

Tab 2 SB 1390 by Simmons; (Identical to H 00775) Everglades Protection Area

Tab 3 SB 1450 by Gruters; (Identical to H 01091) Environmental Enforcement

812520	A	S	RS	EN, Gruters	Delete L.164:	01/27 06:13 PM
680760	SA	S	RCS	EN, Gruters	Delete L.164:	01/27 06:13 PM

Tab 4 SB 1618 by Diaz; (Identical to H 01047) Construction Materials Mining Activities

Tab 5 SB 702 by Albritton; (Similar to H 00609) Petroleum Cleanup

153816	A	S	RCS	EN, Albritton	Delete L.28 - 76:	01/27 06:13 PM
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Tab 6 SB 1382 by Albritton; (Compare to H 01199) Environmental Resource Management

887650	D	S	RS	EN, Albritton	Delete everything after	01/27 06:13 PM
295090	SD	S	RCS	EN, Albritton	Delete everything after	01/27 06:13 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

ENVIRONMENT AND NATURAL RESOURCES

Senator Montford, Chair
Senator Albritton, Vice Chair

MEETING DATE: Monday, January 27, 2020
TIME: 4:00—6:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Montford, Chair; Senator Albritton, Vice Chair; Senators Berman, Mayfield, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Report by the Department of Environmental Protection on Citizen Support Organizations		Presented
2	SB 1390 Simmons (Identical H 775)	Everglades Protection Area; Requiring comprehensive plans and plan amendments adopted by the governing bodies of local governments whose boundaries include any portion of the Everglades Protection Area to follow the state coordinated review process; requiring the Department of Environmental Protection to make certain determinations for such plans and amendments, to provide written notice of its determination to the local governments within a specified timeframe, and to coordinate with the local governments on certain mitigation measures, etc. EN 01/27/2020 Favorable CA RC	Favorable Yeas 5 Nays 0
3	SB 1450 Gruters (Identical H 1091)	Environmental Enforcement; Increasing the civil penalties for violations of certain provisions relating to beach and shore construction, the Biscayne Bay Aquatic Preserve, aquatic preserves, the state water resource plan, artesian wells, pollution, operating a terminal facility without discharge prevention and response certificates, discharge contingency plans for vessels, the Pollutant Discharge Prevention and Control Act, the Clean Ocean Act, the pollution of surface and ground waters, the regulation of oil and gas resources, the Phosphate Land Reclamation Act, sewage disposal facilities, pollution control, reasonable costs and expenses for pollution releases, necessary permits, dumping litter, small quantity generators, the abatement of imminent hazards caused by hazardous substances, hazardous waste generators, transporters, or facilities, and coral reef protection, respectively, etc. EN 01/27/2020 Fav/CS AEG AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Environment and Natural Resources

Monday, January 27, 2020, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1618 Diaz (Identical H 1047, Compare H 1431)	Construction Materials Mining Activities; Creating a pilot program within the Division of State Fire Marshal to monitor and report on the use of explosives in construction materials mining activities in Miami-Dade County; requiring the State Fire Marshal to hire or contract with seismologists to monitor and report blasts occurring in connection with construction materials mining activities in Miami-Dade County and to post the reports of the seismologists on the division's website; requiring a person who engages in construction materials mining activities in Miami-Dade County to submit certain written notice relating to the use of an explosive to the State Fire Marshal, etc. EN 01/27/2020 Favorable BI RC	Favorable Yeas 5 Nays 0
5	SB 702 Albritton (Similar H 609)	Petroleum Cleanup; Revising requirements for a limited contamination assessment report required to be provided by a property owner, operator, or person otherwise responsible for site rehabilitation to the Department of Environmental Protection under the Petroleum Cleanup Participation Program; revising the contents of an advanced cleanup application to include a specified property owner or responsible party agreement, etc. EN 01/27/2020 Fav/CS AEG AP	Fav/CS Yeas 5 Nays 0
6	SB 1382 Albritton (Compare H 1199, H 1363, CS/S 712)	Environmental Resource Management; Providing that basin management action plan management strategies may include certain water quality improvement elements; requiring the Department of Environmental Protection, in coordination with the Department of Health or water management districts, to develop and implement a cooperative urban, suburban, commercial, or institutional water quality improvement element; requiring the Institute of Food and Agriculture Sciences of the University of Florida, in cooperation with the Department of Agriculture and Consumer Services, to develop a research plan and a legislative budget request, etc. EN 01/27/2020 Fav/CS AEG AP	Fav/CS Yeas 4 Nays 0

Other Related Meeting Documents



CITIZEN SUPPORT ORGANIZATIONS

Eric Draper, Director - Florida State Parks

Senate Environment & Natural Resources Committee - January 27, 2020

DEP'S CITIZEN SUPPORT ORGANIZATIONS



96 CSOs

83 Florida Park Service

**13 Office of Resilience
and Coastal Protection**

FLORIDA PARK SERVICE



4X Winner of the National Gold Medal

- 83 Citizen Support Organizations
- 133 state parks supported
- \$4.4 M spent on approved park projects
- 20,453 volunteers
- 1.2 M hours of service



1/27/2020



3

RESILIENCE AND COASTAL PROTECTION



- 13 Citizen Support Organizations
- 3 National Estuarine Research Reserves
- 41 Aquatic Preserves
- 57,412 hours of service



1/27/2020

DEP'S CITIZEN SUPPORT ORGANIZATIONS



CSOs authorized by statute to:

- Conduct programs and activities
- Raise funds
- Request/receive grants, gifts and bequests of money
- Acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value or other property, real or personal
- Make expenditures to or for the direct or indirect benefit of DEP or individual units



CSOs MAKE A DIFFERENCE



Dedicated local nonprofits partner with DEP to:

- Tell a property's story
- Connect people to the property with programs and volunteer opportunities
- Raise funds for improvements
- Work to preserve Florida's cultural and natural history



2014 LEGISLATION REQUIRED CSO REVIEW



Authorized Activities

Sections
20.2551 &
258.015, F.S.

Reporting & Transparency

Section
20.058, F.S.

Ethics Standards

Section
112.3251, F.S.

Audits and Financial Reviews

Section
215.981, F.S.



100% CSOs Compliant

- Active corporations with Florida Department of State
- Authorized Activities
- Reporting and Transparency
- Code of Ethics
- Audits and Financial Reviews



2019 LEGISLATION REQUIRED AUDIT REPORT



DEP CSO Audit Report Requirements

- 1. Provide audits for the most recent three fiscal years for CSOs with annual expenditures in excess of \$300,000**
- 2. Demonstrate that the Office of Resilience and Coastal Protection CSOs comply with reporting/transparency and authorized activities (Sections 20.058 and 20.2551, F.S.)**
- 3. Terminate any CSOs not in compliance**
- 4. Demonstrate CSO contracts comply with laws**

INDEPENDENT CPA AUDIT, Sec. 215.981, F.S.



Required When Total Expenditures Exceed \$300K

7 CSOs

Barrier Island Park Society
Florida State Park Foundation
Friends of Birch State Park
Friends of MacArthur Beach State Park
Friends of Rookery Bay
Stephen Foster CSO
Ybor City Museum Society

FY Audits Required

2016, 2017, 2018
2018
2016, 2017, 2018
2016, 2017, 2018
2016, 2017, 2018
2017
2016



Eric Draper

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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 Committee on Environment and Natural Resources

BILL: SB 1390

INTRODUCER: Senator Simmons

SUBJECT: Everglades Protection Area

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Favorable
2.	_____	_____	CA	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1390 requires comprehensive plans or plan amendments adopted by a local government whose boundaries include any portion of the Everglades Protection Area to follow the state coordinated review process and not the expedited state review process. The Department of Environmental Protection (DEP) must determine whether such plans or plan amendments impede Everglades restoration and protection objectives. DEP must provide notice to the local government of its determination and work in coordination with local governments to identify measures the local government may take to eliminate, reduce, or mitigate adverse impacts. Such a plan or plan amendment may only be deemed complete if it contains a written notice from DEP stating it does not impede Everglades protection and restoration.

II. Present Situation:

The Everglades/Florida Bay Ecosystem

The Everglades/Florida Bay system covers approximately two million acres in South Florida and contains the largest subtropical wetland in the United States.¹ The area is generally described as a vast sawgrass marsh dotted with tree islands and interspersed with wet prairies and aquatic sloughs.²

Historically, the Everglades covered over seven million acres of South Florida, and water flowed down the Kissimmee River into Lake Okeechobee, then south through the vast Everglades to Florida Bay.³ The present Everglades system has been subdivided by the construction of canals, levees, roads, and other facilities as part of efforts to drain the system for agriculture, development, and flood control. As a result, the Everglades is less than half the size it was a century ago, and connections between the central Everglades and adjacent transitional wetlands have been lost. This separation and isolation can impair the Everglades' wildlife communities and the sustainability of the ecosystem.⁴ Over time, the construction of canals and water control structures along with urban and agricultural expansion contributed to unintended consequences.⁵

In 1994, to address these issues, the Legislature passed the Everglades Forever Act (Act).⁶ The Act established numerous long-term goals and environmental standards to restore and protect the Everglades ecosystem, addressing issues including water quantity, water quality, and excessive levels of phosphorus. The Act contains measures for constructing stormwater treatment areas for water entering the Everglades, sets standards for best management practices to address phosphorous pollution loading, and establishes numeric criteria for water quality in the Everglades.⁷ Generally, the Act outlines Florida's commitment to restoring the Everglades ecosystem, and it authorizes programs for achieving this restoration.⁸ These programs work in cooperation with the multi-billion-dollar, multi-decade Comprehensive Everglades Restoration Plan that is a 50-50 partnership between the state and federal government.⁹

¹ SFWMD, *Everglades*, <https://www.sfwmd.gov/our-work/everglades> (last visited Jan. 18, 2020).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ SFWMD, *Everglades Restoration Progress*, 1 (2017), https://www.sfwmd.gov/sites/default/files/documents/spl_everglades_progress.pdf.

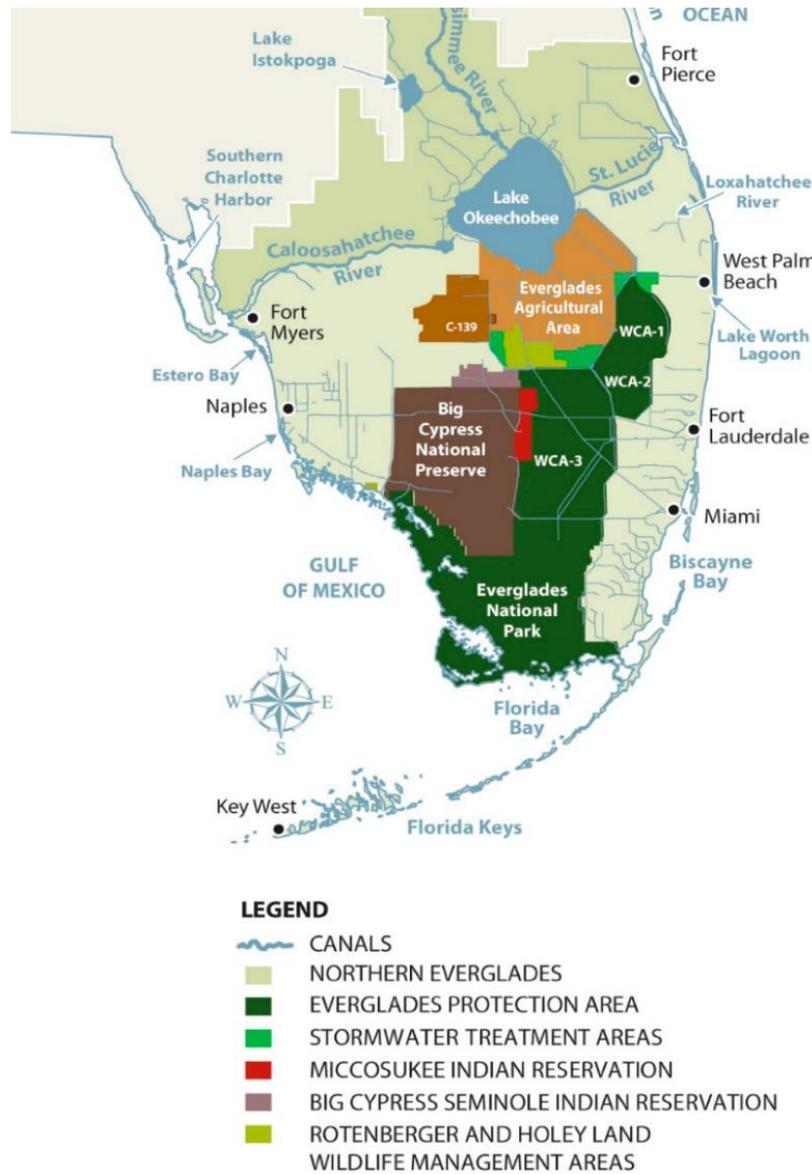
⁶ Chapter 94-115, Laws of Fla.; s. 373.4592, F.S.

⁷ Section 373.4592, F.S.; UF-IFAS, Michael T. Olexa et. al., *Handbook of Florida Water Regulation: Florida Everglades Forever Act*, 1-2 (2017), available at <https://edis.ifas.ufl.edu/pdf/FE/FE60900.pdf>.

⁸ See SFWMD, *Long-Term Plan for Achieving Water Quality Goals*, <https://www.sfwmd.gov/our-work/wq-stas/long-term-plan> (last visited Jan. 18, 2020); see SFWMD, *Regulatory Source Control Programs*, <https://www.sfwmd.gov/our-work/source-control-bmps> (last visited Jan. 19, 2020); see SFWMD, *Water Quality Improvement - Stormwater Treatment Areas (STAs)*, <https://www.sfwmd.gov/our-work/wq-stas> (last visited Jan. 19, 2002).

⁹ UF-IFAS, Michael T. Olexa et. al., *Handbook of Florida Water Regulation: Florida Everglades Forever Act*, 1 (2017); The Water Resources Development Act of 2000 (P.L. 106-541, Dec. 11, 2000); SFWMD, *CERP Project Planning*, <https://www.sfwmd.gov/our-work/cerp-project-planning> (last visited Jan. 18, 2020); DEP, *Comprehensive Everglades Restoration Plan (CERP)*, <https://floridadep.gov/eco-pro/eco-pro/content/comprehensive-everglades-restoration-plan-cerp> (last visited Jan. 18, 2020).

The Act establishes monitoring and protection for the “Everglades Protection Area,” defined as



“Water Conservation Areas (WCAs) 1, 2A, 2B, 3A, and 3B, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park.”¹⁰ WCA 1 is the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and it is managed by the U.S. Fish and Wildlife Service.¹¹ Water Conservation Areas 2 and 3 are managed by the Florida Fish and Wildlife Conservation Commission.¹² Everglades National Park is managed by the National Park Service.¹³

The WCAs are mainly large expanses of Everglades marsh habitat, which are closed off with control levees and canals.¹⁴ As part of the Central & Southern Florida Project first authorized by Congress in 1948, central portions of the Everglades were diked to

¹⁰ Section 373.4592(2)(i), F.S.; *see also* FLA. CON. art. II, s. 7(b). Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area are primarily responsible for the abatement costs.

¹¹ SFWMD, *Water Conservation Area 1 (Arthur R. Marshall Loxahatchee National Wildlife Refuge)*, <https://www.sfwmd.gov/recreation-site/water-conservation-area-1-arthur-r-marshall-loxahatchee-national-wildlife-refuge> (last visited Jan. 18, 2020).

¹² FWC, *Everglades Water Conservation Areas*, <https://myfwc.com/fishing/freshwater/sites-forecasts/s/everglades-water-conservation-areas/> (last visited Jan. 18, 2020).

¹³ NPS, *Everglades National Park*, <https://www.nps.gov/ever/index.htm> (last visited Jan. 18, 2020); SFWMD, *2016 South Florida Environmental Report*, 3 (2016), available at https://issuu.com/southfloridawatermanagement/docs/2016_sfer_highlights_final?e=4207603/33817547. This document contains the map found on this page.

¹⁴ SFWMD, *Water Conservation Areas 2 and 3 (Everglades & Francis S. Taylor Wildlife Management Area)*, <https://www.sfwmd.gov/recreation-site/water-conservation-areas-2-and-3-everglades-francis-s-taylor-wildlife-management-0> (last visited Jan. 18, 2020).

create the WCAs.¹⁵ The WCAs have provided numerous benefits for the Everglades and south Florida, including: providing a detention reservoir for excess water from the agricultural area and parts of the lower east coast region, and for flood discharge from Lake Okeechobee; providing levees to prevent Everglades floodwaters from inundating the lower east coast and provide water for agriculture and Everglades National Park; recharging the Biscayne Aquifer for east coast communities; retarding salt water intrusion in coastal well fields; and benefitting fish and wildlife in the Everglades.¹⁶

DEP explains that the long-term water quality objective for the Everglades is to implement the optimal combination of source controls, stormwater treatment areas, advanced treatment technologies, and regulatory programs to ensure that all waters discharged to the Everglades Protection Area achieve water quality standards consistent with the Act.¹⁷ DEP implements a range of responsibilities under the Act, including coordinating programs on research, monitoring, and permitting activities.¹⁸ The Act requires the state of Florida to pursue certain objectives, including all of the following:

- Restore and protect the Everglades ecological system.
- Authorize the South Florida Water Management District to proceed expeditiously with implementation of the Everglades program.¹⁹
- Reduce excessive levels of phosphorus.
- Pursue comprehensive and innovative solutions to the issues of water quality, water quantity, hydroperiod, and invasions of non-native species that affect the Everglades ecosystem.
- Expedite plans and programs for improving water quantity reaching the Everglades.
- Pursue the Everglades Construction Project, while maximizing its benefits and using superior technology when available.
- Achieve the water quality goals of the Everglades program through implementation of stormwater treatment areas and best management practices.²⁰

Comprehensive Plans and Plan Amendments

In 1985, the Legislature passed the Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development.²¹ A local government's comprehensive plan outlines the needs and locations for future public facilities, including roads, water and wastewater infrastructure, neighborhoods, parks, schools, and commercial and industrial developments.²²

¹⁵ United States Army Corps of Engineers and SFWMD, *Central and Southern Florida Project Comprehensive Review Study, Final Feasibility Report and Programmatic Environmental Impact Statement*, 1-1 (Apr. 1999), available at https://www.sfwmd.gov/sites/default/files/documents/CENTRAL_AND_SOUTHERN_FLORIDA_PROJECT_COMPREHENSIVE_REVIEW_STUDY.pdf.

¹⁶ *Id.* at 1-15.

¹⁷ DEP, *Everglades Forever Act (EFA)*, <https://floridadep.gov/eco-pro/eco-pro/content/everglades-forever-act-efa> (last visited Jan. 21, 2020).

¹⁸ *Id.*

¹⁹ Section 373.4592(2)(h), F.S. The “Everglades Program” is defined as the program of projects, regulations, and research provided by the Act.

²⁰ *Id.*

²¹ Chapter 85-55, Laws of Fla.

²² Section 163.3177, F.S.

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. Among the many components of a comprehensive plan is a land use element designating proposed future general distribution, location, and extent of the uses of land.²³ Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.²⁴

In 2011, the Legislature bifurcated the process for approving comprehensive plan amendments.²⁵ Plan amendments are now placed into either the “Expedited State Review Process” or the “State Coordinated Review Process.”²⁶ The two processes operate in much the same way; however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the Department of Economic Opportunity (DEO), rather than communicated directly to the permitting local government by each individual reviewing agency. Most plan amendments are required to follow the expedited process. Plan amendments in any of the following categories are required to follow the state coordinated process:

- Located in an area of critical state concern, which contains or has a significant impact on certain resources of regional or statewide importance;²⁷
- Propose a rural land stewardship area, which is designed to establish a long-term incentive-based strategy to balance and guide the allocation of land to accommodate future uses for environmental and economic purposes;²⁸
- Propose a sector plan or an amendment to an adopted sector plan, which emphasizes urban form and protection of regionally significant resources and public facilities;²⁹
- Updates to comprehensive plans based on periodic evaluations of compliance with current state requirements;³⁰
- Propose a development of regional impact, which would have a substantial effect upon the health, safety, or welfare of citizens of more than one county;³¹ or
- New plans for newly incorporated municipalities.³²

Under both processes, a proposed comprehensive plan or plan amendment must receive a public hearing by the local governing body before it may be transmitted to the state for review. First, the local planning board must hold a public hearing at which it makes a recommendation to the local governing body on adoption of the plan or plan amendment.³³ Then, the local governing body must hold a public hearing to consider transmittal of the proposed plan or plan amendment.³⁴ If a majority of the local governing body members present at the hearing approve such transmittal, the plan or amendment must be transmitted within 10 working days to the following state and local governmental entities, known as “reviewing agencies”:

²³ Section 163.3177(6)(a), F.S.

²⁴ *Id.*

²⁵ Chapter 2011-139, s. 17, Laws of Fla.

²⁶ Section 163.3184(3) and (4), F.S.

²⁷ *See* s. 380.05, F.S.

²⁸ *See* s. 163.3248, F.S.

²⁹ *See* s. 163.3245, F.S.

³⁰ *See* s. 163.3191, F.S.

³¹ *See* s. 380.06, F.S.

³² Section 163.3184(2)(c), F.S.; *see* s. 163.3167, F.S.

³³ Sections 163.3174(4)(a), F.S.

³⁴ Sections 163.3184(11), F.S.

- DEO, designated as the “state land planning agency”;³⁵
- The appropriate regional planning council;
- The appropriate water management district;
- DEP;
- The Department of State;
- The Department of Transportation;
- The Department of Education, if plan amendments relate to public schools;
- The commanding officer of an affected military installation;
- The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services, in the case of county plans and plan amendments; and
- The county in which the municipality is located, in the case of municipal plans and plan amendments.³⁶

The reviewing agencies and certain other government entities may provide comments to the local government regarding a plan or plan amendment. State agencies may only comment on important state resources and facilities that will be adversely impacted by a plan amendment, if adopted.³⁷ Comments provided by state agencies must state with specificity how a plan amendment will adversely impact an important state resource or facility and must identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts.³⁸ Under the expedited process, these comments must be provided directly to the local government not later than 30 days after receipt of the plan amendment.³⁹ Alternatively, the state coordinated review requires agencies to provide comments to DEO.⁴⁰ DEO then has a total of 60 days from receipt to provide the local government with a report containing the state’s objections, recommendations, and comments.⁴¹

In both processes, comments from each governmental entity must be limited to their statutory purview.⁴² For example, DEP must limit its comments to the subjects of air and water pollution; wetlands and other surface waters of the state; federal and state-owned lands and interest in lands, including state parks, greenways and trails, and conservation easements; solid waste; water and wastewater treatment; and the Everglades ecosystem restoration.⁴³

After the local government receives the comments made by the reviewing agencies, whether directly from the agencies or through the report issued by DEO, the local governing body must hold a second public hearing to approve or deny the plan or plan amendment.⁴⁴ The second

³⁵ Section 163.3164(44), F.S.

³⁶ Section 163.3184(1)(c) and (3)(b)1., F.S.

³⁷ Section 163.3184(3)(b)2. and (4)(c), F.S. DEO has special requirements for providing comments on plans or plan amendments following the state coordinated review process.

³⁸ *Id.*

³⁹ Section 163.3184(3)(b)2.

⁴⁰ Section 163.3184(4)(c)-(d), F.S.

⁴¹ Section 163.3184(4)(d), F.S.; see DEO, *State Coordinated Review Amendment Process*, available at http://www.floridajobs.org/docs/default-source/2015-community-development/community-planning/comp-plan/statecoordinatedreviewprocessflowchart.pdf?sfvrsn=d6a766b0_2.

⁴² Section 163.3184(3)(b)3.-4. and (4)(c), F.S.

⁴³ Section 163.3184(3)(b)4.a., F.S.

