proposed revision conforms the changes proposed to s. 500.03, F.S.

Chapter 500—Food Products

500.121, F.S., Disciplinary Procedures and 500.147, F.S. Inspection of Food Establishments, Food Records, and Vehicles

Present Situation

S. 500.121, F.S., contains authority for disciplinary procedures and s. 500.147, F.S., contains authority for inspection of food establishments, food records, and vehicles.

Effect of Proposed Changes

The proposed revisions align these sections with the proposed revisions to s. 500.03, F.S., The department's existing regulatory responsibilities will remain the same with the incorporation of these changes.

Chapter 502—Milk, Milk Products and Frozen Desserts

502.012, F.S., Definitions and 502.014, F.S., Powers and Duties

Present Situation

The Grade A Pasteurized Milk Ordinance is a collection of rules assembled by The Food and Drug Administration that prescribes a baseline for products sold across the United States. The ordinance has been adopted by department rule. Recent revisions require the definitions in the Florida Statutes to be updated, along with the types of facilities listed in the powers and duties section to realign them with the Grade A Pasteurized Milk Ordinance. The products and facility types listed in s. 502.014, F.S., are not currently inclusive of all products or entities covered by the Grade A Pasteurized Milk Ordinance and

under the department's existing regulatory authority.

Effect of the Proposed Changes

The proposed changes realign the definitions in s. 502.014, F.S., with the updated Grade A Pasteurized Milk Ordinance that was adopted by the department. The proposed changes in s.502.014, F.S., also realign list entities currently regulated by the department with the updated Grade A Pasteurized Milk Ordinance that was adopted by the department. Importantly, these changes do not impact the number or types of persons required to have a permit.

Chapter 502—Milk, Milk Products and Frozen Desserts **502.053, F.S., Permits and Fees; Requirements; Exemptions; Temporary Permits**

Present Situation

Currently, s. 502.053, F.S., requires frozen dessert plants that manufacture and/or wholesale these products to submit monthly, quarterly, semiannual and annual reports documenting the number of gallons of frozen dessert sold. The intent of the legislation is to only require wholesaling entities to register for this license; retailers must conform to other food safety regulations. The required reports are not consistently utilized to materially impact the regulatory process. The department uses many other mechanisms to ensure that the dairy supply and frozen dessert produced using dairy are safe.

Effect of the Proposed Changes

The changes proposed to s. 502.012, F.S., as further described above, furnish a clear distinction between wholesale and retail entities. The revisions to s. 502.053, F.S., will clarify which business entities need frozen dessert plant licenses and eliminates the volume reporting requirement.

Chapter 502—Milk, Milk Products and Frozen Desserts **502.181, F.S., Prohibited Acts**

Present Situation

Individuals and entities that would like to test for milkfat content are required to be permitted by the department (no license fee). Importantly, these milkfat testing results are not used or retained by the department, and milkfat content does not affect food safety. Commercial entities commonly test milkfat to ensure that the products they receive from suppliers conform to contractual standards. The Grade A Pasteurization Ordinance requires Grade A products to be pasteurized at the final point of packaging, whether a supplier previously pasteurized them. Because of the current supply chain structure, dairy products are frequently re-pasteurized to comply with the Grade A Pasteurization Ordinance requirements. It is currently unlawful to re-pasteurize in Florida.

Effect of the Proposed Changes

The proposed revisions eliminate the milkfat permitting requirements and modify the statute to allow Florida entities to conform to the Grade A Pasteurization Ordinance requirements. Milkfat permit applicants are not required to submit a fee, and therefore, no fiscal impact is anticipated.

Chapter 570—Department of Agriculture and Consumer Services **570.441, F.S., Pest Control Trust Fund**

Present Situation

Section 570.441(4), F.S., enables Pest Control Trust Funds to be used to carry out the provisions of s. 570.44 F.S. If the provision sunsets on 30 June 2019, the funds will only be able to be spent in accordance with Chapter 482.

Effect of the Proposed Changes

The proposed revision prevents s. 570.441(4), F.S.'s, expiration until 30 June 2024, allowing the department to use these funds to carry out the provisions of s. 570.44, F.S.,

Chapter 570—Department of Agriculture and Consumer Services 570.93, F.S., Department of Agriculture and Consumer Services; Agricultural Water Conservation and Agricultural Water Supply Planning

Present Situation

Section 570.93, F.S., authorizes a cost-share program amongst federal, state, regional and local agencies for irrigation system retrofits and the application of mobile irrigation laboratory evaluations for water conservation and nutrient reduction.

Effect of the Proposed Changes

The revisions make minor editorial modifications. The proposed revisions enable the funds to continue to be used for irrigation system retrofits and mobile irrigation lab evaluations. The proposed revisions also permit the funds to be spent on additional water conservation activities.