⁴⁴ Section 163.3184(11), F.S.

public hearing must be conducted within 180 days after the agency comments are received. Generally, if a local government fails to hold the second public hearing within 180 days after receipt of agency comments, the plan amendment is deemed withdrawn.⁴⁵

Following adoption, the local government must transmit the plan or plan amendment to DEO within 10 days of the second public hearing, and DEO must notify the local government of any deficiencies with the plan amendment within five working days.⁴⁶ DEO must determine that a plan or plan amendment is complete before it can go into effect. A plan or plan amendment must be deemed complete if it contains:

- A full, executed copy of the adoption ordinance or ordinances;
- In the case of a text amendment, a full copy of the amended language in legislative format with new words inserted in the text underlined and words deleted stricken with hyphens;
- In the case of a future land use map amendment, a copy of the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and
- A copy of any data and analyses the local government deems appropriate.⁴⁷

Under the State Coordinated Review Process, following the determination of completeness, DEO has 45 days to determine whether the plan or plan amendment is in compliance with applicable law.⁴⁸ DEO must issue a notice of intent to find that the plan or plan amendment is either in compliance or not in compliance, and the notice must be published on DEO's website. A plan or plan amendment adopted under the State Coordinated Review Process goes into effect pursuant to DEO's notice of intent.⁴⁹ Under the Expedited State Review Process, a plan amendment goes into effect 31 days after DEO notifies the local government that the plan amendment package is complete.⁵⁰

III. Effect of Proposed Changes:

Section 1 amends s. 163.3184, F.S., which establishes the required procedures for adopting and amending a local government's comprehensive plan.

The bill requires that comprehensive plans and plan amendments adopted by the governing body of a local government whose boundaries include any portion of the Everglades Protection Area⁵¹ must follow the state coordinated review process. The expedited state review process must not be followed for comprehensive plans and plan amendments under such circumstances.

The bill requires the Department of Environmental Protection (DEP) to determine whether a plan or plan amendment adopted by a local government whose boundaries include any portion of the

⁴⁵ Section 163.3184(3)(c)1. and (4)(e)1., F.S. This 180-day timeframe may be extended by agreement as long as notice is provided to DEO and any affected person that provided comments on the plan amendment. Also, an exception exists for developments of regional impact.

⁴⁶ Section 163.3184(3)(c) and (4)(e), F.S.

⁴⁷ *Id.*

⁴⁸ Section 163.3184(4)(e)4., F.S.

⁴⁹ Section 163.3184(4)(e)4.-5., F.S.

⁵⁰ Section 163.3184(3)(c)4., F.S.

⁵¹ Section 373.4592(2)(i), F.S. The bill uses the following definition when referring to the Everglades Protection Area: "Water Conservation Areas 1, 2A, 2B, 3A, and 3B, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park."

Everglades Protection Area impedes the Everglades restoration and protection objectives identified in s. 373.4592, F.S. DEP must provide written notice of its determination to the local government within 30 days after receipt of the plan or plan amendment. DEP must work in coordination with the local government to identify measures the local government may take to eliminate, reduce, or mitigate any adverse impacts to Everglades restoration and protection.

The bill requires comprehensive plan amendments adopted by a local government whose boundaries include any portion of the Everglades Protection Area to be submitted to DEP within 10 working days after the second public hearing. A plan or plan amendment adopted by a local government whose boundaries include any portion of the Everglades Protection Area may only be deemed complete if it contains a written notice from DEP stating the plan or plan amendment does not impede Everglades protection and restoration.

Section 2 amends s. 420.5095(9), F.S., to make a conforming change.

Section 3 states that the bill shall take effect July 1, 2020.

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 bill expands the amount of plans and plan amendments that must go through the state coordinated review process, which is coordinated through DEO. The bill also requires DEP to perform additional procedures as part of the review process. Therefore, the bill may cause DEP and DEO to incur additional costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3184, 420.5095.

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 Simmons

9-01775-20

20201390__

1 A bill to be entitled
2 An act relating to the Everglades Protection Area;
3 amending s. 163.3184, F.S.; requiring comprehensive
4 plans and plan amendments adopted by the governing
5 bodies of local governments whose boundaries include
6 any portion of the Everglades Protection Area to
7 follow the state coordinated review process; requiring
8 the Department of Environmental Protection to make
9 certain determinations for such plans and amendments,
10 to provide written notice of its determination to the
11 local governments within a specified timeframe, and to
12 coordinate with the local governments on certain
13 mitigation measures; requiring certain governing
14 bodies of local governments to transmit adopted plan
15 amendments to the department within a specified
16 timeframe; providing a condition for such plans and
17 plan amendments to be deemed complete; amending s.
18 420.5095, F.S.; conforming a cross-reference;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraph (a) of subsection (2), paragraph (a)
24 of subsection (3), subsection (4), paragraph (b) of subsection
25 (5), and paragraph (a) of subsection (11) of section 163.3184,
26 Florida Statutes, are amended, and paragraph (d) is added to
27 subsection (2) of that section, to read:

28 163.3184 Process for adoption of comprehensive plan or plan
29 amendment.—

9-01775-20

20201390__

30 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

31 (a) Plan amendments adopted by local governments shall
32 follow the expedited state review process in subsection (3),
33 except as set forth in paragraphs (b)-(d) ~~(b) and (c)~~.

34 (d) Plans and plan amendments that are adopted by the
35 governing body of a local government whose boundaries include
36 any portion of the Everglades Protection Area as defined in s.
37 373.4592(2) must follow the state coordinated review process in
38 subsection (4).

39 (3) EXPEDITED STATE REVIEW PROCESS FOR ADOPTION OF
40 COMPREHENSIVE PLAN AMENDMENTS.—

41 (a) The process for amending a comprehensive plan described
42 in this subsection shall apply to all amendments except as
43 provided in paragraphs (2) (b)-(d) ~~(2) (b) and (c)~~ and shall be
44 applicable statewide.

45 (4) STATE COORDINATED REVIEW PROCESS.—

46 (a) *Coordination.*—The state land planning agency shall only
47 use the state coordinated review process described in this
48 subsection for review of comprehensive plans and plan amendments
49 described in paragraphs (2) (c) and (d) ~~paragraph (2) (c)~~. Each
50 comprehensive plan or plan amendment proposed to be adopted
51 pursuant to this subsection shall be transmitted, adopted, and
52 reviewed in the manner prescribed in this subsection. The state
53 land planning agency shall have responsibility for plan review,
54 coordination, and the preparation and transmission of comments,
55 pursuant to this subsection, to the local governing body
56 responsible for the comprehensive plan or plan amendment.

57 (b) *Local government transmittal of proposed plan or*
58 *amendment.*—Each local governing body proposing a plan or plan

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59 amendment specified in paragraph (2) (c) or (d) ~~(2)(e)~~ shall
60 transmit the complete proposed comprehensive plan or plan
61 amendment to the reviewing agencies within 10 working days after
62 the first public hearing pursuant to subsection (11). The
63 transmitted document shall clearly indicate on the cover sheet
64 that this plan amendment is subject to the state coordinated
65 review process of this subsection. The local governing body
66 shall also transmit a copy of the complete proposed
67 comprehensive plan or plan amendment to any other unit of local
68 government or government agency in the state that has filed a
69 written request with the governing body for the plan or plan
70 amendment.

71 (c) *Reviewing agency comments.*—The agencies specified in
72 paragraph (b) may provide comments regarding the plan or plan
73 amendments in accordance with subparagraphs (3) (b)2.-4. However,
74 comments on plans or plan amendments required to be reviewed
75 under the state coordinated review process shall be sent to the
76 state land planning agency within 30 days after receipt by the
77 state land planning agency of the complete proposed plan or plan
78 amendment from the local government. If the state land planning
79 agency comments on a plan or plan amendment adopted under the
80 state coordinated review process, it shall provide comments
81 according to paragraph (d). Any other unit of local government
82 or government agency specified in paragraph (b) may provide
83 comments to the state land planning agency in accordance with
84 subparagraphs (3) (b)2.-4. within 30 days after receipt by the
85 state land planning agency of the complete proposed plan or plan
86 amendment. Written comments submitted by the public shall be
87 sent directly to the local government.

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88 (d) *State land planning agency review.*—

89 1. If the state land planning agency elects to review a
90 plan or plan amendment specified in paragraph (2) (c) or (d)
91 ~~(2) (e)~~, the agency shall issue a report giving its objections,
92 recommendations, and comments regarding the proposed plan or
93 plan amendment within 60 days after receipt of the proposed plan
94 or plan amendment. Notwithstanding the limitation on comments in
95 sub-subparagraph (3) (b) 4.g., the state land planning agency may
96 make objections, recommendations, and comments in its report
97 regarding whether the plan or plan amendment is in compliance
98 and whether the plan or plan amendment will adversely impact
99 important state resources and facilities. Any objection
100 regarding an important state resource or facility that will be
101 adversely impacted by the adopted plan or plan amendment must
102 ~~shall~~ also state with specificity how the plan or plan amendment
103 will adversely impact the important state resource or facility
104 and must ~~shall~~ identify measures the local government may take
105 to eliminate, reduce, or mitigate the adverse impacts. When a
106 federal, state, or regional agency has implemented a permitting
107 program, a local government is not required to duplicate or
108 exceed that permitting program in its comprehensive plan or to
109 implement such a permitting program in its land development
110 regulations. This subparagraph does not prohibit the state land
111 planning agency in conducting its review of local plans or plan
112 amendments from making objections, recommendations, and comments
113 regarding densities and intensities consistent with this part.
114 In preparing its comments, the state land planning agency shall
115 only base its considerations on written, and not oral, comments.

116 2. The state land planning agency review shall identify all

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117 written communications with the agency regarding the proposed
118 plan amendment. The written identification must include a list
119 of all documents received or generated by the agency, which list
120 must be of sufficient specificity to enable the documents to be
121 identified and copies requested, if desired, and the name of the
122 person to be contacted to request copies of any identified
123 document.

124 (e) Everglades Protection Area determinations.—For a plan
125 or plan amendment adopted by the governing body of a local
126 government whose boundaries include any portion of the
127 Everglades Protection Area as defined in s. 373.4592(2), the
128 Department of Environmental Protection shall determine whether
129 the plan or plan amendment impedes the Everglades restoration
130 and protection objectives identified in s. 373.4592. The
131 department shall provide written notice of its determination to
132 the local government within 30 days after receipt of the plan or
133 plan amendment. The department shall work in coordination with
134 the local government to identify measures the local government
135 may take to eliminate, reduce, or mitigate any adverse impacts
136 to Everglades restoration and protection.

137 (f)~~(e)~~ *Local government review of comments; adoption of*
138 *plan or amendments and transmittal.*—

139 1. The local government shall review the report submitted
140 to it by the state land planning agency, if any, and written
141 comments submitted to it by any other person, agency, or
142 government. The local government, upon receipt of the report
143 from the state land planning agency, shall hold a ~~its~~ second
144 public hearing, ~~which shall be a hearing~~ to determine whether to
145 adopt the comprehensive plan or one or more comprehensive plan

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146 amendments pursuant to subsection (11). If the local government
147 fails to hold the second hearing within 180 days after receipt
148 of the state land planning agency's report, the amendments must
149 ~~shall~~ be deemed withdrawn unless extended by agreement with
150 notice to the state land planning agency and any affected person
151 that provided comments on the amendment. The 180-day limitation
152 does not apply to amendments processed pursuant to s. 380.06.

153 2. All comprehensive plan amendments adopted by the
154 governing body, along with the supporting data and analysis,
155 must shall be transmitted within 10 working days after the
156 second public hearing to the state land planning agency and any
157 other agency or local government that provided timely comments
158 under paragraph (c). Comprehensive plan amendments adopted by
159 the governing body of a local government whose boundaries
160 include any portion of the Everglades Protection Area as defined
161 in s. 373.4592(2) must be additionally transmitted within 10
162 working days after the second public hearing to the Department
163 of Environmental Protection.

164 3. The state land planning agency shall notify the local
165 government of any deficiencies within 5 working days after
166 receipt of a plan or plan amendment package. For purposes of
167 completeness, a plan or plan amendment must shall be deemed
168 complete if it contains a full, executed copy of the adoption
169 ordinance or ordinances; in the case of a text amendment, a full
170 copy of the amended language in legislative format with new
171 words inserted in the text underlined, and words deleted
172 stricken with hyphens; in the case of a future land use map
173 amendment, a copy of the future land use map clearly depicting
174 the parcel, its existing future land use designation, and its

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175 adopted designation; and a copy of any data and analyses the
176 local government deems appropriate. A plan or plan amendment
177 adopted by the governing body of a local government whose
178 boundaries include any portion of the Everglades Protection Area
179 as defined in s. 373.4592(2) may only be deemed complete if it
180 contains a written notice from the Department of Environmental
181 Protection pursuant to paragraph (e) that states the plan or
182 plan amendment does not impede Everglades protection and
183 restoration.

184 4. After the state land planning agency makes a
185 determination of completeness regarding the adopted plan or plan
186 amendment, the state land planning agency shall have 45 days to
187 determine if the plan or plan amendment is in compliance with
188 this act. Unless the plan or plan amendment is substantially
189 changed from the one commented on, the state land planning
190 agency's compliance determination shall be limited to objections
191 raised in the objections, recommendations, and comments report.
192 During the period provided for in this subparagraph, the state
193 land planning agency shall issue, through a senior administrator
194 or the secretary, a notice of intent to find that the plan or
195 plan amendment is in compliance or not in compliance. The state
196 land planning agency shall post a copy of the notice of intent
197 on the agency's Internet website. Publication by the state land
198 planning agency of the notice of intent on the state land
199 planning agency's Internet site shall be prima facie evidence of
200 compliance with the publication requirements of this
201 subparagraph.

202 5. A plan or plan amendment adopted under the state
203 coordinated review process shall go into effect pursuant to the

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204 state land planning agency's notice of intent. If timely
205 challenged, an amendment does not become effective until the
206 state land planning agency or the Administration Commission
207 enters a final order determining the adopted amendment to be in
208 compliance.

209 (5) ADMINISTRATIVE CHALLENGES TO PLANS AND PLAN
210 AMENDMENTS.—

211 (b) The state land planning agency may file a petition with
212 the Division of Administrative Hearings pursuant to ss. 120.569
213 and 120.57, with a copy served on the affected local government,
214 to request a formal hearing to challenge whether the plan or
215 plan amendment is in compliance as defined in paragraph (1)(b).
216 The state land planning agency's petition must clearly state the
217 reasons for the challenge. Under the expedited state review
218 process, this petition must be filed with the division within 30
219 days after the state land planning agency notifies the local
220 government that the plan amendment package is complete according
221 to subparagraph (3)(c)3. Under the state coordinated review
222 process, this petition must be filed with the division within 45
223 days after the state land planning agency notifies the local
224 government that the plan amendment package is complete according
225 to subparagraph (4)(f)3. ~~(4)(e)3.~~

226 1. The state land planning agency's challenge to plan
227 amendments adopted under the expedited state review process
228 shall be limited to the comments provided by the reviewing
229 agencies pursuant to subparagraphs (3)(b)2.-4., upon a
230 determination by the state land planning agency that an
231 important state resource or facility will be adversely impacted
232 by the adopted plan amendment. The state land planning agency's

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233 petition must ~~shall~~ state with specificity how the plan
234 amendment will adversely impact the important state resource or
235 facility. The state land planning agency may challenge a plan
236 amendment that has substantially changed from the version on
237 which the agencies provided comments but only upon a
238 determination by the state land planning agency that an
239 important state resource or facility will be adversely impacted.

240 2. If the state land planning agency issues a notice of
241 intent to find the comprehensive plan or plan amendment not in
242 compliance with this act, the notice of intent shall be
243 forwarded to the Division of Administrative Hearings of the
244 Department of Management Services, which shall conduct a
245 proceeding under ss. 120.569 and 120.57 in the county of and
246 convenient to the affected local jurisdiction. The parties to
247 the proceeding shall be the state land planning agency, the
248 affected local government, and any affected person who
249 intervenes. A ~~No~~ new issue may not be alleged as a reason to
250 find a plan or plan amendment not in compliance in an
251 administrative pleading filed more than 21 days after
252 publication of notice unless the party seeking that issue
253 establishes good cause for not alleging the issue within that
254 time period. Good cause does not include excusable neglect.

255 (11) PUBLIC HEARINGS.—

256 (a) The procedure for transmittal of a complete proposed
257 comprehensive plan or plan amendment pursuant to subparagraph
258 (3) (b) 1. and paragraph (4) (b) and for adoption of a
259 comprehensive plan or plan amendment pursuant to subparagraphs
260 (3) (c) 1. and (4) (f) 1. ~~(4) (e) 1.~~ shall be by affirmative vote of
261 not less than a majority of the members of the governing body

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262 present at the hearing. The adoption of a comprehensive plan or
263 plan amendment shall be by ordinance. For the purposes of
264 transmitting or adopting a comprehensive plan or plan amendment,
265 the notice requirements in chapters 125 and 166 are superseded
266 by this subsection, except as provided in this part.

267 Section 2. Subsection (9) of section 420.5095, Florida
268 Statutes, is amended to read:

269 420.5095 Community Workforce Housing Innovation Pilot
270 Program.—

271 (9) Notwithstanding s. 163.3184(4)(b)-(d), any local
272 government comprehensive plan amendment to implement a Community
273 Workforce Housing Innovation Pilot Program project found
274 consistent with this section shall be expedited as provided in
275 this subsection. At least 30 days before ~~prior to~~ adopting a
276 plan amendment under this subsection, the local government shall
277 notify the state land planning agency of its intent to adopt
278 such an amendment, and the notice shall include its evaluation
279 related to site suitability and availability of facilities and
280 services. The public notice of the hearing required by s.
281 163.3184(11)(b)2. shall include a statement that the local
282 government intends to use the expedited adoption process
283 authorized by this subsection. Such amendments shall require
284 only a ~~single public hearing before the governing board, which~~
285 ~~shall be an~~ adoption hearing as described in s. 163.3184(4)(f)
286 before the governing board ~~s. 163.3184(4)(e)~~. Any further
287 proceedings shall be governed by s. 163.3184(5)-(13).

288 Section 3. This act shall take effect July 1, 2020.

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 Committee on Environment and Natural Resources

BILL: CS/SB 1450

INTRODUCER: Environment and Natural Resources Committee and Senator Gruters

SUBJECT: Environmental Enforcement

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1450 makes numerous changes to the penalties for violating Florida’s environmental laws. The bill increases required or maximum environmental penalties in various sections of the Florida Statutes. Most of the changes increase a penalty by 50 percent. Additionally, the bill changes the duration that certain penalties may run, so that, until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.

II. Present Situation:

Environmental Violations

The Department of Environmental Protection (DEP) is Florida’s lead agency for environmental management and stewardship, implementing many programs to protect the state’s air, water, and land.¹ In accordance with the state’s numerous environmental laws, DEP’s responsibilities include the compliance and enforcement process.² Violations of Florida’s environmental laws can result in damages and administrative, civil, and/or criminal penalties.

¹ DEP, *About DEP*, <https://floridadep.gov/about-dep> (last visited Jan. 21, 2020); s. 20.255, F.S.

² See DEP, *Enforcement Manual, Chapter One: DEP Regulatory Enforcement Organization* (2017), available at <https://floridadep.gov/sites/default/files/Chapter%201%20October%202017.pdf>.

Damages

In environmental enforcement, damages should compensate the state for the value of the loss to natural resources caused by the violation.³ DEP may institute a civil action in court or an administrative proceeding in the Division of Administrative Hearings (DOAH) to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.⁴ Damages can cover the cost of remediating the damage done to the environment, and/or costs incurred by the state in responding to the damage, such as tracing the source, controlling and abating the source, and restoring the environmental resources to their former condition.⁵

Penalties

In addition to damages, a violator can be liable for penalties. Penalties differ from damages in that they are designed to punish the wrongdoer rather than to address the harm caused by the violation.⁶ In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.⁷

Administrative penalties can be levied directly by the agency or in a proceeding in DOAH.⁸ The formal administrative enforcement process is typically initiated by serving a notice of violation, and is finalized through entry of a consent order or final order.⁹ In most administrative proceedings, DEP has the final decision.¹⁰ An administrative law judge has the final decision for administrative proceedings involving the Environmental Litigation Reform Act, codified in s. 403.121, F.S., which is the primary statute addressing DEP's administrative penalties.¹¹ Compared to the judicial process, the administrative process is generally considered less expensive, faster and less time consuming, and more conducive to negotiated settlement.¹² However, if DEP is seeking immediate injunctive relief, which compels a party to act or stop acting, an order must be obtained from a court.¹³

DEP must proceed administratively in cases in which DEP seeks administrative penalties that do not exceed \$10,000 per assessment.¹⁴ DEP is prohibited from imposing administrative penalties in excess of \$10,000 in a notice of violation.¹⁵ DEP may not have more than one notice of

³ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf>.

⁴ See s. 403.121, F.S.

⁵ See ss. 403.121 and 403.141, F.S.

⁶ See BLACK'S LAW DICTIONARY 1247 (9th ed. 2009).

⁷ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf>.

⁸ See ch. 120, F.S. The administrative process is formalized in the Administrative Procedure Act.

⁹ DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 58 (2014), available at https://floridadep.gov/sites/default/files/chapter5_0.pdf.

¹⁰ *Id.*

¹¹ *Id.* at 58-59, 66-70; Ch. 2001-258, Laws of Fla.

¹² DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 59 (2014).

¹³ *Id.* at 59-60.

¹⁴ Section 403.121(2)(b), F.S.; DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 66-67 (2014). This requirement does not apply to underground injection, hazardous waste, or asbestos programs.

¹⁵ Section 403.121(2)(b), F.S.

violation pending against a party unless the violations occurred at a different site or the violations were discovered by DEP subsequent to the filing of a previous notice of violation.¹⁶

Civil penalties are noncriminal fines that are generally levied by a court, and which agencies may be authorized to impose.¹⁷ DEP may pursue two forms of action in state court: a petition to enforce an order previously entered through the administrative process, or a complaint for violations of statutes or rules.¹⁸ Under both forms, DEP may seek injunctive relief, civil penalties, damages, and costs and expenses.¹⁹ For judicially imposed civil penalties, DEP is authorized to recover up to \$10,000 per offense, with each day during any portion of which a violation occurs constituting a separate offense.²⁰

A court or an administrative law judge may receive evidence in mitigation, which may result in the decrease or elimination of penalties.²¹

Criminal penalties can include jail/prison time, a criminal fine, or both. Florida law imposes criminal penalties for certain violations of environmental law.²² Punishments for such violations may vary based on standards of intent, such as willful, reckless indifference, or gross careless disregard.²³

This present situation describes DEP's general authority to levy penalties, largely pursuant to ch. 403, F.S. DEP derives enforcement authority from several different chapters of Florida law based on subject matter, so DEP has additional enforcement authority for programs not covered in ch. 403, F.S. Additionally, the Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against the government entity charged with enforcing environmental laws or the violator of the laws.²⁴

Dredge and Fill Permitting Program

In 2018, the Legislature authorized DEP to assume responsibility for the federal dredge and fill permitting program under the Clean Water Act, to regulate the discharge of dredged or fill material into Florida's navigable waters.²⁵ Currently, in Florida, the program is jointly implemented by the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE).²⁶ Assumption of the dredge and fill permitting program requires EPA approval. DEP may adopt any federal requirements, criteria, or

¹⁶ *Id.*

¹⁷ The Environmental Litigation Reform Act allows DEP to seek civil penalties of up to \$10,000 through the administrative process for most environmental violations. The Act may not be used if penalties exceed \$10,000.

¹⁸ DEP, *Enforcement Manual, Chapter Six: Judicial Process and Remedies, Collections, and Bankruptcies*, 86 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf>.

¹⁹ *Id.*

²⁰ Section 403.121(1)(b), F.S.

²¹ Section 403.121, F.S.

²² Section 403.161, F.S.

²³ *Id.*

²⁴ Section 403.412, F.S.

²⁵ Chapter 2018-88, Laws of Fla.; s. 373.4146, F.S.; 33 U.S.C. s. 1344(g).

²⁶ 33 U.S.C. s. 1344(a) and (b).

regulations necessary to obtain assumption.²⁷ Prior to assuming the program, DEP must submit various materials to the EPA, including a complete program description, a memorandum of understanding between the state and EPA, a memorandum of understanding between the state and USACE, copies of all applicable statutes and regulations, and more.²⁸ DEP is still in the process of developing the elements of the program for submission to the EPA.

Regarding enforcement authority, federal regulations require the state to have authority to carry out certain enforcement actions. For example, to assume the program, DEP must have authority to seek criminal fines of at least \$5,000 per violation against any person who:

- Knowingly makes false statements or representation in any document required under the Clean Water Act, federal regulations, or the state program; or
- Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a permit.²⁹

The approved maximum criminal fine must be assessable for each violation and, if the violation is continuous, must be assessable in that maximum amount for each day of violation.³⁰ The burden of proof and degree of knowledge or intent required under state law for establishing violations may not be greater than the burden of proof or degree of knowledge or intent EPA must bear when it brings an action under the Clean Water Act.³¹

Florida law provides that it is a violation of part IV of ch. 373, F.S., and ch. 403, F.S., to:

- Knowingly make any false statement or representation in documents required by state law; or
- Falsify, tamper with, or knowingly render inaccurate any monitoring device or method required by state law, rule, or permit.³²

The criminal penalties for these violations are fines of up to \$10,000, 6 months in jail, or both.³³ However, the penalty provisions in Florida law apply to “[a]ny person who willfully” commits the violations.³⁴ This application of the “willfully” standard of intent in the state penalties is inconsistent with the requirements in the federal regulations, which do not contain such a standard.

III. Effect of Proposed Changes:

Sections 1-21 amend sections of the Florida Statutes containing various penalties for violations of environmental laws. In general, the bill increases the required or maximum penalties in the provisions listed below. In most cases, the penalties are increased by 50 percent.

Several places in existing law impose a penalty for each offense, with each day during which a violation occurs constituting a separate offense. The bill changes that standard to: each day

²⁷ Section 373.4146(2) and (5), F.S.

²⁸ 40 C.F.R. ss. 233.10-233.16.

²⁹ 40 C.F.R. s. 233.41(a)(3)(iii).

³⁰ 40 C.F.R. s. 233.41(b)(1).

³¹ 40 C.F.R. s. 233.41(b)(2).

³² Sections 373.430(1)(c) and (5) and 403.161(1)(c) and (5), F.S.

³³ Sections 373.403(5) and 403.161(5), F.S.

³⁴ *Id.*

during which a violation occurs or is not remediated,³⁵ until a violation is resolved by order or judgment. This standard is changed in several sections and created in others.

The table below summarizes existing penalties and the penalties as revised by the bill. All penalties are levied by the Department of Environmental Protection (DEP) unless otherwise specified.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
161.054 (1), F.S.	Violating statutes, rules or orders regarding coastal construction	An administrative fine for each offense of up to \$10,000. Each day during any portion of which a violation occurs constitutes a separate offense.	An administrative fine for each offense of up to \$15,000. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
258.397 (7), F.S.	Violating a statute or rules regarding Biscayne Bay Aquatic Preserve	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day.	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$7,500 per day. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
258.46, F.S.	Violating the Florida Aquatic Preserve Act or related rules	A civil penalty of not less than \$500 per day and not more than \$5,000 per day of a violation.	A civil penalty of not less than \$750 per day and not more than \$7,500 per day of a violation. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
373.129 (5), F.S.	Violating ch. 373, F.S., relating to water resources	Authorizes DEP, any water management district, any local board, or certain local	Authorizes DEP, any water management district, any local board, or certain local governments to recover a civil

³⁵ The word “remediation” can refer to a large range of activities and timescales. In environmental law, remediation is generally described as restoring land, water, or air to its former state following some harm or pollution; *see* BLACK’S LAW DICTIONARY 1407 (9th ed. 2009).

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>governments³⁶ to recover a civil penalty for each offense, in an amount not to exceed \$10,000 per offense.</p> <p>Each date during which a violation occurs constitutes a separate offense.</p>	<p>penalty for each offense, in an amount not to exceed \$15,000 per offense.</p> <p>Until a violation is resolved by order or judgment, each date during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
373.209 (3)(b), F.S.	Violating a statute regarding artesian wells	A civil penalty of \$100 per day for each day of a violation and each act of a violation.	A civil penalty of \$150 per day for each day of a violation and each act of a violation.
373.430 (3), F.S.	Violating statutes regarding surface waters by willfully causing pollution	<p>A fine of not more than \$50,000 or imprisonment for 5 years, or both, for each offense.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>A fine of not more than \$50,000 or imprisonment for 5 years, or both, for each offense.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
373.430 (4) and (5), F.S.	Violating statutes regarding surface waters by causing pollution due to reckless indifference or gross careless disregard	<p>A fine of not more than \$5,000 or 60 days in jail, or both, for each offense: causing certain pollution.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>	<p>A fine of not more than \$10,000 or 60 days in jail, or both, for each offense: causing certain pollution; failing to obtain any permit; or violating or failing to comply with any rule, regulation, order, or permit.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>

³⁶ Section 373.103(8), F.S. Under certain circumstances, DEP may authorize a water management district to delegate to a local government by rule or agreement the power and duty to administer and enforce any of the statutes, rules, or regulations relating to stormwater permitting or surface water management which the district is authorized or required to administer.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
376.065 (5)(a) and (e), F.S.	Violating a statute regarding terminal facility certifications	<p>A civil penalty of \$500 for any violation of the section or a certification.</p> <p>A civil penalty of \$500 imposed by a county court if commission of the infraction is proved.</p>	<p>A civil penalty of \$750 for any violation of the section or a certification.</p> <p>A civil penalty of \$750 imposed by a county court if commission of the infraction is proved.</p>
376.071 (2)(a) and (e), F.S.	Violations regarding discharge contingency plans for vessels	<p>A civil penalty of \$5,000 for each infraction.</p> <p>A civil penalty of \$5,000 imposed by a county court if commission of the infraction is proved.</p>	<p>A civil penalty of \$7,500 for each infraction.</p> <p>A civil penalty of \$7,500 imposed by a county court if commission of the infraction is proved.</p>
376.16 (1), F.S.	Violating the Pollutant Discharge Prevention and Control Act or DEP rules or orders	<p>A civil penalty of up to \$50,000 per violation per day.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>A civil penalty of up to \$75,000 per violation per day.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
376.16 (2), (3), (7), and (8), F.S.	Violating the Pollutant Discharge Prevention and Control Act or DEP rules or orders	<p>In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel over 5 gallons - a civil penalty of \$500 for the second discharge and \$1,000 for each subsequent discharge within a 12-month period. • Other pollutants - a civil penalty of \$2,500 for the second discharge and \$5,000 for each subsequent discharge within a 12-month period. <p>For persons responsible for two or more discharges within a 12-month period at the same facility,</p>	<p>In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel over 5 gallons - a civil penalty of \$750 for the second discharge and \$1,500 for each subsequent discharge within a 12-month period. • Other pollutants - a civil penalty of \$3,750 for the second discharge and \$7,500 for each subsequent discharge within a 12-month period. <p>For persons responsible for two or more discharges within a 12-month period at the same facility,</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$50 for each discharge subsequent to the first. • Other pollutants equal to or less than 5 gallons - a civil penalty of \$100 for each discharge subsequent to the first. <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$500 for the second discharge of gasoline/diesel and up to \$1,000 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$5,000 for the second discharge of other pollutants and up to \$10,000 for each subsequent discharge within a 12-month period.</p>	<p>the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$75 for each discharge subsequent to the first; • Other pollutants equal to or less than 5 gallons - a civil penalty of \$150 for each discharge subsequent to the first. <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$750 for the second discharge of gasoline/diesel and up to \$1,500 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$7,500 for the second discharge of other pollutants and up to \$15,000 for each subsequent discharge within a 12-month period.</p>
376.25 (6)(a), F.S.	Violating a statute regarding gambling vessels	A civil penalty of not more than \$50,000 for each violation.	<p>A civil penalty of not more than \$75,000 for each violation.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
377.37 (1)(a), F.S.	Violating statutory provisions, rules, orders or permits regarding oil and gas resources	<p>A civil penalty of not more than \$10,000 for each offense.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>A civil penalty of not more than \$15,000 for each offense.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
378.211 (2), F.S.	Violating statutes, rules, or orders regarding land reclamation	<p>A civil penalty of \$100 per violation of a minor or technical nature; \$1,000 per major violation by an operator on which a penalty has not been imposed during the 5 previous years; and \$5,000 per major violation not otherwise covered.</p> <p>Each day or any portion thereof in which a violation continues constitutes a separate violation.³⁷</p>	<p>A civil penalty of \$150 per violation of a minor or technical nature; \$1,500 per major violation by an operator on which a penalty has not been imposed during the 5 previous years; and \$7,500 per major violation not otherwise covered.</p> <p>Until a violation is resolved by order or judgment, each day or any portion thereof in which a violation continues or is not remediated constitutes a separate violation.</p>
403.086 (2), F.S.	Violating orders regarding sanitary sewage disposal	A civil penalty of \$500 for each 24-hour day or fraction thereof that the failure is allowed to continue.	A civil penalty of \$750 for each 24-hour day or fraction thereof that the failure is allowed to continue.
403.121 (1)(b), F.S.	Violating ch. 403, F.S., regarding environmental control	<p>For judicial remedies - authorizes DEP to judicially pursue and recover a civil penalty of not more than \$10,000 per offense.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>For judicial remedies - authorizes DEP to judicially pursue and recover a civil penalty of not more than \$15,000 per offense.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
403.121 (2)(b) and (g) F.S.	Violating ch. 403, F.S., regarding environmental control	For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) DEP must proceed administratively when seeking administrative penalties not exceeding \$10,000 per assessment.	For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) DEP must proceed administratively when seeking administrative penalties not exceeding \$50,000 per assessment.

³⁷ Section 378.211(4), F.S. These civil penalties do not begin to accrue until the expiration of a specified time for initiating corrective action, set forth in a written notice of violation issued by DEP.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>DEP may not impose penalties in excess of \$10,000 in a notice of violation.</p> <p>DEP retains the authority to judicially pursue penalties in excess of \$10,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$10,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$10,000 in penalties may be settled in the court action for less than \$10,000.</p>	<p>DEP may not impose penalties in excess of \$50,000 in a notice of violation.</p> <p>DEP retains the authority to judicially pursue penalties in excess of \$50,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$50,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$50,000 in penalties may be settled in the court action for less than \$50,000.</p>
<p>403.121 (3)(a), F.S.³⁸</p>	<p>Administrative penalty schedule: violations regarding drinking water contamination</p>	<p>\$2,000 for a Maximum Containment Level violation; plus \$1,000 for a primary, inorganic, organic, or radiological Maximum Contaminant Level or fecal coliform bacteria violation; plus \$1,000 if the violation occurs at a community water system; plus \$1,000 if any Maximum Contaminant Level is exceeded by more than 100 percent.</p> <p>\$3,000 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.</p>	<p>\$3,000 for a Maximum Containment Level violation; plus \$1,500 for a primary, inorganic, organic, or radiological Maximum Contaminant Level or fecal coliform bacteria violation; plus \$1,500 if the violation occurs at a community water system; plus \$1,500 if any Maximum Contaminant Level is exceeded by more than 100 percent.</p> <p>\$4,500 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.</p>
<p>403.121 (3)(b), F.S.</p>	<p>Administrative penalty schedule: violations regarding wastewater</p>	<p>\$1,000 for failure to obtain a required wastewater permit (other than a permit for surface water discharge).</p> <p>\$2,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface</p>	<p>\$1,500 for failure to obtain a required wastewater permit (other than a permit for surface water discharge).</p> <p>\$3,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface</p>

³⁸ Section 403.121(3), F.S. The administrative penalties in this subsection do not apply to hazardous waste, asbestos, or underground injection.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>water or groundwater quality violation).</p> <p>\$5,000 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation.</p>	<p>water or groundwater quality violation).</p> <p>\$7,500 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation.</p>
<p>403.121 (3)(c), F.S.</p>	<p>Administrative penalty schedule: violations regarding dredge and fill or stormwater</p>	<p>\$1,000 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$2,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water; plus \$1,000 if the area dredged or filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,000 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$3,000 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater construction activities or failure of a stormwater treatment facility.</p> <p>\$2,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater treatment system.</p> <p>\$5,000 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>	<p>\$1,500 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$3,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water; plus \$1,500 if the area dredged or filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,500 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$4,500 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater construction activities or failure of a stormwater treatment facility.</p> <p>\$3,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater treatment system.</p> <p>\$7,500 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>
<p>403.121 (3)(d), F.S.</p>	<p>Administrative penalty schedule:</p>	<p>\$5,000 per violation for conducting mangrove trimming or alterations without a permit.</p>	<p>\$7,500 per violation for conducting mangrove trimming or alterations without a permit.</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
	violations regarding mangrove trimming		
403.121 (3)(e), F.S.	Administrative penalty schedule: violations regarding solid waste	<p>\$2,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,000 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,000 if the waste contains certain amounts of PCB, untreated biomedical waste, friable asbestos, used oil, or lead acid batteries.</p> <p>\$3,000 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$2,000 for failure to construct or maintain a required stormwater management system.</p>	<p>\$3,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,500 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,500 if the waste contains certain amounts of PCB, untreated biomedical waste, friable asbestos, used oil, or lead acid batteries.</p> <p>\$4,500 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$3,000 for failure to construct or maintain a required stormwater management system.</p>
403.121 (3)(f), F.S.	Administrative penalty schedule: violations regarding air emissions	\$1,000 for an unlawful air emission or exceedance; plus \$3,000 for emissions from the major source of the violating pollutant; plus \$1,000 if over 150% of the allowable level.	\$1,500 for an unlawful air emission or exceedance; plus \$4,500 for emissions from the major source of the violating pollutant; plus \$1,500 if over 150% of the allowable level.
403.121 (3)(g), F.S.	Administrative penalty schedule: violations regarding storage tank system and petroleum contamination	\$5,000 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action	\$7,500 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>or site-rehabilitation completion order has been issued.</p> <p>\$3,000 for failure to timely upgrade a storage tank system.</p> <p>\$2,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or remediate petroleum contamination, or failure to properly install a storage tank system.</p> <p>\$1,000 for failure to properly operate, maintain, or close a storage tank system.</p>	<p>or site-rehabilitation completion order has been issued.</p> <p>\$4,500 for failure to timely upgrade a storage tank system.</p> <p>\$3,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or remediate petroleum contamination, or failure to properly install a storage tank system.</p> <p>\$1,500 for failure to properly operate, maintain, or close a storage tank system.</p>
403.121 (4), F.S.	Violating ch. 403, F.S., regarding environmental control	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> • \$5,000 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$4,000 for failure to install, maintain, or use a required pollution control system or device. • \$3,000 for failure to obtain a required permit before construction or modification. • \$2,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,000 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to 	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> • \$7,500 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$6,000 for failure to install, maintain, or use a required pollution control system or device. • \$4,500 for failure to obtain a required permit before construction or modification. • \$3,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,500 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to DEP.</p> <ul style="list-style-type: none"> • \$500 for failure to prepare, submit, maintain, or use required reports or documentation. 	<p>prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to DEP.</p> <ul style="list-style-type: none"> • \$750 for failure to prepare, submit, maintain, or use required reports or documentation.
<p>403.121 (5), (7), (8), and (9), F.S.</p>	<p>Violating ch. 403, F.S., regarding environmental control</p>	<p>A penalty of \$500 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator’s history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$2,000 must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty, may not exceed \$10,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$5,000, unless there is a history of noncompliance, the economic benefit exceeds \$5,000, or there are multiday violations. Total administrative penalties may not exceed \$10,000 per assessment for all violations attributable to a</p>	<p>A penalty of \$1,000 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator’s history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$3,000 must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty, may not exceed \$15,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$7,500, unless there is a history of noncompliance, the economic benefit exceeds \$7,500, or there are multiday violations. Total administrative penalties may not exceed \$50,000 per assessment for all violations attributable to a</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		specific person in a notice of violation.	specific person in a notice of violation.
403.141 (1), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts	<p>A civil penalty for each offense in an amount not to exceed \$10,000.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>A civil penalty for each offense in an amount not to exceed \$15,000.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
403.161 (3) and (5), F.S.	Violating ch. 403, F.S., regarding environmental control, by willfully causing pollution	<p>A fine of not more than \$50,000 or imprisonment for five years, or both, for each offense.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>	<p>A fine of not more than \$50,000 or imprisonment for five years, or both, for each offense.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>
403.161 (4), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts specified in the statute	A violation causing pollution due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$5,000 or 60 days in jail, or both, for each offense.	A violation causing pollution; failure to obtain a permit required under Ch. 403, F.S., or rules; or violating any rule, order, permit or certification adopted or issued by DEP due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$10,000 or 60 days in jail, or both, for each offense.
403.413 (6)(a), F.S.	Dumping litter	A civil penalty of \$100 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.	A civil penalty of \$150 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
403.7234 (5), F.S.	Violations involving small quantity generators	A fine of between \$50 and \$100 per day for a maximum of 100 days for a noncompliant small quantity generator.	A fine of between \$75 and \$150 per day for a maximum of 100 days for a noncompliant small quantity generator.
403.726 (3), F.S.	Violations regarding hazardous waste creating an imminent hazard	Authorizes DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$25,000 for each day of continued violation.	Authorizes DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$37,000 for each day until a violation is resolved by order or judgment.
403.727 (3)(a), F.S.	Violations regarding hazardous waste	A civil penalty of not more than \$50,000 for each day of continued violation.	A civil penalty of not more than \$75,000 for each day of continued violation or until a violation is resolved by order or judgment.
403.93345 (8)(a)-(c) and (g), F.S.	Civil penalty schedule: violating the Florida Coral Reef Protection Act	<p>Damage to a coral reef less than or equal to 1 square meter: \$150; additional \$150 with aggravating circumstances; additional \$150 if occurring within a state park or aquatic preserve.</p> <p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$300 per square meter; additional \$300 per square meter with aggravating circumstances; additional \$300 per square meter if occurring within a state park or aquatic preserve.</p> <p>Damage exceeding an area of 10 square meters: \$1,000 per square meter; additional \$1,000 per square meter with aggravating circumstances; additional \$1,000 per square meter if occurring within a state park or aquatic preserve.</p> <p>The total penalties levied may not exceed \$250,000 per occurrence.</p>	<p>Damage to a coral reef less than or equal to 1 square meter: \$225; additional \$225 with aggravating circumstances; additional \$225 if occurring within a state park or aquatic preserve.</p> <p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$450 per square meter; additional \$450 per square meter with aggravating circumstances; additional \$450 per square meter if occurring within a state park or aquatic preserve.</p> <p>Damage exceeding an area of 10 square meters: \$1,500 per square meter; additional \$1,500 per square meter with aggravating circumstances; additional \$1,500 per square meter if occurring within a state park or aquatic preserve.</p> <p>The total penalties levied may not exceed \$375,000 per occurrence.</p>

Sections 22-26 reenact ss. 823.11(5); 403.077(5); 403.131(2); 403.4154(3)(d); 403.860(5); 403.708(10); 403.7191(7); 403.811; 403.7255(2); and 403.7186(8), F.S. This reenactment is done for the purpose of incorporating certain amendments made by the bill, as the reenacted provisions reference sections of law that are amended by the bill.

Section 27 states that the bill takes effect July 1, 2020.

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 vagueness doctrine was developed to ensure compliance with the Due Process Clause in the Fifth Amendment of the United States Constitution, and Florida's Constitution includes a similar due process guarantee.³⁹ The vagueness doctrine provides that a statute must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, and it must provide explicit standards for those who apply them to avoid arbitrary and discriminatory enforcement.⁴⁰ A statute is void for vagueness when, because of its imprecision, it fails to give an adequate notice of what conduct is prohibited.⁴¹ Thus, it invites arbitrary and discriminatory enforcement.⁴² A statute is not void for vagueness if the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.⁴³ However, the Supreme Court has indicated that a statute giving fair notice of the prohibited conduct can still be void for vagueness if it lends itself to arbitrary enforcement.⁴⁴ The need for definiteness is even greater when a law imposes criminal penalties on individual behavior or implicates constitutionally protected rights.⁴⁵

³⁹ *Simmons v. State*, 944 So.2d 317, 324 (Fla. 2006).

⁴⁰ *Florida Ass'n of Professional Lobbyists, Inc. v. Div. of Legislative Info. Services of the Florida Office of Legislative Services*, 525 F.3d 1073, 1078 (11th Cir. 2008) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).

⁴¹ *Sult v. State*, 906 So.2d 1013, 1020 (Fla. 2005).

⁴² *Id.*

⁴³ *Simmons*, 944 at 324.

⁴⁴ *Id.*; see *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

⁴⁵ *Simmons*, 944 at 324.

In several places in the bill, a penalty standard is revised or added such that “until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.” In such instances, the meaning of the word “remediated” is crucial for determining the number of separate offenses. This term is undefined in the statutes amended by the bill. This condition is applied to criminal penalties in addition to administrative and civil penalties.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases numerous penalties for violations of environmental laws. In some instances, the bill also expands the potential time period when each passing day may constitute a separate offense. Overall, the bill increases the penalties that the private sector must pay for violations of environmental laws.

C. Government Sector Impact:

The bill increases the amounts of numerous penalties. If imposed, the funds from such penalties would increase revenue to the state. Therefore, the bill may have a positive, indeterminate impact on the government sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In sections of the bill containing “[u]ntil a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense,” or similar language, a definition for the word “remediated” is recommended.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 161.054, 258.397, 258.46, 373.129, 373.209, 373.430, 376.065, 376.071, 376.16, 376.25, 377.37, 378.211, 403.086, 403.121, 403.141, 403.161, 403.413, 403.7234, 403.726, 403.727, 403.93345.

This bill reenacts parts or all of the following sections of the Florida Statutes: 823.11, 403.077, 403.131, 403.4154, 403.860, 403.708, 403.7191, 403.811, 403.7255, 403.7186.

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 Environment and Natural Resources Committee on January 27, 2020:

- Removes the “willfully” standard of intent from applying to criminal penalties in two sections of Florida’s environmental statutes. The penalties apply to violations of knowingly falsifying documents or tampering with required monitoring. DEP’s authority to seek criminal fines for such falsification or tampering is required by the federal regulations for state assumption of the 404 dredge and fill program. Applying a “willfully” standard to the penalties is not consistent with the federal regulations, so the bill removes the standard.
- Revises the title of the bill to more accurately describe the contents of the bill.

- B. **Amendments:**

None.