Chapter—590 Forest Protection 590.02, F.S., Florida Forest Service; Powers, Authority, and Duties; Liability; Building Structures; Withlacoochee Training Center

Present Situation

s. 590.02(1), F.S.,
Currently to be licensed, Florida Forest Service firefighters must complete a fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training. Pursuant to s. 633.408 F.S., the Division of the State Fire Marshal's (DFSM) structural training course must be at least 206 hours, students must pass a required exam administered by the division and meet the Florida Forest Services' requirements to receive a Forestry Certificate of Compliance. The Florida Forest Service, unlike many other fire suppression and safety agencies, primarily manages wildland or forest fires that may involve a structural element.

Effect of the Proposed Changes

s. 590.02(1), F.S.,
The proposed revisions require the department to restructure its training course to better meet its firefighters' specific training needs. The minimum number of wildfire training hours will go from 250 to 376 and the proposed statute also prescribes a minimum of 40 structural training hours and 40 emergency medical training hours.

Chapter—595 School Food and Nutrition Services
595.404, F.S., School Food and Other Nutrition Programs; Powers and Duties of the Department

Present Situation

Pursuant to s. 120.542, F.S., agencies are authorized to waive rules when the person subject to the rule demonstrates that the requirement has been achieved by other means and when the application of a rule would create substantial hardship or would violate the principles of fairness. Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l), authorizes state administering agencies to request exemptions to specific School Nutrition Program requirements if a program participant demonstrates a hardship and the request does not conflict with the U.S.C. requirements that cannot be waived.

Effect of the Proposed Changes

The proposed revision allows the department to establish an exemption, variance and waiver process by rule for School Nutrition Program Sponsors. The revision does not modify existing departmental responsibilities.

Chapter—500 Food Products
500.81, F.S., Healthy Food Financing Initiative

Present Situation

The department or its qualified contractors are currently responsible for managing the Healthy Food Financing Initiative. The program provides assistance to qualifying entities that provide food retail or food to primarily low-income and underserved communities. An entity must allocate at least 30% of food retail space to the sale of perishable goods to be eligible for infrastructure upgrades. An entity that allocates less than 30% may still qualify for funding to be used on refrigeration, displays or other one-time capital expenditures to promote the sale of fresh produce and other healthy foods.

Effect of the Proposed Changes

The proposed changes of the revision repeal the Healthy Food Financing Initiative.

Chapter 633—Fire Prevention and Control
633.406, F.S., Classes of Certification and 633.408, F.S., Firefighter and Volunteer Firefighter Training and Certification

Present Situation

s. 633.406, F.S., allows the division may award one or more certificate of various types. Pursuant to s. 590.02(1)(e), F.S. the Division of the State Fire Marshall (DSFM) shall establish a structural firefighting training program of not less than 206 hours. Individuals that satisfy the DSFM's training requirement, pass the exam and complete 250 hours of wildfire training will receive a Forestry Certificate of Compliance issued by the DSFM.

Effect of the Proposed Changes

The bill makes conforming changes to s. 633.406, F.S., s. 633.408, F.S., to be consistent with the changes proposed in s. 590.02, F.S.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

	(FY 19-20) Amount/FTE	(FY 20-21) Amount/FTE	(FY 21-22) Amount/FTE
A. Revenues			
1. Recurring			
2. Non-Recurring			

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

VII. LEGAL ISSUES

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

D. Other:

VIII. COMMENTS:

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

April 8

Meeting Date

1646

Bill Number (if applicable)

Topic For Bill

Amendment Barcode (if applicable)

Name Tim Meenan

Job Title _____

Address 300 S. Duval St.

Phone (850) 425-4000

Street

Tallahassee

FL

City

State

Zip

Email Tim@meenaninfo.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing 14270 Palm Beach Pkwy.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/19
Meeting Date

1646
Bill Number (if applicable)

Topic FDACS

Amendment Barcode (if applicable)

Name Adam Bastford

Job Title Legislative Affairs Dir.