812520

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/27/2020	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Gruters) recommended the following:

Senate Amendment

Delete line 164

and insert:

specified in paragraph (1) (b) or who commits a violation

specified in paragraph (1) (c) commits is

Delete line 784

and insert:

specified in paragraph (1) (b) or who commits a violation

specified in paragraph (1) (c) commits is



680760

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2020	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Gruters) recommended the following:

1 **Senate Substitute for Amendment (812520) (with title**
2 **amendment)**

3
4 Delete line 164

5 and insert:

6 specified in paragraph (1) (b) or who commits a violation
7 specified in paragraph (1) (c) commits ~~is~~

8 Delete line 784

9 and insert:

10 specified in paragraph (1) (b) or who commits a violation



680760

11 specified in paragraph (1)(c) commits is

12

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

14 And the title is amended as follows:

15 Delete lines 3 - 26

16 and insert:

17 s. 161.054, F.S.; revising administrative penalties
18 for violations of certain provisions relating to beach
19 and shore construction and activities; providing that
20 each day that certain violations occur or are not
21 remediated constitutes a separate offense until such
22 violations are resolved by order or judgment; making
23 technical changes; amending ss. 258.397, 258.46,
24 373.129, 376.16, 376.25, 377.37, 378.211, and 403.141,
25 F.S.; revising civil penalties for violations of
26 certain provisions relating to the Biscayne Bay
27 Aquatic Preserve, aquatic preserves, water resources,
28 the Pollutant Discharge Prevention and Control Act,
29 the Clean Ocean Act, regulation of oil and gas
30 resources, the Phosphate Land Reclamation Act, and
31 other provisions relating to pollution and the
32 environment, respectively; providing that each day
33 that certain violations occur or are not remediated
34 constitutes a separate offense until such violations
35 are resolved by order or judgment; making technical
36 changes; amending ss. 373.209, 376.065, 376.071,
37 403.086, 403.413, 403.7234, and 403.93345, F.S.;

38 revising civil penalties for violations of certain
39 provisions relating to artesian wells, terminal



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40 facilities, discharge contingency plans for vessels,
41 sewage disposal facilities, dumping litter, small
42 quantity generators, and coral reef protection,
43 respectively; making technical changes; amending ss.
44 373.430 and 403.161, F.S.; revising criminal penalties
45 for violations of certain provisions relating to
46 pollution and the environment; providing that each day
47 that certain violations occur or are not remediated
48 constitutes a separate offense until such violations
49 are resolved by order or judgment; making technical
50 changes; amending s. 403.121, F.S.; revising civil and
51 administrative penalties for violations of certain
52 provisions relating to pollution and the environment;
53 providing that each day that certain violations occur
54 or are not remediated constitutes a separate offense
55 until such violations are resolved by order or
56 judgment; increasing the amount of penalties that can
57 be assessed administratively; making technical
58 changes; amending ss. 403.726 and 403.727, F.S.;
59 revising civil penalties for violations of certain
60 provisions relating to hazardous waste for each day
61 that certain violations occur and are not resolved by
62 order or judgment; making technical changes;
63 reenacting s.

By Senator Gruters

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1 A bill to be entitled
2 An act relating to environmental enforcement; amending
3 ss. 161.054, 258.397, 258.46, 373.129, 373.209,
4 373.430, 376.065, 376.071, 376.16, 376.25, 377.37,
5 378.211, 403.086, 403.121, 403.141, 403.161, 403.413,
6 403.7234, 403.726, 403.727, and 403.93345, F.S.;
7 increasing the civil penalties for violations of
8 certain provisions relating to beach and shore
9 construction, the Biscayne Bay Aquatic Preserve,
10 aquatic preserves, the state water resource plan,
11 artesian wells, pollution, operating a terminal
12 facility without discharge prevention and response
13 certificates, discharge contingency plans for vessels,
14 the Pollutant Discharge Prevention and Control Act,
15 the Clean Ocean Act, the pollution of surface and
16 ground waters, the regulation of oil and gas
17 resources, the Phosphate Land Reclamation Act, sewage
18 disposal facilities, pollution control, reasonable
19 costs and expenses for pollution releases, necessary
20 permits, dumping litter, small quantity generators,
21 the abatement of imminent hazards caused by hazardous
22 substances, hazardous waste generators, transporters,
23 or facilities, and coral reef protection,
24 respectively; providing that each day that certain
25 violations are not remediated constitutes a separate
26 offense; making technical changes; reenacting s.
27 823.11(5), F.S., to incorporate the amendment made to
28 s. 376.16, F.S., in a reference thereto; reenacting
29 ss. 403.077(5), 403.131(2), 403.4154(3)(d), and

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30 403.860(5), F.S., to incorporate the amendment made to
31 s. 403.121, F.S., in a reference thereto; reenacting
32 ss. 403.708(10), 403.7191(7), and 403.811, F.S., to
33 incorporate the amendment made to s. 403.141, F.S., in
34 a reference thereto; reenacting s. 403.7255(2), F.S.,
35 to incorporate the amendment made to s. 403.161, F.S.,
36 in a reference thereto; reenacting s. 403.7186(8),
37 F.S., to incorporate the amendment made to ss. 403.141
38 and 403.161, F.S., in references thereto; providing an
39 effective date.
40

41 Be It Enacted by the Legislature of the State of Florida:
42

43 Section 1. Subsection (1) of section 161.054, Florida
44 Statutes, is amended to read:

45 161.054 Administrative fines; liability for damage; liens.-

46 (1) In addition to the penalties provided for in ss.
47 161.052, 161.053, and 161.121, any person, firm, corporation, or
48 governmental agency, or agent thereof, refusing to comply with
49 or willfully violating ~~any of the provisions of~~ s. 161.041, s.
50 161.052, or s. 161.053, or any rule or order prescribed by the
51 department thereunder, shall incur a fine for each offense in an
52 amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected
53 by the department. Until a violation is resolved by order or
54 judgment, each day during any portion of which such violation
55 occurs or is not remediated constitutes a separate offense.

56 Section 2. Subsection (7) of section 258.397, Florida
57 Statutes, is amended to read:

58 258.397 Biscayne Bay Aquatic Preserve.-

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59 (7) ENFORCEMENT. ~~The provisions of~~ This section may be
60 enforced in accordance with ~~the provisions of~~ s. 403.412. In
61 addition, the Department of Legal Affairs may ~~is authorized to~~
62 bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day
63 against any person, natural or corporate, who violates ~~the~~
64 ~~provisions of~~ this section or any rule or regulation issued
65 hereunder. Until a violation is resolved by order or judgment,
66 each day during any portion of which such violation occurs or is
67 not remediated constitutes a separate offense. Enforcement of
68 applicable state regulations shall be supplemented by the Miami-
69 Dade County Department of Environmental Resources Management
70 through the creation of a full-time enforcement presence along
71 the Miami River.

72 Section 3. Section 258.46, Florida Statutes, is amended to
73 read:

74 258.46 Enforcement; violations; penalty. ~~The provisions of~~
75 This act may be enforced by the Board of Trustees of the
76 Internal Improvement Trust Fund or in accordance with ~~the~~
77 ~~provisions of~~ s. 403.412. However, any violation by any person,
78 natural or corporate, of ~~the provisions of~~ this act or any rule
79 or regulation issued hereunder is ~~shall be~~ further punishable by
80 a civil penalty of not less than \$750 ~~\$500~~ per day or more than
81 \$7,500 ~~\$5,000~~ per day of such violation. Until a violation is
82 resolved by order or judgment, each day during any portion of
83 which such violation occurs or is not remediated constitutes a
84 separate offense.

85 Section 4. Subsections (5) and (7) of section 373.129,
86 Florida Statutes, are amended to read:

87 373.129 Maintenance of actions.—The department, the

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88 governing board of any water management district, any local
89 board, or a local government to which authority has been
90 delegated pursuant to s. 373.103(8), is authorized to commence
91 and maintain proper and necessary actions and proceedings in any
92 court of competent jurisdiction for any of the following
93 purposes:

94 (5) To recover a civil penalty for each offense in an
95 amount not to exceed \$15,000 ~~\$10,000~~ per offense. Until a
96 violation is resolved by order or judgment, each date during any
97 portion of which such violation occurs or is not remediated
98 constitutes a separate offense.

99 (a) A civil penalty recovered by a water management
100 district pursuant to this subsection shall be retained and used
101 exclusively by the water management district that collected the
102 money. A civil penalty recovered by the department pursuant to
103 this subsection must be deposited into the Water Quality
104 Assurance Trust Fund established under s. 376.307.

105 (b) A local government that is delegated authority pursuant
106 to s. 373.103(8) may deposit a civil penalty recovered pursuant
107 to this subsection into a local water pollution control program
108 trust fund, notwithstanding ~~the provisions of~~ paragraph (a).
109 However, civil penalties that are deposited in a local water
110 pollution control program trust fund and that are recovered for
111 violations of state water quality standards may be used only to
112 restore water quality in the area that was the subject of the
113 action, and civil penalties that are deposited in a local water
114 pollution control program trust fund and that are recovered for
115 violation of requirements relating to water quantity may be used
116 only to purchase lands and make capital improvements associated

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117 with surface water management, or other purposes consistent with
118 the requirements of this chapter for the management and storage
119 of surface water.

120 (7) To enforce ~~the provisions of~~ part IV of this chapter in
121 the same manner and to the same extent as provided in ss.
122 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

123 Section 5. Subsection (3) of section 373.209, Florida
124 Statutes, is amended to read:

125 373.209 Artesian wells; penalties for violation.-

126 (3) Any person who violates ~~any provision of~~ this section
127 is shall be subject to either:

128 (a) The remedial measures provided for in s. 373.436; or

129 (b) A civil penalty of \$150 ~~\$100~~ a day for each and every
130 day of such violation and for each and every act of violation.

131 The civil penalty may be recovered by the water management board
132 of the water management district in which the well is located or
133 by the department in a suit in a court of competent jurisdiction
134 in the county where the defendant resides, in the county of
135 residence of any defendant if there is more than one defendant,
136 or in the county where the violation took place. The place of
137 suit shall be selected by the board or department, and the suit,
138 by direction of the board or department, shall be instituted and
139 conducted in the name of the board or department by appropriate
140 counsel. The payment of any such damages does not impair or
141 abridge any cause of action which any person may have against
142 the person violating ~~any provision of~~ this section.

143 Section 6. Subsections (2) through (5) of section 373.430,
144 Florida Statutes, are amended to read:

145 373.430 Prohibitions, violation, penalty, intent.-

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146 (2) A person who ~~Whoever~~ commits a violation specified in
147 subsection (1) is liable for any damage caused and for civil
148 penalties as provided in s. 373.129.

149 (3) A ~~Any~~ person who willfully commits a violation
150 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
151 the third degree, punishable as provided in ss. 775.082(3)(e)
152 and 775.083(1)(g), by a fine of not more than \$50,000 or by
153 imprisonment for 5 years, or by both, for each offense. Until a
154 violation is resolved by order or judgment, each day during any
155 portion of which such violation occurs or is not remediated
156 constitutes a separate offense.

157 (4) A ~~Any~~ person who commits a violation specified in
158 paragraph (1)(a) or paragraph (1)(b) due to reckless
159 indifference or gross careless disregard commits ~~is guilty of~~ a
160 misdemeanor of the second degree, punishable as provided in ss.
161 775.082(4)(b) and 775.083(1)(g), by a fine of not more than
162 \$10,000 ~~\$5,000~~ or 60 days in jail, or by both, for each offense.

163 (5) A ~~Any~~ person who willfully commits a violation
164 specified in paragraph (1)(b) or paragraph (1)(c) commits ~~is~~
165 ~~guilty of~~ a misdemeanor of the first degree, punishable as
166 provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of
167 not more than \$10,000 or by 6 months in jail, or by both, for
168 each offense.

169 Section 7. Paragraphs (a) and (e) of subsection (5) of
170 section 376.065, Florida Statutes, are amended to read:

171 376.065 Operation of terminal facility without discharge
172 prevention and response certificate prohibited; penalty.-

173 (5) (a) A person who violates this section or the terms and
174 requirements of such certification commits a noncriminal

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175 infraction. The civil penalty for any such infraction shall be
 176 \$750 ~~\$500~~, except as otherwise provided in this section.

177 (e) A person who elects to appear before the county court
 178 or who is required to so appear waives the limitations of the
 179 civil penalty specified in paragraph (a). The court, after a
 180 hearing, shall make a determination as to whether an infraction
 181 has been committed. If the commission of the infraction is
 182 proved, the court shall impose a civil penalty of \$750 ~~\$500~~.

183 Section 8. Paragraphs (a) and (e) of subsection (2) of
 184 section 376.071, Florida Statutes, are amended to read:

185 376.071 Discharge contingency plan for vessels.—

186 (2) (a) A master of a vessel that violates subsection (1)
 187 commits a noncriminal infraction and shall be cited for such
 188 infraction. The civil penalty for such an infraction shall be
 189 \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

190 (e) A person who elects to appear before the county court
 191 or who is required to appear waives the limitations of the civil
 192 penalty specified in paragraph (a). The court, after a hearing,
 193 shall make a determination as to whether an infraction has been
 194 committed. If the commission of the infraction is proved, the
 195 court shall impose a civil penalty of \$7,500 ~~\$5,000~~.

196 Section 9. Section 376.16, Florida Statutes, is amended to
 197 read:

198 376.16 Enforcement and penalties.—

199 (1) It is unlawful for any person to violate ~~any provision~~
 200 ~~of~~ ss. 376.011-376.21 or any rule or order of the department
 201 made pursuant to this act. A violation is shall be punishable by
 202 a civil penalty of up to \$75,000 ~~\$50,000~~ per violation per day
 203 to be assessed by the department. Until a violation is resolved

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204 by order or judgment, each day during any portion of which the
205 violation occurs or is not remediated constitutes a separate
206 offense. The penalty provisions of this subsection do ~~shall~~ not
207 apply to any discharge promptly reported and removed by a person
208 responsible, in accordance with the rules and orders of the
209 department, or to any discharge of pollutants equal to or less
210 than 5 gallons.

211 (2) In addition to the penalty provisions which may apply
212 under subsection (1), a person responsible for two or more
213 discharges of any pollutant reported pursuant to s. 376.12
214 within a 12-month period at the same facility commits a
215 noncriminal infraction and shall be cited by the department for
216 such infraction.

217 (a) For discharges of gasoline or diesel over 5 gallons,
218 the civil penalty for the second discharge shall be \$750 ~~\$500~~
219 and the civil penalty for each subsequent discharge within a 12-
220 month period shall be \$1,500 ~~\$1,000~~, except as otherwise
221 provided in this section.

222 (b) For discharges of any pollutant other than gasoline or
223 diesel, the civil penalty for a second discharge shall be \$3,750
224 ~~\$2,500~~ and the civil penalty for each subsequent discharge
225 within a 12-month period shall be \$7,500 ~~\$5,000~~, except as
226 otherwise provided in this section.

227 (3) A person responsible for two or more discharges of any
228 pollutant reported pursuant to s. 376.12 within a 12-month
229 period at the same facility commits a noncriminal infraction and
230 shall be cited by the department for such infraction.

231 (a) For discharges of gasoline or diesel equal to or less
232 than 5 gallons, the civil penalty shall be \$75 ~~\$50~~ for each

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233 discharge subsequent to the first.

234 (b) For discharges of pollutants other than gasoline or
235 diesel equal to or less than 5 gallons, the civil penalty shall
236 be \$150 ~~\$100~~ for each discharge subsequent to the first.

237 (4) A person charged with a noncriminal infraction pursuant
238 to subsection (2) or subsection (3) may:

239 (a) Pay the civil penalty;

240 (b) Post a bond equal to the amount of the applicable civil
241 penalty; or

242 (c) Sign and accept a citation indicating a promise to
243 appear before the county court.

244

245 The department employee authorized to issue these citations may
246 indicate on the citation the time and location of the scheduled
247 hearing and shall indicate the applicable civil penalty.

248 (5) Any person who willfully refuses to post bond or accept
249 and sign a citation commits a misdemeanor of the second degree,
250 punishable as provided in s. 775.082 or s. 775.083.

251 (6) After compliance with paragraph (4) (b) or paragraph
252 (4) (c), any person charged with a noncriminal infraction under
253 subsection (2) or subsection (3) may:

254 (a) Pay the civil penalty, either by mail or in person,
255 within 30 days after the date of receiving the citation; or

256 (b) If the person has posted bond, forfeit the bond by not
257 appearing at the designated time and location.

258

259 A person cited for an infraction under this section who pays the
260 civil penalty or forfeits the bond has admitted the infraction
261 and waives the right to a hearing on the issue of commission of

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262 the infraction. Such admission may not be used as evidence in
263 any other proceeding.

264 (7) Any person who elects to appear before the county court
265 or who is required to appear waives the limitations of the civil
266 penalties specified in subsection (2). The court, after a
267 hearing, shall make a determination as to whether an infraction
268 has been committed. If the commission of an infraction is
269 proved, the court may impose a civil penalty up to, but not
270 exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or
271 diesel and a civil penalty up to, but not exceeding, \$1,500
272 ~~\$1,000~~ for each subsequent discharge of gasoline or diesel
273 within a 12-month period.

274 (8) Any person who elects to appear before the county court
275 or who is required to appear waives the limitations of the civil
276 penalties specified in subsection (2) or subsection (3). The
277 court, after a hearing, shall make a determination as to whether
278 an infraction has been committed. If the commission of an
279 infraction is proved, the court may impose a civil penalty up
280 to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of
281 pollutants other than gasoline or diesel and a civil penalty up
282 to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent
283 discharge of pollutants other than gasoline or diesel within a
284 12-month period.

285 (9) At a hearing under this section, the commission of a
286 charged offense must be proved by the greater weight of the
287 evidence.

288 (10) A person who is found by a hearing official to have
289 committed an infraction may appeal that finding to the circuit
290 court.

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291 (11) Any person who has not posted bond and who neither
292 pays the applicable civil penalty, as specified in subsection
293 (2) or subsection (3) within 30 days of receipt of the citation
294 nor appears before the court commits a misdemeanor of the second
295 degree, punishable as provided in s. 775.082 or s. 775.083.

296 (12) Any person who makes or causes to be made a false
297 statement that which the person does not believe to be true in
298 response to requirements of ~~the provisions of~~ ss. 376.011-376.21
299 commits a felony of the second degree, punishable as provided in
300 s. 775.082, s. 775.083, or s. 775.084.

301 Section 10. Paragraph (a) of subsection (6) of section
302 376.25, Florida Statutes, is amended to read:

303 376.25 Gambling vessels; registration; required and
304 prohibited releases.—

305 (6) PENALTIES.—

306 (a) A person who violates this section is subject to a
307 civil penalty of not more than \$75,000 ~~\$50,000~~ for each
308 violation. Until a violation is resolved by order or judgment,
309 each day during any portion of which such violation occurs or is
310 not remediated constitutes a separate offense.

311 Section 11. Paragraph (a) of subsection (1) of section
312 377.37, Florida Statutes, is amended to read:

313 377.37 Penalties.—

314 (1) (a) Any person who violates ~~any provision of~~ this law or
315 any rule, regulation, or order of the division made under this
316 chapter or who violates the terms of any permit to drill for or
317 produce oil, gas, or other petroleum products referred to in s.
318 377.242(1) or to store gas in a natural gas storage facility, or
319 any lessee, permitholder, or operator of equipment or facilities

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320 used in the exploration for, drilling for, or production of oil,
321 gas, or other petroleum products, or storage of gas in a natural
322 gas storage facility, who refuses inspection by the division as
323 provided in this chapter, is liable to the state for any damage
324 caused to the air, waters, or property, including animal, plant,
325 or aquatic life, of the state and for reasonable costs and
326 expenses of the state in tracing the source of the discharge, in
327 controlling and abating the source and the pollutants, and in
328 restoring the air, waters, and property, including animal,
329 plant, and aquatic life, of the state. Furthermore, such person,
330 lessee, permitholder, or operator is subject to the judicial
331 imposition of a civil penalty in an amount of not more than
332 \$15,000 ~~\$10,000~~ for each offense. However, the court may receive
333 evidence in mitigation. Until a violation is resolved by order
334 or judgment, each day during any portion of which such violation
335 occurs or is not remediated constitutes a separate offense. This
336 section does not ~~Nothing herein shall~~ give the department the
337 right to bring an action on behalf of any private person.

338 Section 12. Subsection (2) of section 378.211, Florida
339 Statutes, is amended to read:

340 378.211 Violations; damages; penalties.—

341 (2) The department may institute a civil action in a court
342 of competent jurisdiction to impose and recover a civil penalty
343 for violation of this part or of any rule adopted or order
344 issued pursuant to this part. The penalty may ~~shall~~ not exceed
345 the following amounts, and the court shall consider evidence in
346 mitigation:

347 (a) For violations of a minor or technical nature, \$150
348 ~~\$100~~ per violation.

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349 (b) For major violations by an operator on which a penalty
350 has not been imposed under this paragraph during the previous 5
351 years, \$1,500 ~~\$1,000~~ per violation.

352 (c) For major violations not covered by paragraph (b),
353 \$7,500 ~~\$5,000~~ per violation.

354
355 Subject to ~~the provisions of~~ subsection (4), until a violation
356 is resolved by order or judgment, each day or any portion
357 thereof in which the violation continues or is not remediated
358 shall constitute a separate violation.

359 Section 13. Subsection (2) of section 403.086, Florida
360 Statutes, is amended to read:

361 403.086 Sewage disposal facilities; advanced and secondary
362 waste treatment.—

363 (2) Any facilities for sanitary sewage disposal shall
364 provide for secondary waste treatment and, in addition thereto,
365 advanced waste treatment as deemed necessary and ordered by the
366 Department of Environmental Protection. Failure to conform shall
367 be punishable by a civil penalty of \$750 ~~\$500~~ for each 24-hour
368 day or fraction thereof that such failure is allowed to continue
369 thereafter.

370 Section 14. Section 403.121, Florida Statutes, is amended
371 to read:

372 403.121 Enforcement; procedure; remedies.—The department
373 shall have the following judicial and administrative remedies
374 available to it for violations of this chapter, as specified in
375 s. 403.161(1).

376 (1) Judicial remedies:

377 (a) The department may institute a civil action in a court

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378 of competent jurisdiction to establish liability and to recover
379 damages for any injury to the air, waters, or property,
380 including animal, plant, and aquatic life, of the state caused
381 by any violation.

382 (b) The department may institute a civil action in a court
383 of competent jurisdiction to impose and to recover a civil
384 penalty for each violation in an amount of not more than \$15,000
385 ~~\$10,000~~ per offense. However, the court may receive evidence in
386 mitigation. Until a violation is resolved by order or judgment,
387 each day during any portion of which such violation occurs or is
388 not remediated constitutes a separate offense.

389 (c) Except as provided in paragraph (2) (c), it is ~~shall~~ not
390 ~~be~~ a defense to, or ground for dismissal of, these judicial
391 remedies for damages and civil penalties that the department has
392 failed to exhaust its administrative remedies, has failed to
393 serve a notice of violation, or has failed to hold an
394 administrative hearing prior to the institution of a civil
395 action.

396 (2) Administrative remedies:

397 (a) The department may institute an administrative
398 proceeding to establish liability and to recover damages for any
399 injury to the air, waters, or property, including animal, plant,
400 or aquatic life, of the state caused by any violation. The
401 department may order that the violator pay a specified sum as
402 damages to the state. Judgment for the amount of damages
403 determined by the department may be entered in any court having
404 jurisdiction thereof and may be enforced as any other judgment.

405 (b) If the department has reason to believe a violation has
406 occurred, it may institute an administrative proceeding to order

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407 the prevention, abatement, or control of the conditions creating
408 the violation or other appropriate corrective action. Except for
409 violations involving hazardous wastes, asbestos, or underground
410 injection, the department shall proceed administratively in all
411 cases in which the department seeks administrative penalties
412 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated
413 in accordance with subsections (3), (4), (5), (6), and (7).
414 Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty
415 assessed pursuant to subsection (3), subsection (4), or
416 subsection (5) against a public water system serving a
417 population of more than 10,000 shall be not less than \$1,000 per
418 day per violation. The department may ~~shall~~ not impose
419 administrative penalties in excess of \$50,000 ~~\$10,000~~ in a
420 notice of violation. The department may ~~shall~~ not have more than
421 one notice of violation seeking administrative penalties pending
422 against the same party at the same time unless the violations
423 occurred at a different site or the violations were discovered
424 by the department subsequent to the filing of a previous notice
425 of violation.

426 (c) An administrative proceeding shall be instituted by the
427 department's serving of a written notice of violation upon the
428 alleged violator by certified mail. If the department is unable
429 to effect service by certified mail, the notice of violation may
430 be hand delivered or personally served in accordance with
431 chapter 48. The notice shall specify the ~~provision of the law,~~
432 rule, regulation, permit, certification, or order of the
433 department alleged to be violated and the facts alleged to
434 constitute a violation thereof. An order for corrective action,
435 penalty assessment, or damages may be included with the notice.