Address 310 W College

Phone 222 2557

Street

Tallahassee

State

FL 32301

Zip

Email adam.bastford@ffba.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Farm Bureau

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/9/19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB1646

Bill Number (if applicable)

Topic FDACS BILL

Amendment Barcode (if applicable)

Name MATT ALFORD

Job Title DEP LEG AFFAIRS DIRECTOR

Address Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL DEPT AGRICULTURE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Debbie Mayfield, Chair
Appropriations Subcommittee on Agriculture, Environment, and General Government

Subject: Committee Agenda Request

Date: March 26, 2019

I respectfully request that **Senate Bill #1646**, relating to Department of Agriculture and Consumer Services, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Appropriations Subcommittee on Agriculture, Environment and General Government **Judge:**

Started: 4/9/2019 1:32:22 PM

Ends: 4/9/2019 2:12:39 PM **Length:** 00:40:18

1:32:35 PM	Called to Order
1:32:40 PM	Sen. Mayfield (Chair)
1:33:43 PM	S 1552
1:33:45 PM	Sen. Gruters
1:35:13 PM	David Cullen, Lobbyist, Sierra Club Florida
1:36:25 PM	David Shepp, Lobbyist, Mote Marine Laboratory
1:37:53 PM	Sen. Broxson
1:38:27 PM	D. Shepp
1:39:02 PM	Sen. Mayfield
1:39:18 PM	D. Shepp
1:39:40 PM	Sen. Powell
1:40:17 PM	D. Shepp
1:41:07 PM	Sen. Stewart
1:41:51 PM	D. Shepp
1:42:11 PM	Jennifer Goen, Director of Government Relations, Florida Gulf Coast University (waives in support)
1:42:20 PM	Diana Ferguson, Attorney, Miami-Dade County (waives in support)
1:42:30 PM	Sen. Berman
1:43:34 PM	Sen. Gruters
1:45:14 PM	S 286
1:45:24 PM	Sen. Albritton
1:46:33 PM	Am. 907278
1:46:45 PM	Sen. Albritton
1:47:51 PM	Sen. Berman
1:48:25 PM	Sen. Albritton
1:49:48 PM	S 286 (cont.)
1:50:00 PM	David Cullen, Sierra Club Florida (waives in support)
1:50:08 PM	Richard Gentry, Lobbyist, Stand Up For North Florida (waives in support)
1:50:12 PM	Rob Williamson, CEO Holley-Navarre Water System (waives in support)
1:50:14 PM	Rebecca O'Hara, Deputy General Counsel, Florida League of Cities (waives in support)
1:50:17 PM	Drinda Merritt, Mayor, Town of Inglis (waives in support)
1:50:20 PM	David Childs, Legal Council, FWEA Utility Council (waives in support)
1:50:23 PM	Mark Thomasson, Associate, Conservation and Environmental Quality Committee of Florida Engineering Society (waives in support)
1:50:57 PM	Sen. Mayfield
1:51:24 PM	Sen. Albritton
1:52:43 PM	S 1646
1:53:01 PM	Sen. Albritton
1:55:51 PM	Sen. Stewart
1:56:09 PM	Sen. Albritton
1:57:23 PM	Tim Meenan, Lobbyist, 14270 Palm Beach Point (waives in support)
1:57:32 PM	Adam Basford, Legislative Affairs Director, Florida Farm Bureau (waives in support)
1:57:40 PM	Matt Alford, Dept. of Legislative Affairs Director, Florida Department of Agriculture (waives in support)
1:57:54 PM	Sen. Albritton
1:58:28 PM	S 1502
1:58:45 PM	Sen. Bradley
1:59:50 PM	Drinda Merritt, Mayor, Town of Inglis (waives in support)
1:59:59 PM	Sen. Mayfield
2:00:20 PM	Sen. Bradley
2:00:58 PM	S 538
2:01:12 PM	Sen. Brandes
2:01:50 PM	Sen. Stewart
2:02:17 PM	Sen. Brandes

2:03:28 PM Sen. Hutson
2:03:46 PM Ashley Kalifeh, Lobbyist/Attorney, Florida Surplus Lines Association (waives in support)
2:03:59 PM Donovan Brown, Lobbyist, Wholesale & Specialty Insurance Association (waives in support)
2:04:03 PM Amanda Ruppel, Managing Director, Burns & Wilcox (waives in support)
2:04:10 PM Michael Franzese, Senior Vice President, RT Specialty (waives in support)
2:04:21 PM Sen. Hooper
2:05:01 PM Sen. Mayfield
2:05:25 PM Sen. Brandes
2:06:42 PM S 1278
2:06:47 PM Sen. Powell (Chair)
2:07:01 PM Sen. Mayfield
2:07:12 PM Am. 778974
2:07:23 PM Sen. Mayfield
2:10:02 PM Pepper Uchino, Lobbyist, Indian River County (waives in support)
2:10:19 PM S 1278
2:10:37 PM David Cullen, Lobbyist, Sierra Club Florida (waives in support)
2:10:47 PM Kurt Spitzer, Lobbyist, Florida Stormwater Association (waives in support)
2:10:56 PM Trish Neely, Board Member, League Women Voters (waives in support)
2:11:51 PM Sen. Mayfield (Chair)
2:12:06 PM Sen. Bean
2:12:26 PM Meeting Adjourned