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436 When the department is seeking to impose an administrative
437 penalty for any violation by issuing a notice of violation, any
438 corrective action needed to correct the violation or damages
439 caused by the violation must be pursued in the notice of
440 violation or they are waived. However, an ~~no~~ order is not ~~shall~~
441 ~~become~~ effective until after service and an administrative
442 hearing, if requested within 20 days after service. Failure to
443 request an administrative hearing within this time period
444 constitutes ~~shall constitute~~ a waiver thereof, unless the
445 respondent files a written notice with the department within
446 this time period opting out of the administrative process
447 initiated by the department to impose administrative penalties.
448 Any respondent choosing to opt out of the administrative process
449 initiated by the department in an action that seeks the
450 imposition of administrative penalties must file a written
451 notice with the department within 20 days after service of the
452 notice of violation opting out of the administrative process. A
453 respondent's decision to opt out of the administrative process
454 does not preclude the department from initiating a state court
455 action seeking injunctive relief, damages, and the judicial
456 imposition of civil penalties.

457 (d) If a person timely files a petition challenging a
458 notice of violation, that person will thereafter be referred to
459 as the respondent. The hearing requested by the respondent shall
460 be held within 180 days after the department has referred the
461 initial petition to the Division of Administrative Hearings
462 unless the parties agree to a later date. The department has the
463 burden of proving with the preponderance of the evidence that
464 the respondent is responsible for the violation. ~~No~~

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465 Administrative penalties should not be imposed unless the
466 department satisfies that burden. Following the close of the
467 hearing, the administrative law judge shall issue a final order
468 on all matters, including the imposition of an administrative
469 penalty. When the department seeks to enforce that portion of a
470 final order imposing administrative penalties pursuant to s.
471 120.69, the respondent may ~~shall~~ not assert as a defense the
472 inappropriateness of the administrative remedy. The department
473 retains its final-order authority in all administrative actions
474 that do not request the imposition of administrative penalties.

475 (e) After filing a petition requesting a formal hearing in
476 response to a notice of violation in which the department
477 imposes an administrative penalty, a respondent may request that
478 a private mediator be appointed to mediate the dispute by
479 contacting the Florida Conflict Resolution Consortium within 10
480 days after receipt of the initial order from the administrative
481 law judge. The Florida Conflict Resolution Consortium shall pay
482 all of the costs of the mediator and for up to 8 hours of the
483 mediator's time per case at \$150 per hour. Upon notice from the
484 respondent, the Florida Conflict Resolution Consortium shall
485 provide to the respondent a panel of possible mediators from the
486 area in which the hearing on the petition would be heard. The
487 respondent shall select the mediator and notify the Florida
488 Conflict Resolution Consortium of the selection within 15 days
489 of receipt of the proposed panel of mediators. The Florida
490 Conflict Resolution Consortium shall provide all of the
491 administrative support for the mediation process. The mediation
492 must be completed at least 15 days before the final hearing date
493 set by the administrative law judge.

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494 (f) In any administrative proceeding brought by the
495 department, the prevailing party shall recover all costs as
496 provided in ss. 57.041 and 57.071. The costs must be included in
497 the final order. The respondent is the prevailing party when an
498 order is entered awarding no penalties to the department and
499 such order has not been reversed on appeal or the time for
500 seeking judicial review has expired. The respondent is ~~shall be~~
501 entitled to an award of attorney's fees if the administrative
502 law judge determines that the notice of violation issued by the
503 department seeking the imposition of administrative penalties
504 was not substantially justified as defined in s. 57.111(3)(e).
505 An ~~No~~ award of attorney's fees as provided by this subsection
506 may not ~~shall~~ exceed \$15,000.

507 (g) Nothing herein shall be construed as preventing any
508 other legal or administrative action in accordance with law.
509 Nothing in this subsection shall limit the department's
510 authority provided in ss. 403.131, 403.141, and this section to
511 judicially pursue injunctive relief. When the department
512 exercises its authority to judicially pursue injunctive relief,
513 penalties in any amount up to the statutory maximum sought by
514 the department must be pursued as part of the state court action
515 and not by initiating a separate administrative proceeding. The
516 department retains the authority to judicially pursue penalties
517 in excess of \$50,000 ~~\$10,000~~ for violations not specifically
518 included in the administrative penalty schedule, or for multiple
519 or multiday violations alleged to exceed a total of \$50,000
520 ~~\$10,000~~. The department also retains the authority provided in
521 ss. 403.131, 403.141, and this section to judicially pursue
522 injunctive relief and damages, if a notice of violation seeking

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523 the imposition of administrative penalties has not been issued.
524 The department has the authority to enter into a settlement,
525 either before or after initiating a notice of violation, and the
526 settlement may include a penalty amount different from the
527 administrative penalty schedule. Any case filed in state court
528 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in
529 penalties may be settled in the court action for less than
530 \$50,000 ~~\$10,000~~.

531 (h) Chapter 120 applies ~~shall apply~~ to any administrative
532 action taken by the department or any delegated program pursuing
533 administrative penalties in accordance with this section.

534 (3) Except for violations involving hazardous wastes,
535 asbestos, or underground injection, administrative penalties
536 must be calculated according to the following schedule:

537 (a) For a drinking water contamination violation, the
538 department shall assess a penalty of \$3,000 ~~\$2,000~~ for a Maximum
539 Containment Level (MCL) violation; plus \$1,500 ~~\$1,000~~ if the
540 violation is for a primary inorganic, organic, or radiological
541 Maximum Contaminant Level or it is a fecal coliform bacteria
542 violation; plus \$1,500 ~~\$1,000~~ if the violation occurs at a
543 community water system; and plus \$1,500 ~~\$1,000~~ if any Maximum
544 Contaminant Level is exceeded by more than 100 percent. For
545 failure to obtain a clearance letter prior to placing a drinking
546 water system into service when the system would not have been
547 eligible for clearance, the department shall assess a penalty of
548 \$4,500 ~~\$3,000~~.

549 (b) For failure to obtain a required wastewater permit,
550 other than a permit required for surface water discharge, the
551 department shall assess a penalty of \$1,500 ~~\$1,000~~. For a

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552 domestic or industrial wastewater violation not involving a
553 surface water or groundwater quality violation, the department
554 shall assess a penalty of \$3,000 ~~\$2,000~~ for an unpermitted or
555 unauthorized discharge or effluent-limitation exceedance. For an
556 unpermitted or unauthorized discharge or effluent-limitation
557 exceedance that resulted in a surface water or groundwater
558 quality violation, the department shall assess a penalty of
559 \$7,500 ~~\$5,000~~.

560 (c) For a dredge and fill or stormwater violation, the
561 department shall assess a penalty of \$1,500 ~~\$1,000~~ for
562 unpermitted or unauthorized dredging or filling or unauthorized
563 construction of a stormwater management system against the
564 person or persons responsible for the illegal dredging or
565 filling, or unauthorized construction of a stormwater management
566 system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in
567 an aquatic preserve, an Outstanding Florida Water, a
568 conservation easement, or a Class I or Class II surface water,
569 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
570 one-quarter acre but less than or equal to one-half acre, and
571 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
572 one-half acre but less than or equal to one acre. The
573 administrative penalty schedule does ~~shall~~ not apply to a dredge
574 and fill violation if the area dredged or filled exceeds one
575 acre. The department retains the authority to seek the judicial
576 imposition of civil penalties for all dredge and fill violations
577 involving more than one acre. The department shall assess a
578 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
579 mitigation, failure to record a required conservation easement,
580 or for a water quality violation resulting from dredging or

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581 filling activities, stormwater construction activities or
582 failure of a stormwater treatment facility. For stormwater
583 management systems serving less than 5 acres, the department
584 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
585 properly or timely construct a stormwater management system. In
586 addition to the penalties authorized in this subsection, the
587 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
588 against the contractor or agent of the owner or tenant that
589 conducts unpermitted or unauthorized dredging or filling. For
590 purposes of this paragraph, the preparation or signing of a
591 permit application by a person currently licensed under chapter
592 471 to practice as a professional engineer does ~~shall~~ not make
593 that person an agent of the owner or tenant.

594 (d) For mangrove trimming or alteration violations, the
595 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
596 against the contractor or agent of the owner or tenant that
597 conducts mangrove trimming or alteration without a permit as
598 required by s. 403.9328. For purposes of this paragraph, the
599 preparation or signing of a permit application by a person
600 currently licensed under chapter 471 to practice as a
601 professional engineer does ~~shall~~ not make that person an agent
602 of the owner or tenant.

603 (e) For solid waste violations, the department shall assess
604 a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or unauthorized
605 disposal or storage of solid waste; plus \$1,000 if the solid
606 waste is Class I or Class III (excluding yard trash) or if the
607 solid waste is construction and demolition debris in excess of
608 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is disposed of
609 or stored in any natural or artificial body of water or within

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610 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~ if the
611 waste contains PCB at a concentration of 50 parts per million or
612 greater; untreated biomedical waste; friable asbestos greater
613 than 1 cubic meter which is not wetted, bagged, and covered;
614 used oil greater than 25 gallons; or 10 or more lead acid
615 batteries. The department shall assess a penalty of \$4,500
616 ~~\$3,000~~ for failure to properly maintain leachate control;
617 unauthorized burning; failure to have a trained spotter on duty
618 at the working face when accepting waste; or failure to provide
619 access control for three consecutive inspections. The department
620 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct
621 or maintain a required stormwater management system.

622 (f) For an air emission violation, the department shall
623 assess a penalty of \$1,500 ~~\$1,000~~ for an unpermitted or
624 unauthorized air emission or an air-emission-permit exceedance,
625 ~~plus \$1,000 if the emission results in an air quality violation,~~
626 plus \$4,500 ~~\$3,000~~ if the emission was from a major source and
627 the source was major for the pollutant in violation; plus \$1,500
628 ~~\$1,000~~ if the emission was more than 150 percent of the
629 allowable level.

630 (g) For storage tank system and petroleum contamination
631 violations, the department shall assess a penalty of \$7,500
632 ~~\$5,000~~ for failure to empty a damaged storage system as
633 necessary to ensure that a release does not occur until repairs
634 to the storage system are completed; when a release has occurred
635 from that storage tank system; for failure to timely recover
636 free product; or for failure to conduct remediation or
637 monitoring activities until a no-further-action or site-
638 rehabilitation completion order has been issued. The department

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639 shall assess a penalty of \$4,500 ~~\$3,000~~ for failure to timely
 640 upgrade a storage tank system. The department shall assess a
 641 penalty of \$3,000 ~~\$2,000~~ for failure to conduct or maintain
 642 required release detection; failure to timely investigate a
 643 suspected release from a storage system; depositing motor fuel
 644 into an unregistered storage tank system; failure to timely
 645 assess or remediate petroleum contamination; or failure to
 646 properly install a storage tank system. The department shall
 647 assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly
 648 operate, maintain, or close a storage tank system.

649 (4) In an administrative proceeding, in addition to the
 650 penalties that may be assessed under subsection (3), the
 651 department shall assess administrative penalties according to
 652 the following schedule:

653 (a) For failure to satisfy financial responsibility
 654 requirements or for violation of s. 377.371(1), \$7,500 ~~\$5,000~~.

655 (b) For failure to install, maintain, or use a required
 656 pollution control system or device, \$6,000 ~~\$4,000~~.

657 (c) For failure to obtain a required permit before
 658 construction or modification, \$4,500 ~~\$3,000~~.

659 (d) For failure to conduct required monitoring or testing;
 660 failure to conduct required release detection; or failure to
 661 construct in compliance with a permit, \$3,000 ~~\$2,000~~.

662 (e) For failure to maintain required staff to respond to
 663 emergencies; failure to conduct required training; failure to
 664 prepare, maintain, or update required contingency plans; failure
 665 to adequately respond to emergencies to bring an emergency
 666 situation under control; or failure to submit required
 667 notification to the department, \$1,500 ~~\$1,000~~.

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668 (f) Except as provided in subsection (2) with respect to
669 public water systems serving a population of more than 10,000,
670 for failure to prepare, submit, maintain, or use required
671 reports or other required documentation, \$750 ~~\$500~~.

672 (5) Except as provided in subsection (2) with respect to
673 public water systems serving a population of more than 10,000,
674 for failure to comply with any other departmental regulatory
675 statute or rule requirement not otherwise identified in this
676 section, the department may assess a penalty of \$1,000 ~~\$500~~.

677 (6) For each additional day during which a violation
678 occurs, the administrative penalties in subsections ~~subsection~~
679 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day
680 per violation.

681 (7) The history of noncompliance of the violator for any
682 previous violation resulting in an executed consent order, but
683 not including a consent order entered into without a finding of
684 violation, or resulting in a final order or judgment after the
685 effective date of this law involving the imposition of \$3,000
686 ~~\$2,000~~ or more in penalties shall be taken into consideration in
687 the following manner:

688 (a) One previous such violation within 5 years prior to the
689 filing of the notice of violation will result in a 25-percent
690 per day increase in the scheduled administrative penalty.

691 (b) Two previous such violations within 5 years prior to
692 the filing of the notice of violation will result in a 50-
693 percent per day increase in the scheduled administrative
694 penalty.

695 (c) Three or more previous such violations within 5 years
696 prior to the filing of the notice of violation will result in a

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697 100-percent per day increase in the scheduled administrative
698 penalty.

699 (8) The direct economic benefit gained by the violator from
700 the violation, where consideration of economic benefit is
701 provided by Florida law or required by federal law as part of a
702 federally delegated or approved program, shall be added to the
703 scheduled administrative penalty. The total administrative
704 penalty, including any economic benefit added to the scheduled
705 administrative penalty, may ~~shall~~ not exceed \$15,000 ~~\$10,000~~.

706 (9) The administrative penalties assessed for any
707 particular violation may ~~shall~~ not exceed \$7,500 ~~\$5,000~~ against
708 any one violator, unless the violator has a history of
709 noncompliance, the economic benefit of the violation as
710 described in subsection (8) exceeds \$7,500 ~~\$5,000~~, or there are
711 multiday violations. The total administrative penalties may
712 ~~shall~~ not exceed \$50,000 ~~\$10,000~~ per assessment for all
713 violations attributable to a specific person in the notice of
714 violation.

715 (10) The administrative law judge may receive evidence in
716 mitigation. The penalties identified in subsections ~~subsection~~
717 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50
718 percent by the administrative law judge for mitigating
719 circumstances, including good faith efforts to comply prior to
720 or after discovery of the violations by the department. Upon an
721 affirmative finding that the violation was caused by
722 circumstances beyond the reasonable control of the respondent
723 and could not have been prevented by respondent's due diligence,
724 the administrative law judge may further reduce the penalty.

725 (11) Penalties collected pursuant to this section shall be

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726 deposited into the Water Quality Assurance Trust Fund or other
727 trust fund designated by statute and shall be used to fund the
728 restoration of ecosystems, or polluted areas of the state, as
729 defined by the department, to their condition before pollution
730 occurred. The Florida Conflict Resolution Consortium may use a
731 portion of the fund to administer the mediation process provided
732 in paragraph (2) (e) and to contract with private mediators for
733 administrative penalty cases.

734 (12) The purpose of the administrative penalty schedule and
735 process is to provide a more predictable and efficient manner
736 for individuals and businesses to resolve relatively minor
737 environmental disputes. Subsections (3)-(7) may ~~Subsection (3),~~
738 ~~subsection (4), subsection (5), subsection (6), or subsection~~
739 ~~(7) shall~~ not be construed as limiting a state court in the
740 assessment of damages. The administrative penalty schedule does
741 not apply to the judicial imposition of civil penalties in state
742 court as provided in this section.

743 Section 15. Subsection (1) of section 403.141, Florida
744 Statutes, is amended to read:

745 403.141 Civil liability; joint and several liability.-

746 (1) A person who ~~Whoever~~ commits a violation specified in
747 s. 403.161(1) is liable to the state for any damage caused to
748 the air, waters, or property, including animal, plant, or
749 aquatic life, of the state and for reasonable costs and expenses
750 of the state in tracing the source of the discharge, in
751 controlling and abating the source and the pollutants, and in
752 restoring the air, waters, and property, including animal,
753 plant, and aquatic life, of the state to their former condition,
754 and furthermore is subject to the judicial imposition of a civil

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755 penalty for each offense in an amount of not more than \$15,000
756 ~~\$10,000~~ per offense. However, the court may receive evidence in
757 mitigation. Until a violation is resolved by order or judgment,
758 each day during any portion of which such violation occurs or is
759 not remediated constitutes a separate offense. Nothing herein
760 gives ~~shall give~~ the department the right to bring an action on
761 behalf of any private person.

762 Section 16. Subsections (2) through (5) of section 403.161,
763 Florida Statutes, are amended to read:

764 403.161 Prohibitions, violation, penalty, intent.—

765 (2) A person who ~~Whoever~~ commits a violation specified in
766 subsection (1) is liable to the state for any damage caused and
767 for civil penalties as provided in s. 403.141.

768 (3) A ~~Any~~ person who willfully commits a violation
769 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
770 the third degree, punishable as provided in ss. 775.082(3)(e)
771 and 775.083(1)(g) by a fine of not more than \$50,000 or by
772 imprisonment for 5 years, or by both, for each offense. Until a
773 violation is resolved by order or judgment, each day during any
774 portion of which such violation occurs or is not remediated
775 constitutes a separate offense.

776 (4) A ~~Any~~ person who commits a violation specified in
777 paragraph (1)(a) or paragraph (1)(b) due to reckless
778 indifference or gross careless disregard commits ~~is guilty of~~ a
779 misdemeanor of the second degree, punishable as provided in ss.
780 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
781 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each
782 offense.

783 (5) A ~~Any~~ person who willfully commits a violation

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784 specified in paragraph (1)(b) or paragraph (1)(c) commits is
785 ~~guilty of~~ a misdemeanor of the first degree punishable as
786 provided in ss. 775.082(4)(a) and 775.083(1)(g) by a fine of not
787 more than \$10,000 or by 6 months in jail, or by both for each
788 offense.

789 Section 17. Paragraph (a) of subsection (6) of section
790 403.413, Florida Statutes, is amended to read:

791 403.413 Florida Litter Law.—

792 (6) PENALTIES; ENFORCEMENT.—

793 (a) Any person who dumps litter in violation of subsection
794 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
795 feet in volume and not for commercial purposes commits is~~guilty~~
796 ~~of~~ a noncriminal infraction, punishable by a civil penalty of
797 \$150 ~~\$100~~, from which \$50 shall be deposited into the Solid
798 Waste Management Trust Fund to be used for the solid waste
799 management grant program pursuant to s. 403.7095. In addition,
800 the court may require the violator to pick up litter or perform
801 other labor commensurate with the offense committed.

802 Section 18. Subsection (5) of section 403.7234, Florida
803 Statutes, is amended to read:

804 403.7234 Small quantity generator notification and
805 verification program.—

806 (5) Any small quantity generator who does not comply with
807 the requirements of subsection (4) and who has received a
808 notification and survey in person or through one certified
809 letter from the county is subject to a fine of between \$75 ~~\$50~~
810 and \$150 ~~\$100~~ per day for a maximum of 100 days. The county may
811 collect such fines and deposit them in its general revenue fund.
812 Fines collected by the county shall be used to carry out the

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813 notification and verification procedure established in this
814 section. If there are excess funds after the notification and
815 verification procedures have been completed, such funds shall be
816 used for hazardous and solid waste management purposes only.

817 Section 19. Subsection (3) of section 403.726, Florida
818 Statutes, is amended to read:

819 403.726 Abatement of imminent hazard caused by hazardous
820 substance.—

821 (3) An imminent hazard exists if any hazardous substance
822 creates an immediate and substantial danger to human health,
823 safety, or welfare or to the environment. The department may
824 institute action in its own name, using the procedures and
825 remedies of s. 403.121 or s. 403.131, to abate an imminent
826 hazard. However, the department is authorized to recover a civil
827 penalty of not more than \$37,500 ~~\$25,000~~ for each day until a ~~of~~
828 ~~continued~~ violation is resolved by order or judgment. Whenever
829 serious harm to human health, safety, and welfare; the
830 environment; or private or public property may occur prior to
831 completion of an administrative hearing or other formal
832 proceeding that which might be initiated to abate the risk of
833 serious harm, the department may obtain, ex parte, an injunction
834 without paying filing and service fees prior to the filing and
835 service of process.

836 Section 20. Paragraph (a) of subsection (3) of section
837 403.727, Florida Statutes, is amended to read:

838 403.727 Violations; defenses, penalties, and remedies.—

839 (3) Violations of the provisions of this act are punishable
840 as follows:

841 (a) Any person who violates ~~the provisions of~~ this act, the

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842 rules or orders of the department, or the conditions of a permit
843 is liable to the state for any damages specified in s. 403.141
844 and for a civil penalty of not more than \$75,000 ~~\$50,000~~ for
845 each day of continued violation or until a violation is resolved
846 by order or judgment, except as otherwise provided herein. The
847 department may revoke any permit issued to the violator. In any
848 action by the department against a small hazardous waste
849 generator for the improper disposal of hazardous wastes, a
850 rebuttable presumption of improper disposal shall be created if
851 the generator was notified pursuant to s. 403.7234; the
852 generator shall then have the burden of proving that the
853 disposal was proper. If the generator was not so notified, the
854 burden of proving improper disposal shall be placed upon the
855 department.

856 Section 21. Subsection (8) of section 403.93345, Florida
857 Statutes, is amended to read:

858 403.93345 Coral reef protection.—

859 (8) In addition to the compensation described in subsection
860 (5), the department may assess, per occurrence, civil penalties
861 according to the following schedule:

862 (a) For any anchoring of a vessel on a coral reef or for
863 any other damage to a coral reef totaling less than or equal to
864 an area of 1 square meter, \$225 ~~\$150~~, provided that a
865 responsible party who has anchored a recreational vessel as
866 defined in s. 327.02 which is lawfully registered or exempt from
867 registration pursuant to chapter 328 is issued, at least once, a
868 warning letter in lieu of penalty; with aggravating
869 circumstances, an additional \$225 ~~\$150~~; occurring within a state
870 park or aquatic preserve, an additional \$225 ~~\$150~~.

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871 (b) For damage totaling more than an area of 1 square meter
872 but less than or equal to an area of 10 square meters, \$450 ~~\$300~~
873 per square meter; with aggravating circumstances, an additional
874 \$450 ~~\$300~~ per square meter; occurring within a state park or
875 aquatic preserve, an additional \$450 ~~\$300~~ per square meter.

876 (c) For damage exceeding an area of 10 square meters,
877 \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,
878 an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a
879 state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per
880 square meter.

881 (d) For a second violation, the total penalty may be
882 doubled.

883 (e) For a third violation, the total penalty may be
884 tripled.

885 (f) For any violation after a third violation, the total
886 penalty may be quadrupled.

887 (g) The total of penalties levied may not exceed \$375,000
888 ~~\$250,000~~ per occurrence.

889 Section 22. Subsection (5) of s. 823.11, Florida Statutes,
890 is reenacted for the purpose of incorporating the amendment made
891 by this act to s. 376.16, Florida Statutes, in a reference
892 thereto.

893 Section 23. Subsection (5) of s. 403.077, subsection (2) of
894 s. 403.131, paragraph (d) of subsection (3) of s. 403.4154, and
895 subsection (5) of s. 403.860, Florida Statutes, are reenacted
896 for the purpose of incorporating the amendment made by this act
897 to s. 403.121, Florida Statutes, in references thereto.

898 Section 24. Subsection (10) of s. 403.708, subsection (7)
899 of s. 403.7191, and s. 403.811, Florida Statutes, are reenacted

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900 for the purpose of incorporating the amendment made by this act
901 to s. 403.141, Florida Statutes, in references thereto.

902 Section 25. Subsection (2) of s. 403.7255, Florida
903 Statutes, is reenacted for the purpose of incorporating the
904 amendment made by this act to s. 403.161, Florida Statutes, in a
905 reference thereto.

906 Section 26. Subsection (8) of s. 403.7186, Florida
907 Statutes, is reenacted for the purpose of incorporating the
908 amendments made by this act to ss. 403.141 and 403.161, Florida
909 Statutes, in references thereto.

910 Section 27. This act shall take effect July 1, 2020.

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 Committee on Environment and Natural Resources

BILL: SB 1618

INTRODUCER: Senator Diaz

SUBJECT: Construction Materials Mining Activities

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Favorable
2.			BI	
3.			RC	

I. Summary:

SB 1618 creates a pilot program in the Division of the State Fire Marshal (Division) within the Department of Financial Services for the monitoring and reporting of each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County. The bill requires the State Fire Marshal to hire or contract with seismologists to monitor and report, at minimum, the ground vibration, frequency, intensity, air blast, and time and date of the blast. The bill prohibits the seismologists from certain conflicts of interest or dishonest practices. The bill requires the State Fire Marshal to post the report on the Division’s website and to adopt rules to implement and enforce the act.

The bill requires a person who engages in construction materials mining activities to provide written notice to the State Fire Marshal of the use of an explosive for such activities in Miami-Dade County before the detonation of the explosive.

The bill appropriates, for the fiscal year 2020-2021, \$600,000 in recurring funds and \$440,000 in nonrecurring funds from the General Revenue Fund to the Division for the purpose of implementing the monitoring and reporting pilot program created under the bill.

II. Present Situation:

State Fire Marshal

The Chief Financial Officer of Florida is designated as the State Fire Marshal.¹ The State Fire Marshal has the authority to set standards, limits, and regulations regarding the use of explosives for construction materials mining activities.² This authority includes, directly or indirectly, the operation, handling, licensure, or permitting of explosives, and setting standards or limits,

¹ Section 633.104, F.S.

² Section 552.30(1), F.S.

including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast, and time, date, occurrence, and notice restrictions.³

Construction Materials Mining Activities

It is common practice for mining companies to use explosives as they extract sand and limestone from Florida soil.⁴ These materials are used to make construction components such as aggregates, sand, cement, and roadbase materials.⁵ The use of explosives is governed by federal, state, and local government laws.⁶

At the federal level, Title 30 of the U.S. Code and its various implementing regulations establish basic safety, health, certification, reporting, and environmental requirements for the use of explosives in mining operations. At the state level, ch. 552, F.S., governs the requirements and enforcement for the manufacture, distribution, and use of explosives.

As of 2000, state law preempts local regulations imposing standards, limits, or other regulations regarding the use of explosives for construction materials mining activities.⁷ However, the State Fire Marshal may use his or her discretion to delegate the monitoring of and enforcement of regulations governing the use of explosives by construction materials mining activities, including the assessment and collection of reasonable fees, to the applicable municipality or county.⁸ This must be accomplished by a written agreement with the local government.⁹

Ground Vibration Limits

Pursuant to Florida law, the State Fire Marshal must establish statewide ground vibration limits for construction materials mining activities in conformance with federal limits.¹⁰ The legal limit in Florida is 0.5 inches per second peak particle velocity when using explosives within two miles of an urban development due to the potential damage to plaster-on-lath construction.¹¹

Permits

To use explosives, a company must have a permit issued by the Regulatory Licensing Section in the Division of State Fire Marshal (“Division”) under the Department of Financial Services (DFS).¹² All blasting activities must be monitored by a seismologist. There are restrictions on the use of explosives, including limiting activity to daylight hours between 8 a.m. and 5 p.m.,

³ *Id.*

⁴ DFS, Division of State Fire Marshal, *Mine Blasting Information*, https://www.myfloridacfo.com/Division/SFM/BFP/mine_blasting.htm (last visited Jan. 22, 2020).

⁵ Section 552.30(1), F.S.

⁶ 30 U.S. Code; s. 552.30(2), F.S.; Fla. Admin. Code R. 69A-2.024. For examples of local ordinances, see Miami-Dade County’s Code of Ordinances, §13-4; City of Miramar’s Code of Ordinances, §2-66.

⁷ Ch. 2000-266, Laws of Fla.

⁸ Section 552.30(2), F.S.

⁹ Fla. Admin. Code R. 69A-2.024(9)(a).

¹⁰ *Id.*; see United States Bureau of Mines, *Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria* (Figure B-1), available at <https://www.osmre.gov/resources/blasting/docs/USBM/RI8507BlastingVibration1989.pdf>.

¹¹ Fla. Admin. Code R. 69A-2.024(15).

¹² Fla. Admin. Code R. 69A-2.024(3).

Monday through Friday.¹³ Blasting is prohibited on weekends and official holidays unless consent is granted by the State Fire Marshal.¹⁴

A person who is permitted to engage in construction materials mining activity must submit written notification to the county or municipality where the activity is to be conducted after the issuance of a permit and at least 20 days prior to a blast. Such person must also submit subsequent notices following permit renewals and revisions.¹⁵

Reporting

Pursuant to DFS rules, each person engaged in construction materials mining activity shall submit to the State Fire Marshal, upon request, the results of ground vibration and air blast measurements, along with specific information including the date and time of the blast and amount of explosives.¹⁶

Seismologists

Seismology is the study of earthquakes and related phenomena. A seismologist studies the Earth's structure and other geological events for commercial and other purposes.¹⁷ Seismologists can conduct research, record and analyze data, or apply their knowledge to help detect and monitor explosions.

Ground vibration measurements made pursuant to DFS rule must be made by a seismologist that:

- Has five years of continuous experience measuring and evaluating levels of ground vibration and air overpressure produced by blasting;
- Has demonstrable expertise in the use, location, and operation of seismographic equipment and analysis of seismographic data;
- Has prior experience in monitoring side effects produced by blasting used in construction materials mining activity;
- Has not engaged in dishonest practices relating to the collection or analysis of data or information regarding the use of explosives in construction materials mining; and
- Is not an employee of the mining permit holder, blaster, or user.¹⁸

A seismologist may not be an employee of a mining permit holder, blaster, or user, or another entity regulated under ch. 552, F.S., to be considered independent.¹⁹ In addition, the seismologist may not have been an expert witness, investigator, or consultant for the mining permit holder, blaster, or user or for an aggrieved party in a legal action where the mining permit holder, blaster, or user is alleged to have caused damages.²⁰

¹³ Fla. Admin. Code R. 69A-2.024(6).

¹⁴ *Id.*

¹⁵ Fla. Admin. Code R. 69A-2.024(8).

¹⁶ For full list of requirements, see Fla. Admin. Code R. 69A-2.024(7).

¹⁷ U.S. Bureau of Labor Statistics, *You're a what? Seismologist*, Jan. 2015, <https://www.bls.gov/careeroutlook/2015/youre-a-what/seismologist.htm> (last visited Jan. 22, 2020).

¹⁸ Fla. Admin. Code R. 69A-2.024(4).

¹⁹ Fla. Admin. Code R. 69A-2.024(2).

²⁰ *Id.*

Complaints

The State Fire Marshal is required to investigate any alleged violation of ch. 552, F.S.²¹ A person who believes that a mining operation is in violation of state law or DFS rules, or that the operation's use of explosives is unsafe or causes damage to the property of others, may file a complaint with the Division.²² The Division suggests including the following information in a complaint:

- The date and time of the blast;
- Photographs;
- Written statements from witnesses;
- Reports by independent inspectors or experts who have inspected the affected property;
- Samples of damaged material; and
- Other material or information that will support the facts leading to the complaint.²³

If the Division determines, through investigation, that the complaint is justified and a violation occurred, it has the authority to impose administrative penalties against a mining company that exceeds established blasting limits or violates other laws or rules.²⁴ These penalties range from a monetary fine to the suspension or revocation of the company's permit.²⁵

Miami-Dade Blasting Concerns

The Lake Belt Region in Miami-Dade County provides over half of the limestone that Florida requires, which can only be extracted by blasting.²⁶ Several communities within Miami-Dade County have concerns about the blasting activities in their area and the effects on their residences. Miami-Dade County enacted an ordinance that requires persons who use explosives and blasting agents, generally, to obtain a county occupational license and/or user permit to perform blasting in the incorporated and unincorporated areas of the county in addition to operating pursuant to statutory requirements.²⁷

With regard to regulation of blasting activity, the Town of Miami Lakes has made unsuccessful attempts to limit blasting.²⁸ The City of Miramar banned all blasting in the city in 1999, but the effects of blasting performed outside of city limits are still felt by residents within the city.²⁹ The City of Miramar also created an advisory committee in 2017 as an information source and to facilitate communication between the city and its residents who are impacted by mining.³⁰ The

²¹ Fla. Admin. Code R. 69A-2.024(11).

²² DFS, Division of State Fire Marshal, *Blasting in Florida, A guide to filing complaints*, available at https://www.myfloridacfo.com/Division/SFM/BFP/Documents/Blasting_in_Florida_brochure.pdf.

²³ *Id.*

²⁴ Sections 552.151, 552.161, and 552.171, F.S.; Fla. Admin. Code R. 69A-2.024(11).

²⁵ *Id.*

²⁶ DEP, *Limestone, Shell, Dolomite*, <https://floridadep.gov/water/mining-mitigation/content/limestone-shell-dolomite> (last visited Jan. 22, 2020); see also South Florida Water Management District, *Lake Belt Mitigation Committee*, <https://www.sfwmd.gov/our-work/lake-belt-committee> (last visited Jan. 22, 2020).

²⁷ Miami-Dade County's Code of Ordinances, §13-4.

²⁸ Town of Miami Lakes, *Blasting Concerns*, https://www.miamilakes-fl.gov/index.php?option=com_content&view=article&id=1482&Itemid=866 (last visited Jan. 22, 2020).

²⁹ City of Miramar, *Blasting Concerns*, <https://www.miramarfl.gov/388/Blasting-Concerns> (last visited Jan. 22, 2020).

³⁰ City of Miramar's Code of Ordinances, §2-66.

City of Doral monitors blasting activity and daily blasting records are kept by the quarries or an independent seismologist.³¹

2018 Mine Blasting Study

In 2017, the Florida Legislature appropriated funds to DFS to allow it to contract for a study to review whether the established statewide ground vibrations limits for construction material mining activities were still appropriate and to review any legitimate claims for damages caused by such mining activities. The study was required to include a review of measured amplitudes and frequencies, structure responses, theoretical analyses of material strengths and strains, and assessments of home damages.³² The SFM's selected vendor, RESPEC, Inc., delivered its final study to DFS at the end of July 2018.³³

The study concluded that limiting vibrations to 0.5 inches per second was overly restrictive and suggested changing the ruling to address plaster-on-lath and drywall construction. The study also concluded that the two-mile urban development distance requirement from blasting had no scientific justification and recommended eliminating it or replacing it with a requirement with scientific support. Since the study, there have not been any revisions to state law or DFS rule.

III. Effect of Proposed Changes:

Legislative Findings

The bill revises s. 552.30, F.S. The bill provides legislative findings that:

- Construction materials mining activities require the use of explosives to fracture the material before excavation;
- The use of explosives results in physical ground vibrations and air blasts that may affect other property owners in the vicinity of the mining site;
- It is in the best interest of the public to ensure that blasts resulting from the use of explosives for construction materials mining activities are accurately monitored and reported to ensure the blasts do not exceed physical ground vibration and air blast limits; and
- More permits for construction materials mining activities have been issued to entities operating in Miami-Dade County than any other county in the state.

Monitoring and Reporting Pilot Program

The bill creates a pilot program in the Division of the State Fire Marshal (Division) within the Department of Financial Services (DFS) for the monitoring and reporting of each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County.

The bill requires the State Fire Marshal to hire or contract with seismologists to monitor and report each blast resulting from the use of explosives for construction materials mining activities

³¹ City of Doral, *Blasting/Mining Information*, <https://www.cityofdoral.com/residents/blasting-mining-information/> (last visited Jan. 22, 2020).

³² Section 552.30(3), F.S.

³³ Respec, *Construction Materials Mining Activities Consultation and Study Preparation Services Final Report*, July 2018, available at <https://www.myfloridacfo.com/Division/SFM/BFP/documents/MineBlastingStudy.pdf>.

in the county, including, at minimum, monitoring and reporting the ground vibration, frequency, intensity, air blast, and time and date of the blast. The State Fire Marshal must post the reports on the Division's website.

The bill prohibits a seismologist that is hired or contracted by the state to conduct the monitoring and reporting required under the bill from:

- Being employed by or under contract with a person who engages in or contracts for construction materials mining activities; or
- Engaging in dishonest practices relating to the collection or analysis of data or information regarding the use of explosives in construction materials mining activities.

Notice Requirements

The bill requires a person who engages in construction materials mining activities to provide written notice to the State Fire Marshal of the use of an explosive for such activities in Miami-Dade County before the detonation of the explosive.

Rulemaking

The bill requires the State Fire Marshal to adopt rules to implement and enforce the bill.

Appropriation

The bill appropriates, for the fiscal year 2020-2021, the recurring sum of \$600,000 and the nonrecurring sum of \$440,000 from the General Revenue Fund to the Division for the purpose of implementing the monitoring and reporting pilot program created under the bill.

Effective Date

The bill provides an effective date of October 1, 2020.

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:

There will be a negative fiscal impact to the Division to create the monitoring and reporting pilot program, hire or contract with seismologists, and adopt rules. However, an appropriation has been provided under the bill so the impact may be offset if it covers the costs incurred by the Division.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 552.30 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 Diaz

36-01876A-20

20201618__

1 A bill to be entitled
2 An act relating to construction materials mining
3 activities; amending s. 552.30, F.S.; providing
4 legislative findings; creating a pilot program within
5 the Division of State Fire Marshal to monitor and
6 report on the use of explosives in construction
7 materials mining activities in Miami-Dade County;
8 requiring the State Fire Marshal to hire or contract
9 with seismologists to monitor and report blasts
10 occurring in connection with construction materials
11 mining activities in Miami-Dade County and to post the
12 reports of the seismologists on the division's
13 website; providing requirements for such
14 seismologists; requiring a person who engages in
15 construction materials mining activities in Miami-Dade
16 County to submit certain written notice relating to
17 the use of an explosive to the State Fire Marshal;
18 requiring the State Fire Marshal to adopt rules;
19 providing an appropriation; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 552.30, Florida Statutes, is amended to
25 read:

26 552.30 Construction materials mining activities.—

27 (1) Notwithstanding the provisions of s. 552.25, the State
28 Fire Marshal shall have the sole and exclusive authority to
29 adopt ~~promulgate~~ standards, limits, and regulations regarding

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30 the use of explosives used for ~~in conjunction with~~ construction
31 materials mining activities. Such authority to regulate use
32 shall include, directly or indirectly, the operation, handling,
33 licensure, or permitting of explosives and setting standards or
34 limits, including, but not limited to, ground vibration,
35 frequency, intensity, blast pattern, air blast and time, date,
36 occurrence, and notice restrictions. As used in this section,
37 the term "construction materials mining activities" means the
38 extraction of limestone and sand suitable for production of
39 construction aggregates, sand, cement, and road base materials
40 for shipment offsite by any person or company primarily engaged
41 in the commercial mining of any such natural resources.

42 (2) The State Fire Marshal shall establish statewide ground
43 vibration limits for construction materials mining activities
44 which conform to those limits established in the United States
45 Bureau of Mines, Report of Investigations 8507, Appendix B -
46 Alternative Blasting Level Criteria (Figure B-1). The State Fire
47 Marshal may, at his or her sole discretion, by rule or formal
48 agreement, delegate to the applicable municipality or county,
49 the monitoring and enforcement components of regulations
50 governing the use of explosives, as recognized in this section,
51 by construction materials mining activities. Such delegation may
52 include the assessment and collection of reasonable fees by the
53 municipality or county for the purpose of carrying out the
54 delegated activities.

55 (3) The State Fire Marshal is directed to conduct or
56 contract for a study to review whether the established statewide
57 ground vibration limits for construction materials mining
58 activities are still appropriate and to review any legitimate

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59 claims paid for damages caused by such mining activities. The
60 study must include a review of measured vibration amplitudes and
61 frequencies, structure responses, theoretical analyses of
62 material strength and strains, and assessments of home damages.

63 (a) The study shall be funded using the specified portion
64 of revenues received from the water treatment plant upgrade fee
65 pursuant to s. 373.41492.

66 (b) The State Fire Marshal shall submit a report to the
67 Governor, the President of the Senate, and the Speaker of the
68 House of Representatives by December 1, 2016, which contains the
69 findings of the study and any recommendations.

70 (4) (a) The Legislature finds that construction materials
71 mining activities require the use of explosives to fracture the
72 material before excavation. The use of explosives results in
73 physical ground vibrations and air blasts that may affect other
74 property owners in the vicinity of the mining site. It is in the
75 best interest of the public to ensure that blasts resulting from
76 the use of explosives for construction materials mining
77 activities are accurately monitored and reported to ensure the
78 blasts do not exceed physical ground vibration and air blast
79 limits. The Legislature further finds that more permits for
80 construction materials mining activities have been issued to
81 entities operating in Miami-Dade County than any other county in
82 the state.

83 (b) A monitoring and reporting pilot program for the use of
84 explosives is created within the Division of the State Fire
85 Marshal to monitor and report each blast resulting from the use
86 of explosives for construction materials mining activities in
87 Miami-Dade County.

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88 (c) The State Fire Marshal shall hire or contract with
89 seismologists to monitor and report each blast resulting from
90 the use of explosives for construction materials mining
91 activities in Miami-Dade County, including, at a minimum,
92 monitoring and reporting the ground vibration, frequency,
93 intensity, air blast, and time and date of the blast. The State
94 Fire Marshal shall post the reports on the division's website to
95 be available to the public.

96 (d) A seismologist hired or contracted by the State Fire
97 Marshal as required by this subsection may not:

98 1. Be an employee of or under contract with a person who
99 engages in or contracts for construction materials mining
100 activities.

101 2. Have engaged in dishonest practices relating to the
102 collection or analysis of data or information regarding the use
103 of explosives in construction materials mining activities.

104 (e) A person who engages in construction materials mining
105 activities shall provide written notice to the State Fire
106 Marshal of the use of an explosive for construction materials
107 mining activities in Miami-Dade County before the detonation of
108 the explosive.

109 (f) The State Fire Marshal shall adopt rules to implement
110 and enforce this subsection.

111 Section 2. For fiscal year 2020-2021, the recurring sum of
112 \$600,000 and the nonrecurring sum of \$440,000 are appropriated
113 from the General Revenue Fund to the Division of State Fire
114 Marshal within the Department of Financial Services for the
115 purpose of implementing the monitoring and reporting pilot
116 program for the use of explosives in Miami-Dade County pursuant

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117 to s. 552.30(4), Florida Statutes.

118 Section 3. This act shall take effect October 1, 2020.

**Florida Department of Environmental Protection
DIVISION OF WASTE MANAGEMENT
Bureau of Petroleum Storage Systems**

**PETROLEUM
CONTAMINATION CLEANUP
and
DISCHARGE
PREVENTION PROGRAMS**



- JANUARY 2012 -

Florida Department of Environmental Protection
Bureau of Petroleum Storage Systems
January 2012 Program Briefing

PROGRAM ORIGINS

Regulation of underground petroleum storage tanks began in the early 1980s with the recognition that Florida's groundwater, which provides 90% of the state's drinking water, 70% of the state's industrial water and 50% of its agricultural water needs, was at risk of becoming contaminated. In 1982, petroleum contamination from a leaking underground petroleum storage tank was documented in a well field for the City of Bellevue, in Marion County. The legislative response to the problem was the passage of the Water Quality Assurance Act of 1983. The law provided for:

- Prohibition against petroleum discharges
- Required cleanup of petroleum discharges
- State mandated cleanup if not done expeditiously
- Strict liability for petroleum contamination
- Required tank inspections and monitoring

The provisions of the 1983 Act were implemented by rule under the former Florida Department of Environmental Regulation (FDER), but by 1985, the situation became clear that an incentive program was needed to accelerate the assessment and cleanup process for petroleum contaminated sites. The Legislature considered the alternatives and created the State Underground Petroleum Environmental Response Act of 1986. The fiscal analysis that accompanied the legislation in 1986 predicted as many as 2,000 contaminated sites throughout the State. As of December 2011, the total number of contaminated sites exceeded 25,124 of which 17,396 are eligible for state funding.

The 1986 legislation also created the Inland Protection Trust Fund (ss. 376.3071, Florida Statutes) to pay for the expedited cleanup of petroleum contaminated sites. The Inland Protection Trust Fund (IPTF) is a non-lapsing revolving trust fund with revenues generated from an excise tax per barrel of petroleum products currently produced or imported into the State as defined in ss. 206.9935, Florida Statutes. The amount of the excise tax collected per barrel is dependent upon the unobligated balance of the IPTF according to the formula: thirty cents if the balance is between \$100 and \$150 million; sixty cents if the unobligated balance is between \$50 and \$100 million; and eighty cents if the unobligated balance is less than \$50 million.

BUREAU'S MANAGEMENT APPROACHES TO SITE CLEANUP

1996 To Present

The Bureau has two basic missions. The first is to clean up, in a health threat priority order system, all known petroleum-contaminated sites eligible in one of the five legislative cleanup programs and to ensure that all non-eligible discharges are cleaned up in accordance with Chapter 62-770, FAC. The second mission is to reduce or eliminate future discharges to ensure that the State does not suffer a petroleum contamination relapse of the magnitude that was discovered in the late 1980s and early 1990s.

In 1996, the Bureau redirected activities to:

- Preapprove the scope and costs of cleanup activities for all state-funded eligible sites. (While the Bureau does not micromanage contractors, the Bureau is statutorily required to approve the prepared scope of work and technical approach submitted by the contractor. The Bureau is not obligated to approve any scope of work with which it does not agree).
- Utilize business-based approaches to operations
- Develop a "tool kit" of alternative cleanup strategies to fit various cleanup scenarios
- Provide for on-going program audits and accountability

The successful implementation of the Bureau's two missions has been largely due to the establishment of an innovative baseline program structure and to constant refinements and improvements in the way operations are conducted, outsourcing initiatives are implemented, and training and standardized procedures are developed and instituted.

Risk-Based Corrective Action

Legislation in 1996 required formalization of Risk-Based Corrective Action (RBCA) procedures at petroleum contamination sites. RBCA considers the actual risk to human health, public safety and the environment in determining whether alternative cleanup strategies can be utilized to provide for more cost-effective cleanups. RBCA allows for using alternative cleanup target levels, institutional and engineering controls and remediation by natural attenuation in lieu of using conventional cleanup technologies on a case-by-case basis. These RBCA strategies allow the Bureau to make cleanup decisions that can reduce costs while protecting human health and the environment. RBCA concepts and strategies were folded into the Bureau's petroleum cleanup rule, Chapter 62-770, FAC, in 1997. A renewed emphasis on incorporating RBCA into cleanup decisions and educating the regulated community began in 2011.

Cost Templating/Standardization

The underpinning of the Bureau's innovative baseline program structure is to focus on the scope of work and to standardize the ways in which site rehabilitation work is conducted. The Legislature required the Bureau by statute to develop "templates" which provided for standardized forms and pricing schedules for activities conducted on a job site. This innovative structure and approach has significantly reduced or eliminated negotiation times with cleanup contractors, reduced or eliminated subcontractor bidding requirements, resulting in more sites being assessed, remediated and closed. In addition, the Bureau established a standard operating procedure manual (SOP) and numerous geological and engineering technical guidance documents to ensure consistency throughout the program for both internal operations and the cleanup industry.

Program Audits

The Bureau works closely with the Department's Office of Inspector General (OIG) to establish short, mid and long-term audit schedules for the staff augmentation, administrative, compliance and local program cleanup oversight contracts as well as audits on the cleanup contractors who perform the actual remediation work. Audits are routinely conducted, reports are reviewed and action taken where necessary in order to protect the integrity of the state's petroleum cleanup discharge prevention program.

COMPLIANCE AND ENFORCEMENT

Compliance Inspections

The Bureau's successful wholesale and retail petroleum compliance program for monitoring how well registered sites are complying with the State's storage and distribution engineering requirements as stipulated in Chapters 62-761 and 62-762, FAC, continues to produce outstanding results. Inspectors ensure facilities maintain equipment upgrades; that leak detection systems are functioning; that reconciliation records are up to date and, that new discharges are handled appropriately. Inspectors work closely with owners and operators and provide expertise and advice on their petroleum storage and distribution systems; and how to achieve compliance without the need for enforcement. All inspectors receive initial and continuation training and must pass a test prior to participation in the inspection program.

Inspections are performed and uploaded through the state-of-the-art computer system, Florida Inspection Reporting for Storage Tanks (FIRST), which has increased inspection frequency, accuracy and efficiency.

Active Tank Facility Registrations

During the first half of Fiscal Year 2011/2012, the Bureau maintained site records on more than 44,218 underground and above ground tanks and 22,643 registration placards were issued to facilities during the year.

Discharge Reports Filed

The Bureau requires that all new discharges of petroleum products be reported. Since 1993, the numbers of reported discharges has declined dramatically. This decrease can be attributed to engineering improvements such as double walled tanks and piping, secondary containment and leak detection systems as well as diligence on the part of the inspectors, owners and operators. The number of total discharges per year is shown in **Figure 1**. As of December 2011, 99.9% of all tanks in service as well as their associated piping are double-walled.

During the 2006 Legislative session, new statutory language was added to Chapter 376 which directs the program to fold new releases having occurred on or after July 1, 2005 into the existing state funded eligibility if the facility has met specific legislative-required criteria.

Discharges Reported

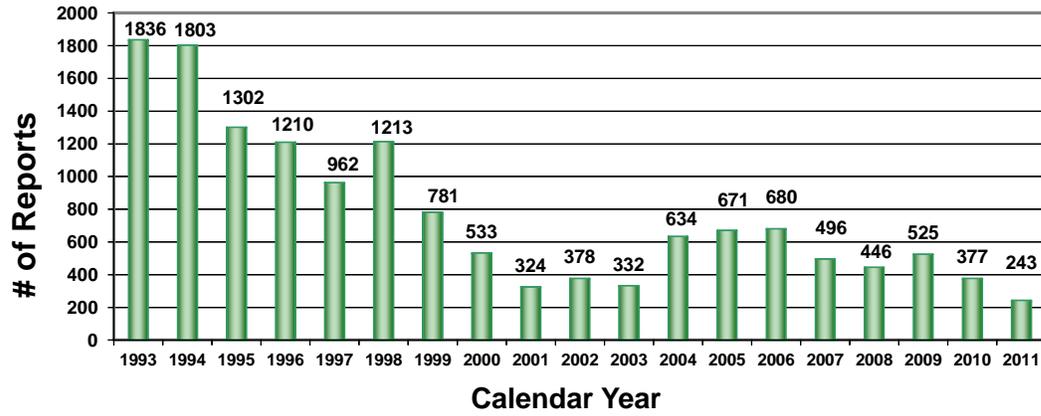


Figure 1

OUTSOURCING/CONTRACTING

Over the past eleven years, the Bureau has created an infrastructure consisting of State staff, county contracted staff and private contractors to address the administrative and management issues and complex technical issues associated with petroleum, pollutant and hazardous materials discharge prevention and contamination cleanup.

County Compliance Contracting

In order to prevent or reduce future discharges of petroleum products, the Bureau established an aggressive and comprehensive inspection, compliance and enforcement program. The Bureau has 37 contracts with counties and local Department of Health Districts to establish and maintain inspections, compliance and enforcement covering 65 counties. The compliance contracts employ approximately 140 field inspectors. Florida's petroleum inspection, compliance and enforcement program is the State's first line of defense for ensuring that petroleum storage and distribution systems are maintained and upgraded as required by law and that all new discharges are reported and cleaned up. All inspectors are required to attend formal training and must pass a test in order to be recognized as a State inspector. Continuous training is also required for all inspectors.

County Cleanup Contracting

Over the past few years, the Bureau has expanded its operations as the number of sites undergoing petroleum contamination cleanup has increased. In order to meet this challenge, the Bureau initiated contracts with counties and local Department of Health entities to establish cleanup programs so that more sites could be managed at the local level. The Bureau has entered into contracts with 14 counties and local Department of Health offices to manage petroleum cleanups covering 20 counties. The contracted cleanup programs employ approximately 80 people, most of whom are geologists, engineers and scientists. To maintain consistency, all staff members associated with the program are required to use the program SOP manual and technical guidance documents. In addition, all staff are required to attend initial and refresher training on all aspects of petroleum assessment, remediation and internal operations.

Private Sector Contracting

Over the past eleven years, the Bureau has increased its work output by utilizing private contractors to augment State employees. To supplement the Bureau's four operational cleanup teams that handle the review and oversight of the cleanup of contaminated sites, two additional contracted teams were hired. The contracted teams provide approximately 30-35 additional professional staff members, including engineers, geologists, and scientists, to implement the preapproval program and oversee cleanup work. The cost of the two contractor teams is approximately \$5 million per year. In addition, the Bureau utilizes private contractors at a cost of approximately \$2.07 million per year to provide administrative support including priority scoring; accounting and

support staff; contractor qualification; contractor designation form solicitation and processing; deductible and LCAR solicitation and tracking; utility invoice processing; file and database QA and off-site contamination notification. The Bureau also uses private contractors as needed to perform ability to pay analyses, legal support services and forensic investigations. The use of contract staff has allowed the Bureau to dramatically increase its business volume without incurring long-term staffing obligations.

Potable Well Protection and Department of Health Contracting

All petroleum contaminated sites are assigned a priority score based on various threats to human health and the environment which determines a site's prioritization for assessment, cleanup and State funding (if applicable). One of the most significant risk factors is the proximity of public and private drinking water wells to the contaminated site. The Department receives a direct Legislative appropriation of approximately \$200,000 annually, which is administered by the Division of Water Resource Management, to provide treatment filters or alternate water supplies in cases where a potable well has been impacted by contamination. The Division of Waste management contracts with the Department of Health to provide location surveys, and representative sampling and analytical testing of potable wells in the vicinity of contaminated sites at an annual cost of approximately \$1.6 million. Data from these activities are used by both Divisions for water supply protection and cleanup prioritization purposes.

LEGISLATIVE FUNDING

Beginning with the restructuring of the petroleum cleanup and discharge prevention program in 1996, the Legislature began funding the preapproval program. The funding history to achieve these improvements is depicted in **Figure 2**.

Preapproval Funding

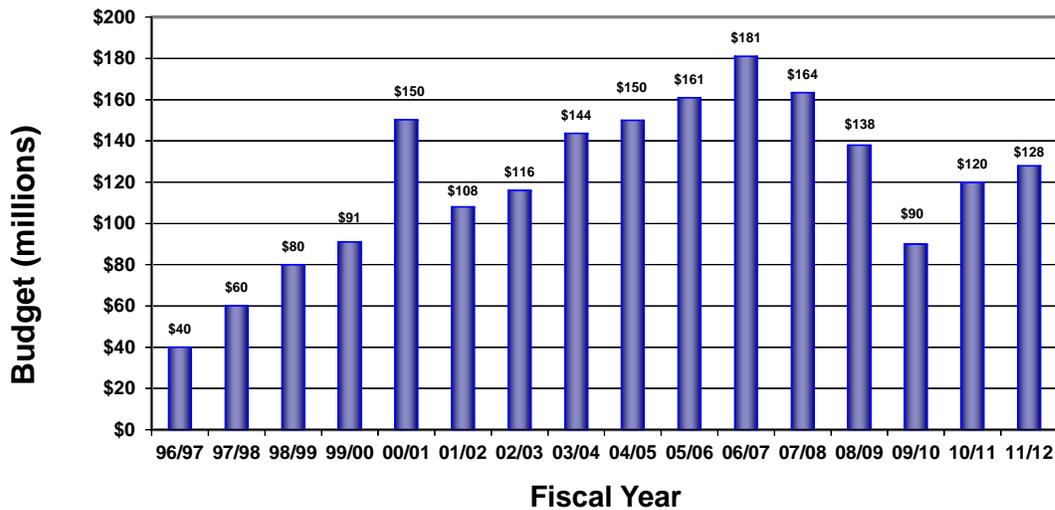


Figure 2

PERFORMANCE MEASURES

Overall Program Performance

There are 19,164 sites that have been identified, ranked and determined eligible for state-funded cleanup under the various programs administered by the Bureau. The program progress is summarized as follows:

- *Total number of contaminated sites registered in a state funded program eligible – 19,164*
- *Eligible sites undergoing cleanup as of December 2011 – 3,395*
- *The score range for funding active sites was lowered from 56 to 49 on January 3, 2011, and then lowered again on September 20, 2011 to 46*
- *Eligible sites awaiting cleanup as of December 2011 – 8,939*
- *Total number of eligible site closures as of December 2011 (cleanups completed) – 6,830*
- *Total number of ineligible site closures as of December 2011 (cleanups completed) – 7,179*

Number of Work Orders Issued

Two key indicators of performance within the petroleum cleanup program are the number of work orders issued for cleanup activities and the number of site closures. In other words, the tally of the number of work orders and site closures and the corresponding dollar value is the measure of program activity and intensity. **Figure 3** documents the ramp up of the workload since mid-1996 and **Figure 4** documents the number of eligible and ineligible site closures since 1996.

Work Orders / Task Assignments / Other Contracts: Preapproval Program

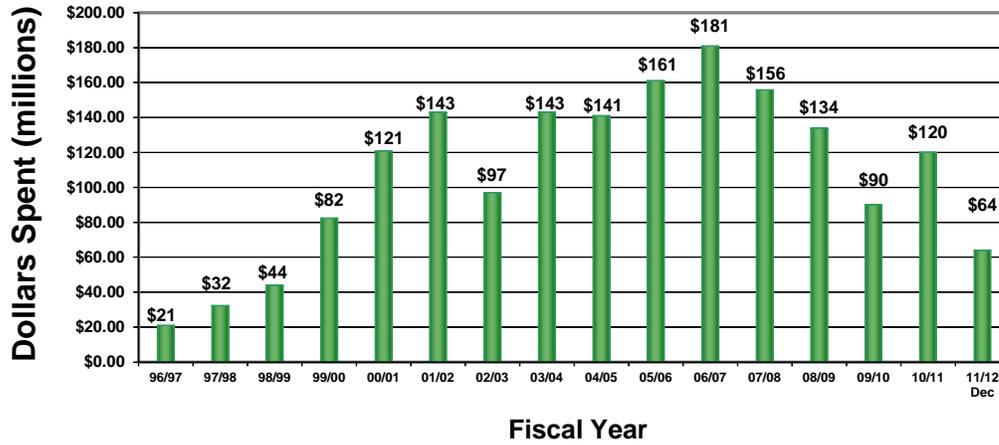


Figure 3

Cleanups Completed

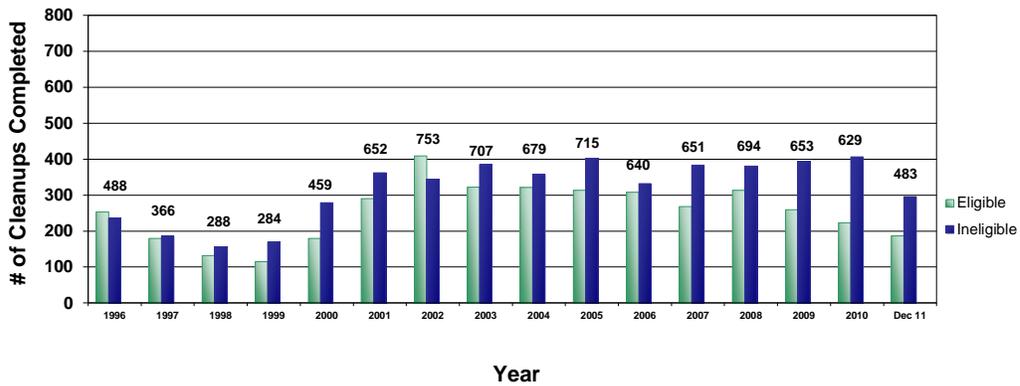


Figure 4

Cleanups Underway

Figure 5 depicts the number of sites where cleanup operations are underway. This graph shows the dramatic acceleration in program activity from 1996 to present.

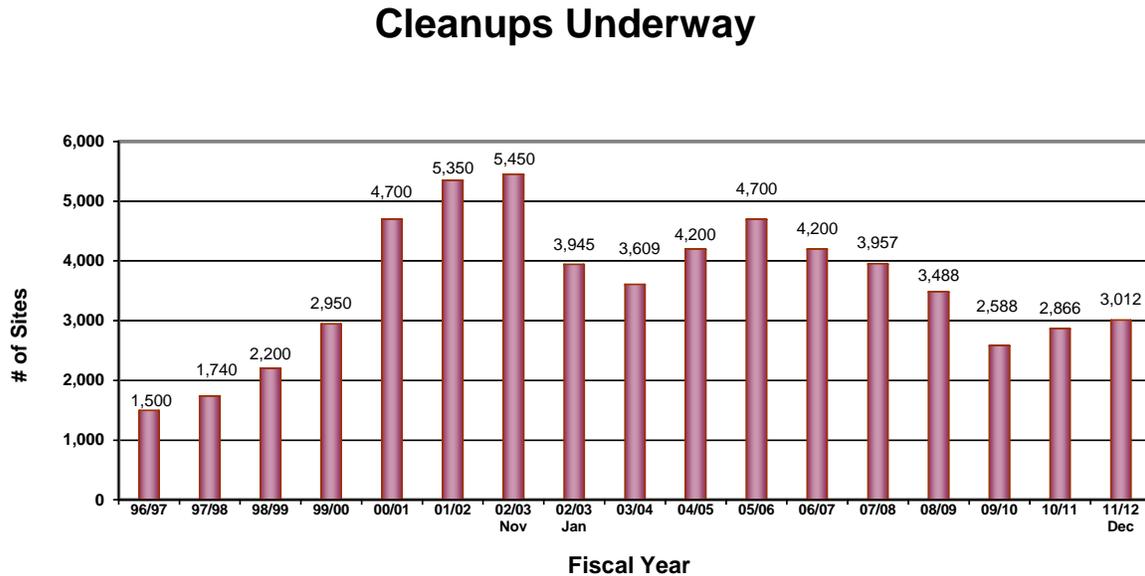


Figure 5

Fiscal Year 2012/2013 Active Cleanups are expected to increase by approximately 1,000 sites due to a new effort of providing a minimal amount of assessment on every eligible facility in the next 6-8 years to screen sites for imminent health threats, clean closures and liability against future discharges.

RECENT DEVELOPMENTS

In 2002 the Bureau instituted a streamlined Petroleum Contamination Assessment process which was designed to speed up the process of determining the vertical and horizontal extent of the contamination plume. This new streamlined assessment process has been very successful and contamination assessments that were previously taking 18 – 24 months are now completed in 9 months or less.

In early 2003 the Bureau began an extensive review of the efficiency and effectiveness of the remediation systems used to remove petroleum contamination from soil and groundwater. The results of this study indicated that a more comprehensive approach to engineering design, component selection, construction, testing, operations and monitoring of remediation systems was essential to increased site closures and increased efficiency and effectiveness. In July of 2003 the Bureau instituted new standards for all phases of remediation operations and in March of 2004 instituted new payment standards. Contractor performance standards were also established linking remediation performance to contractor performance/nonperformance criteria. Additionally, each cleanup team and county cleanup program has a designated engineer who reviews quarterly remediation system performance reports and provides recommendations to the site managers and a systems field inspector who ensures that the system is running and performing to design specifications. The improved standards which integrate design, component selection, construction, testing and operations coupled with human and automation monitoring vastly improved remediation system performance, efficiency and effectiveness resulting in more site closures per year and greatly reduced cleanup timelines. In addition, remediation systems are being refurbished and reused at other sites, reducing the capital investment costs of purchasing new systems. For fiscal years 2009/2010 and 2010/2011 over \$5 million worth of equipment was reused, thereby reducing the capital investment in remediation systems.

Over the past few years, the Bureau has made several attempts to project and estimate the costs associated with site cleanups. There are multiple variables associated with each contaminated site and each site is best viewed as a separate project with its own set of circumstances and variables. Each site requires extensive assessment to determine the depth and width of the contamination plume, what geology is present and particulars on groundwater flow. Such assessments are done by physically drilling for soil and groundwater samples as deep as 100 feet or more. The contamination plume is essentially chased across the source property and beyond until the laboratory analyticals indicate where the outer edge of the plume is located.

Once an assessment report is completed based upon the physical investigation at the site, the engineers and geologists decide on the best course of action to cleanup the site. A typical assessment report presents the vertical and horizontal contamination plume on maps, groundwater flow, geology and laboratory analytical tables which show which contaminants are present, where they are and at what levels, and recommendations on how to approach the cleanup. The costs for assessment can run as little as \$20,000 and as high as \$100,000 or more.

Depending on whether a mechanical remediation system is to be installed or the soil will be removed or a combination of approaches, the costs could run \$100,000 to \$200,000 for system construction and \$60,000 or more per year to operate a remediation system. Systems can run for several years before the site is ready for monitoring and closure. Soil removals can cost up to several million dollars depending on how deep and wide the contamination is and whether roadways, parking lots or structures need to be moved, demolished or relocated.

Geology, vertical and horizontal extent of the plume, levels of contamination, whether petroleum in its liquid state is present and whether there is groundwater contamination are, in many cases, the main variables which determine the cleanup costs at a site. The total cost of a cleanup could be as low as \$20,000 - \$30,000, where no contamination is detected and as high as \$5 million or more where contamination has sunk deep into the ground requiring a massive soil removal and groundwater remediation effort. In 2002 the average cost of a cleanup was approximately \$460,000. In 2004 the average cost of cleanup dropped to \$380,000 per site. Since 2004 the average cost has risen slightly to \$400,000 per site. The Bureau fully expects the average cleanup costs to oscillate over the years. However, as the program begins to address low scored sites in the years to come, larger contamination plumes are expected because these sites have been awaiting cleanup for many years. It is anticipated that the average cost for a site cleanup could rise dramatically.

RECENT PROGRAM DIRECTIONS

Preapproval Advanced Cleanup Program

The Preapproval Advanced Cleanup Program (PAC) was created to provide an opportunity for site rehabilitation to be conducted on a limited basis in advance of the site's priority ranking. Applicants in this program bid a significant cost share for cleanup work and successful projects are allowed to move forward in advance of other priorities. **Table 1** below summarizes the number of participants and the cost sharing since 1996. Eleven of the last twelve cycles of the PAC program were cancelled due to the need to fund priority scored site cleanups.

Table 1: Preapproval Advance Cleanup Program

Application Period	Winning Applicants	DEP Funding	Applicant Funding	Average Applicant Cost Share %
11/01/96 – 12/31/96	63	\$ 4,063,853.54	\$ 7,371,481.47	62.90%
05/01/97 – 06/30/97	69	\$ 4,262,593.40	\$ 6,575,902.70	60.02%
11/01/97 – 12/31/97	20	\$ 1,709,636.58	\$ 2,006,055.30	53.33%
05/01/98 – 06/30/98	38	\$ 5,658,372.35	\$ 7,088,115.90	53.76%
11/01/98 – 12/31/98	30	\$ 1,300,329.57	\$ 1,494,862.04	44.81%
05/01/99 – 06/30/99	8	\$ 2,643,793.14	\$ 1,121,681.06	33.02%
11/01/99 – 12/31/99	14	\$ 1,260,041.80	\$ 583,616.20	37.59%
05/01/00 – 06/30/00	13	\$ 1,561,743.80	\$ 664,581.12	29.54%
11/01/00 – 12/29/00	5	\$ 830,149.67	\$ 325,760.14	27.80%
05/01/01 – 06/30/01	15	\$3,074,144.05	\$1,208,845.09	27.18%
11/01/01 – 12/29/01	25	\$6,775,956.04	\$2,357,243.15	26.53%
05/01/02 – 06/30/02	6	\$1,086,489.77	\$391,786.83	27.50%
11/01/02 – 12/29/02	-----	CANCELLED		-----
05/01/03 – 06/30/03	-----	CANCELLED		-----
11/01/03 – 12/29/03	-----	CANCELLED		-----
05/01/04 – 06/30/04	-----	CANCELLED		-----
11/01/04 – 12/31/04	-----	CANCELLED		-----
05/01/05 – 06/30/05	-----	CANCELLED		-----
11/01/05 – 12/31/05	-----	CANCELLED		-----
05/01/06 – 06/30/06	-----	CANCELLED		-----
11/01/06 – 12/31/06	-----	CANCELLED		-----
05/01/07 – 06/30/07	18	\$4,848,000.35	\$5,449,734.87	51.46%
11/01/07 – 12/31/07	-----	CANCELLED		-----
05/01/08 – 06/30/08	-----	CANCELLED		-----
11/01/08 – 12/31/08	-----	CANCELLED		-----
05/01/09 – 06/30/09	-----	CANCELLED		-----
11/01/09 – 12/31/09	-----	CANCELLED		-----
05/01/10 – 06/30/10	-----	CANCELLED		-----
11/01/10 – 12/31/10	-----	CANCELLED		-----
05/01/11 – 06/30/11	-----	CANCELLED		-----
11/01/11 – 12/31/11	30	\$4,794,358.71	\$5,967,178.94	53.88%

Note: The PAC program allows for discretionary funding on sites below score range. Since 2002 the program has concentrated funding on sites within score range to help increase site closures on higher scored sites.

Cost Share Agreements

The Bureau developed Cost Share Agreements for handling the problem where new discharges occur at sites where there is an existing discharge, which is eligible in one of the State's five cleanup programs. The mixed plumes of old and new discharges could lead to awkward situations within the existing program areas with respect to the allocation of costs. To remedy this problem, the Legislature authorized the Bureau by statute in 1999 to negotiate cost sharing agreements with the responsible parties for new discharges. The cost sharing allows the Bureau to negotiate issues of prioritization and allocation of cleanup and funding responsibilities with the person accepting responsibility for the new contamination. To date, over 451 such agreements have been completed.

College Co-Op Program

The Bureau established a college Co-Op program to attract and train science, geology, and engineering students in petroleum assessment and cleanup. These students are encouraged to move into an environmental science or engineering career once they graduate. Currently, several Co-Op students are employed either in the Bureau or the petroleum cleanup industry.

HISTORY OF STATE-ASSISTED PETROLEUM CLEANUP PROGRAMS

Early Detection Incentive Program (Section 376.3071(9), F.S.): July 1, 1986 – December 31, 1988

Owners of underground petroleum tanks with suspected contamination that were reported to the Department between June 30, 1986, and December 31, 1988, were eligible for either state-contracted cleanup or reimbursement of costs for a privately managed cleanup. A critical component of the Early Detection Incentive (EDI) program was the creation of a “grace period” or exemption from departmental enforcement actions for sites that were reported. Approximately 10,000 contaminated sites were submitted under the EDI program with approximately 5,000 sites being submitted just prior to the deadline the last two weeks of 1988.

Petroleum Liability and Restoration Insurance Program (Section 3072, F.S.): January 1, 1987 – December 31, 1998

The Petroleum Liability and Restoration Insurance Program (PLRIP) was established on January 1, 1989 in response to anticipated federal financial responsibility requirements. In the late 1980's there were few, if any, private insurers writing coverage for petroleum-contaminated sites. PLRIP provided petroleum facilities that were in State regulatory compliance eligibility to purchase \$1 million in pollution liability protection from a state-contracted insurer. PLRIP also provided \$1 million worth of state funded site restoration coverage. In the early 1990's, commercial liability insurance was available in the marketplace at cost effective premiums. Legislation was passed to return the responsibility for site cleanup to the responsible party and to phase out the Department's participation in the restoration insurance program by the end of 1998. State funded coverage was reduced to \$300,000 from January 1, 1994 to December 31, 1996. A reduction to \$150,000 in state funded coverage started on January 1, 1997 through December 31, 1997 with the Department's participation in the PLRIP program being phased out by the end of 1998. During the 2008 Legislative session, the state-funded coverage for PLRIP sites was raised effective July 1, 2008. Sites with \$1 million in state coverage were raised to \$1.2 million. Sites with \$300,000 in coverage were raised to \$400,000 and sites with \$150,000 in coverage were raised to \$300,000.

Abandoned Tank Restoration Program (Section 376.305(6), F.S.): June 1, 1990 – June 30, 1996

The Abandoned Tank Restoration Program (ATRP) was established on June 1, 1990 by the Legislature to address the problem of out-of-service or abandoned tanks that have contamination associated with previous operations. The original program created in 1990 had a one-year application period. The application deadline to participate in the program subsequently was extended to 1992, 1994, and finally in 1996 the deadline was waived indefinitely for owners financially unable to comply with tank closure.

Petroleum Cleanup Participation Program (Section 3071(13), F.S.): July 1, 1996 – December 31, 1998

In 1996, the Petroleum Cleanup Participation Program (PCPP) was created to implement a cost-sharing cleanup for properties or sites not otherwise eligible under EDI, ATRP or PLRIP for which contamination occurred prior to January 1, 1995. Sites qualifying for the program are eligible for up to \$300,000 of site rehabilitation funding with a co-payment of 25% of the costs by the owner, operator or person responsible. The co-payment percentage can be reduced if the owner demonstrates an inability to pay. During the 2008 Legislative session, the state-funded site restoration coverage for PCPP sites was increased from \$300,000 to \$400,000 effective July 1, 2008.

Innocent Victim Program (Section 376.30715, F.S.)

A contaminated site acquired prior to July 1, 1990, and which ceased operating as a petroleum storage or retail business prior to January 1, 1985, is eligible for financial assistance under the Abandoned Tank Restoration Program.

Inland Protection Finance Corporation (Section 376.3075, F.S.)

With the conclusion of the Petroleum Contamination Site Cleanup Reimbursement Program on December 31, 1996, the total backlog of unpaid claims for cleanup reimbursements amounted to \$551.5 million. The 1996 Legislature addressed the need to pay off this obligation in an expeditious manner since the collections from the Inland Protection Trust Fund (IPTF) were not enough to cover payback on a timely basis and continue cleanups on high priority sites. The solution was the creation of the Inland Protection Finance Corporation (IPFC) that was authorized to issue bonds to finance repayment of the reimbursement claims. In February 1998, the IPFC obtained \$262 million in bond proceeds and by late 1999, the Reimbursement Program backlog had been paid off using a combination of bond proceeds and IPTF. The bonds issued in 1998, which were being retired at a rate of approximately \$50 million per year, were completely satisfied in July 2005, six months ahead of schedule. The last reimbursement claims were paid out in 2005 and the Reimbursement Claims Program was officially terminated by the end of 2005.

Limited Source Removal Initiative

The Limited Source Removal Initiative (LSRI) was originally designated to sunset on June 30, 2008. During the 2008 Legislative session, the decision was made to extend the sunset date to June 30, 2010. This program was enacted to allow the removal of some contaminated soils during a storage tank system upgrade to allow access to soils which would be otherwise inaccessible due to the presence of active tanks.

Low Scored Site Initiative

The Low Scored Site Initiative (LSSI) sets aside up to \$10 million annually for the assessment of sites scored below 10 in an attempt to reach closure. Separate closure requirements, which are less stringent than higher priority sites-based on health threats, are available for property owners to choose in an attempt to reach closure.

Long-Term Natural Attenuation Monitoring Program

The Long-Term Natural Attenuation Monitoring Program (LTNAM) was initiated in 2011 in an effort to encourage sites with minimal contamination present to enter long-term monitoring in an effort to allow funds normally allocated for remediation at these facilities to be used elsewhere.

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 Committee on Environment and Natural Resources

BILL: CS/SB 702

INTRODUCER: Environment and Natural Resources Committee and Senator Albritton

SUBJECT: Petroleum Cleanup

DATE: January 27, 2020 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 702 revises provisions relating to the Petroleum Cleanup Participation Program to authorize a demonstration of cost savings to replace or supplement the existing cost-share requirement.

The bill deletes the authorization that the limited contamination assessment report and the copayment costs may be reduced or eliminated, if the owner and all operators responsible for restoration, demonstrate that they cannot financially comply with the copayment and limited contamination assessment report requirements.

The bill deletes the 120-day time limitation for negotiations for the cost-share aspect of the Petroleum Cleanup Participation Program.

The bill deletes a prohibition in the Advance Cleanup Program for the state to pay for limited contamination assessments and replaces it with a requirement that the state issue purchase orders for such assessments.

The bill makes the following revisions to the individual application for the Advance Cleanup Program:

- It deletes the requirement that the limited contamination assessment report be included in the application.

- It adds the requirement that the property owner or responsible party must commit to continue to participate in the advanced cleanup program upon completion of the limited contamination assessment and finalization of the proposed course of action.
- It revises the requirement that the application include a proposed course of action to make it a “conceptual” proposed course of action.

II. Present Situation:

Petroleum Restoration Program

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices. These discharges pose a significant threat to groundwater quality,¹ the source of 90 percent of Florida’s drinking water.² The identification and cleanup of petroleum contamination is particularly challenging due to Florida’s diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.³

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida’s groundwater from past and future petroleum releases.⁴ The Department of Environmental Protection (DEP) regulates these storage tank systems.⁵

To fund the cleanup of contaminated petroleum sites, the Legislature created the Inland Protection Trust Fund (IPTF).⁶ The state levies an excise tax on each barrel of petroleum and petroleum products produced in or imported into the state to fund the IPTF.⁷ The state determines the amount of the excise tax for each barrel based on a formula that is dependent upon the unobligated balance of the IPTF.⁸ Each year, the Legislature deposits approximately \$200 million from the excise tax into the IPTF.⁹

DEP may establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of areas contaminated by leaking underground petroleum storage tanks.¹⁰ The Petroleum Restoration Program (PRP) establishes the requirements and procedures for cleaning up

¹ U.S. Environmental Protection Agency, *Underground Storage Tanks (USTs)*, <https://www.epa.gov/ust> (last visited Jan. 20, 2020).

² South Florida Water Management District, *Groundwater Modeling*, <https://www.sfwmd.gov/science-data/gw-modeling> (last visited Jan. 20, 2020).

³ Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012) (on file with Senate Environment and Natural Resources Committee).

⁴ Chapter 83-310, Laws of Fla.

⁵ Sections 376.30(3) and 376.303, F.S.

⁶ Section 376.3071(3)-(4), F.S.

⁷ Sections 206.9935(3) and 376.3071(7), F.S.

⁸ The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between \$100 million and \$150 million; 60 cents if the unobligated balance is above \$50 million, but below \$100 million; and 80 cents if the unobligated balance is \$50 million or less. Section 206.9935(3), F.S.

⁹ DEP, *SOP – 1. Introduction*, <https://floridadep.gov/waste/petroleum-restoration/content/sop-1-introduction> (last visited Jan. 20, 2020).

¹⁰ Section 376.3071(5), F.S.

contaminated land, as well as the circumstances under which the state will pay for the cleanup.¹¹ To receive rehabilitation funding assistance, a site must qualify under one of several programs, which are outlined in the table on the following page.

Program Name	Program Dates	Program Description
Early Detection Incentive Program (EDI) (s. 376.3071(10), F.S.)	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	<ul style="list-style-type: none"> • First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) (s. 376.3072, F.S.)	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	<ul style="list-style-type: none"> • Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage
Abandoned Tank Restoration Program (ATRP) (s. 376.305(6), F.S.)	For petroleum storage systems that have not stored petroleum since March 1, 1990 ¹²	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration	The application period began on July 1, 2005, and	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985

¹¹ DEP, *Petroleum Restoration Program*, <https://floridadep.gov/Waste/Petroleum-Restoration> (last visited Jan. 20, 2020).

¹² The ATRP originally had a one-year application period, but the deadline was extended. The deadline is now waived indefinitely for site owners who are financially unable to pay for the closure of abandoned tanks. Section 376.305(6)(b), F.S.

<p>Program (IVPSSRP) (s. 376.30715, F.S.)</p>	<p>remains open</p>	
<p>Petroleum Cleanup Participation Program (PCPP) (s. 376.3071(13), F.S.)</p>	<p>Remains open</p>	<ul style="list-style-type: none"> • Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs¹³ • Originally had a \$300,000 cap on the amount of coverage, which was raised to \$400,000 beginning July 1, 2008
<p>Consent Order (aka “Hardship” or “Indigent”) (s. 376.305(6)(b), F.S.)</p>	<p>The program began in 1986 and remains open</p>	<ul style="list-style-type: none"> • Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

Petroleum Cleanup Participation Program (PCPP)

In 1996, the Legislature created PCPP to implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system that occurred before January 1, 1995. Petroleum discharges from sources other than a petroleum storage system cannot receive funding under PCPP.¹⁴ Further, the following sites are not eligible for PCPP:

- Sites where DEP has been denied access;
- Sites owned or operated by the federal government;
- Sites identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund; and
- Sites that are eligible under ATRP, EDI, or PLRIP.¹⁵

DEP ranks PCPP program sites based on human health and safety risks.¹⁶ When funds become available, DEP will notify the owner, operator, or person otherwise responsible for site rehabilitation (owner or responsible party) in writing, based on that priority ranking.¹⁷

Limited Contamination Assessment

After approval from DEP, the owner or responsible party must enter into a PCPP agreement with DEP and submit a limited contamination assessment report sufficient to determine the extent of

¹³ The 25 percent copay requirement can be reduced or eliminated if the site owner and all responsible parties demonstrate that they are financially unable to comply. Section 376.3071(13)(c), F.S.

¹⁴ Section 376.3071(13), F.S.

¹⁵ Section 376.3071(13)(h), F.S.

¹⁶ Fla. Admin Code R. 62-771.100(1).

¹⁷ DEP, *Petroleum Cleanup Participation Program (PCPP)*, <https://floridadep.gov/waste/petroleum-restoration/content/petroleum-cleanup-participation-program-pcpp> (last visited Jan. 20, 2020).

the contamination and cleanup.¹⁸ A limited contamination assessment must be conducted by an engineer or geologist and must address:

- The site history which describes all current and past petroleum storage systems and the type of products stored in them, as well as the type and volume of products that were discharged at the source property.
- Results of a well survey conducted to locate all private water supply wells within a certain distance of the contamination.
- Results of a soil assessment conducted in and around each potential source area (fuel storage tanks, fuel dispensers, and fuel piping) to determine if there is any contaminated soil present in the unsaturated zone.
- Results of groundwater sampling and analyses from at least one properly constructed monitoring well installed in each source area. If groundwater contamination is detected, the direction of groundwater flow must be determined and additional monitoring wells are required to determine the extent of the groundwater contamination.
- Water level measurements.
- Soil and groundwater samples collected must be analyzed by an FDEP approved laboratory and quality assurance samples must be collected/prepared and analyzed.¹⁹
- A reasonable, economical, and attainable course of action that is proposed to achieve site rehabilitation.²⁰

Costs

The owner or responsible party may recommend a department term contractor to clean up the PCPP eligible discharge but is not required to do so. Sites qualifying for the program are eligible for up to \$400,000 of site rehabilitation funding.²¹ DEP may approve supplemental funding of up to \$100,000 for additional remediation and monitoring at PCPP sites if such remediation and monitoring is necessary to achieve a NFA order.²² The owner or responsible party must agree to pay a 25 percent copayment.²³ The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner or responsible party demonstrates an inability to pay.²⁴ If the negotiation of the cost-sharing agreement cannot be completed within 120-days after beginning negotiations, DEP must terminate negotiations and the site becomes ineligible for state funding and for any liability protections under the PCPP.²⁵

No Further Action

The ultimate goal for any contaminated site is for DEP to issue it a “No Further Action” (NFA) closure.²⁶ NFA closures usually result in reduced remediation costs and allow for contaminated site closures when remediation efforts have reached a diminishing return. An NFA order may

¹⁸ Section 376.3071(13)(d), F.S.

¹⁹ Fla. Admin. Code R. 62-780.300 and Ch. 62-160.

²⁰ DEP, *Petroleum Restoration Program, Limited Contamination Assessment Report (LCAR) Preparation Guidance* (Oct. 1, 2019), available at https://floridadep.gov/sites/default/files/LCAR%20Guidance%20Final%2001Oct2019_0.pdf.

²¹ Section 376.3071(13)(b), F.S.

²² Section 376.3071(13)(c), F.S.

²³ Section 376.3071(13)(d), F.S.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Fla. Admin. Code R. 62-780.680.

require institutional or engineering controls be put in place to prevent or reduce exposure to contamination.²⁷ An institutional control is a restriction on the use of or access to a site to eliminate or minimize exposure to contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements.²⁸ Engineering controls are modifications to a site to reduce or eliminate the potential for exposure to contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.²⁹

Risk Management Level Options (RMOs)

Once a responsible party completes a site assessment, it has three Risk Management Level Options (RMOs) available to perform site rehabilitation to achieve an NFA order.³⁰ Under the RMO options, the responsible party must either rehabilitate the site to the default cleanup target levels (CTLs)³¹ or to alternative CTLs established through a risk assessment. Under RMO I, DEP will issue a NFA closure without institutional and engineering controls.³² This option is used when concentrations of contaminants in both soil, groundwater, and surface water are equal to or less than the residential CTLs.³³ Additionally, concentrations of contaminants in soil must indicate that contaminants will not leach into the groundwater in violation of the groundwater CTL.³⁴ Under RMO II and RMO III, DEP will grant an NFA order, subject to institutional controls and/or engineering controls and other conditions determined by DEP.³⁵

Advanced Cleanup

The Legislature created the Advanced Cleanup Program in 1996 to allow eligible sites to receive state rehabilitation funding in advance of the site's priority ranking to encourage redevelopment and facilitate property transactions or public works projects.³⁶ To participate in Advanced Cleanup Program, a site must be eligible for restoration funding under EDI, PLRIP, ATRP, IVPSSRP, or PCPP.³⁷

Applications for the Advanced Cleanup Program must include a cost-sharing commitment in addition to the 25-percent-copayment requirement.³⁸ An applicant may demonstrate his or her cost-sharing commitment by proposing either a commitment to pay, a demonstrated cost savings to DEP, or both. The application must be accompanied by a \$250 nonrefundable review fee, a limited contamination assessment report, a proposed course of action, and a site access agreement. The limited contamination assessment report must be sufficient to support the

²⁷ *Id.*

²⁸ Section 376.301(22), F.S.

²⁹ Section 376.301(17), F.S.

³⁰ Fla. Admin Code R. 62-780.680(1)-(3).

³¹ Fla. Admin Code R. 62-777.

³² Fla. Admin. Code R. 62-780.680(1).

³³ The rule also requires that no free product be present. Fla. Admin. Code R. 62-780.680(1). "Free product" means the presence of a non-aqueous phase liquid in the environment in excess of 0.01 foot in thickness, measured at its thickest point. Fla. Admin Code R. 62-780.200.

³⁴ Fla. Admin. Code R. 62-780.680(1).

³⁵ Fla. Admin Code R. 62-780.680(2).

³⁶ Section 376.30713(1)(a), F.S.

³⁷ Section 376.30713(1)(d), F.S.

³⁸ *Id.*

proposed course of action and to estimate the cost of the proposed course of action.³⁹ Costs incurred related to conducting the limited contamination assessment report are not refundable from the IPTF.⁴⁰

DEP ranks the applications for the Advanced Cleanup Program based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing.⁴¹

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 376.3071(13), F.S., relating to the Petroleum Cleanup Participation Program (PCPP). The bill specifies that the limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action.

The bill revises the 25-percent cost-share requirement to require the agreement with DEP to include:

- A 25-percent cost savings to the department;
- A copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation; or
- A combination of both.

Demonstrated savings includes reduced rates by the proposed agency term contractor or the difference in cost associated with Risk Management Options Level-I closure versus an Risk Management Options Level-II closure, or both the copayment and demonstrated cost savings.

Risk Management Options Level-I is defined as a No Further Action closure without institutional controls or without institutional and engineering controls. This closure applies subject to conditions in department rules and agreements.

Risk Management Options Level-II is defined as a No Further Action closure where institutional controls, and, if appropriate, engineering controls shall apply if the controls are protective of human health, public safety, and the environment. This closure applies subject to conditions in department rules and agreements.

The bill **deletes** the following:

- The requirement that the owner, operator, or person otherwise responsible for conducting site rehabilitation demonstrate the ability to meet the copayment obligation.
- The authorization that the limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration demonstrate that they cannot financially comply with the requirements.

³⁹ *Id.*

⁴⁰ Section 376.30713(2)(a), F.S.

⁴¹ Section 376.30713(2)(b), F.S.

- Direction to DEP to take into consideration the owner's and operator's net worth in making the determination of financial ability.
- The 120-day time limit on negotiations after which DEP is required to terminate negotiations and the site shall be ineligible for state funding under the PCPP and all liability protections provided for under the PCPP shall be revoked.

Section 2 of the bill amends s. 376.30713, F.S., relating to the Advanced Cleanup Program. The bill revises the requirements of an individual application for the program as follows:

- It deletes the requirement that the limited contamination assessment report be included in the application.
- It adds the requirement that the property owner or responsible party must commit to continue to participate in the advanced cleanup program upon completion of the limited contamination assessment and finalization of the proposed course of action.
- It revises the requirement that the application include a proposed course of action to make it a "conceptual" proposed course of action.

The bill **deletes** the following from the requirements for an individual application:

- The requirement that the limited contamination assessment report be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Although this provision is deleted from the application requirements, the bill adds it as a requirement for limited contamination assessments that receive state funding (see below).
- The prohibition on refunding costs incurred related to conducting the limited contamination assessment report from the Inland Protection Trust Fund.
- The statement that site eligibility is not an entitlement to advanced cleanup or continued restoration funding; note, however, paragraph (2)(e) of this section retains this same language, so the deletion likely has no legal effect.

Upon acceptance of an advanced cleanup application, the bill requires the applicant's contractor to submit to DEP a scope of work for a limited contamination assessment. When the scope of work is negotiated and agreed upon, DEP must issue one or more purchase orders of up to \$35,000 each for the limited contamination assessment. The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action.

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 provide cost savings under the PCPP for owners, operators, or persons otherwise responsible for conducting site rehabilitation by allowing them to demonstrate cost savings in lieu of or in addition to the copayment requirement. The bill, however, removes the provision that allowed such applicants to reduce or eliminate costs associated with the limited contamination assessment report and the copayment costs if the applicant demonstrated that he or she could not financially comply.

The bill may have a positive fiscal impact on participants in the Advanced Cleanup Program as the bill requires DEP to pay for the limited contamination assessment.

C. Government Sector Impact:

There would be a negative fiscal impact to the state of paying for limited contamination assessments that the state is currently prohibited from paying for. There are multiple variables associated with each contaminated site and each site requires extensive assessment to determine the depth.⁴² Project costs and the cost of limited contamination assessments could vary widely. However, a report by DEP indicates that site assessments (funded by DEP through other petroleum restoration programs) cost \$37,303,020 for 1,056 sites in fiscal year 2018-2019.⁴³ This averages out to approximately \$35,000, which is the amount of the purchase order authorization in the bill. Note, however, that limited contamination assessment reports do not need to have the same scope as a site assessment report.⁴⁴

VI. Technical Deficiencies:

None.

⁴² Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012) (on file with Senate Environment and Natural Resources Committee).

⁴³ DEP, *Petroleum Restoration Program Dashboard* (June 2019), available at https://floridadep.gov/sites/default/files/PRP_Dashboard_Jun2019_v2.pdf.

⁴⁴ DEP, *Petroleum Restoration Program, Limited Contamination Assessment Report (LCAR) Preparation Guidance* (Jan 19, 2020), available at https://floridadep.gov/sites/default/files/LCAR%20Guidance%20Final%2001Oct2019_0.pdf.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 376.3071 and 376.30713 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.)

CS by Environment and Natural Resources Committee on January 27, 2020:

- Replaces RMO-I and RMO-II with Risk Management Options Level-I and Risk Management Options Level-II.
- Provides definitions with Risk Management Options Level-I and Risk Management Options Level-II.
- Makes minor language clarifications.

B. Amendments:

None.



153816

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2020	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Albritton) recommended the following:

Senate Amendment (with directory amendment)

Delete lines 28 - 76
and insert:
implement a ~~cost-sharing~~ cleanup program to provide
rehabilitation funding assistance for all property contaminated
by discharges of petroleum or petroleum products from a
petroleum storage system occurring before January 1, 1995,
~~subject to a copayment provided for in a Petroleum Cleanup
Participation Program site rehabilitation agreement.~~ Eligibility



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11 is subject to an annual appropriation from the fund.
12 Additionally, funding for eligible sites is contingent upon
13 annual appropriation in subsequent years. Such continued state
14 funding is not an entitlement or a vested right under this
15 subsection. Eligibility shall be determined in the program,
16 notwithstanding any other provision of law, consent order,
17 order, judgment, or ordinance to the contrary.

18 (a)1. The department shall accept any discharge reporting
19 form received before January 1, 1995, as an application for this
20 program, and the facility owner or operator need not reapply.

21 2. Regardless of whether ownership has changed, owners or
22 operators of property that is contaminated by petroleum or
23 petroleum products from a petroleum storage system may apply for
24 such program by filing a written report of the contamination
25 incident, including evidence that such incident occurred before
26 January 1, 1995, with the department. Incidents of petroleum
27 contamination discovered after December 31, 1994, at sites which
28 have not stored petroleum or petroleum products for consumption,
29 use, or sale after such date shall be presumed to have occurred
30 before January 1, 1995. An operator's filed report shall be an
31 application of the owner for all purposes.

32 (b) Subject to annual appropriation from the fund, sites
33 meeting the criteria of this subsection are eligible for up to
34 \$400,000 of site rehabilitation funding assistance in priority
35 order pursuant to subsections (5) and (6). Sites meeting the
36 criteria of this subsection for which a site rehabilitation
37 completion order was issued before June 1, 2008, do not qualify
38 for the 2008 increase in site rehabilitation funding assistance
39 and are bound by the pre-June 1, 2008, limits. Sites meeting the



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40 criteria of this subsection for which a site rehabilitation
41 completion order was not issued before June 1, 2008, regardless
42 of whether they have previously transitioned to nonstate-funded
43 cleanup status, may continue state-funded cleanup pursuant to
44 this section until a site rehabilitation completion order is
45 issued or the increased site rehabilitation funding assistance
46 limit is reached, whichever occurs first. The department may not
47 pay expenses incurred beyond the scope of an approved contract.

48 (c) The department may also approve supplemental funding of
49 up to \$100,000 for additional remediation and monitoring if such
50 remediation and monitoring is necessary to achieve a
51 determination of "No Further Action."

52 (d) Upon notification by the department that rehabilitation
53 funding assistance is available for the site pursuant to
54 subsections (5) and (6), the property owner, operator, or person
55 otherwise responsible for site rehabilitation shall provide the
56 department with a limited contamination assessment report and
57 shall enter into a Petroleum Cleanup Participation Program site
58 rehabilitation agreement with the department. The limited
59 contamination assessment report must be sufficient to support
60 the proposed course of action and to estimate the cost of the
61 proposed course of action. The agreement must provide for a 25-
62 percent cost savings to the department, a copayment by the
63 owner, operator, or person otherwise responsible for conducting
64 site rehabilitation, or a combination of cost savings and a
65 copayment. Cost savings to the department may be demonstrated in
66 the form of reduced rates by the proposed agency term contractor
67 or the difference in cost associated with a Risk Management
68 Options Level I closure versus a Risk Management Options Level



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69 II closure. For the purpose of this paragraph, the term:

70 1. "Risk Management Options Level I" means a "No Further
71 Action" closure without institutional controls or without
72 institutional and engineering controls. This closure option
73 applies subject to conditions in department rules and
74 agreements.

75 2. "Risk Management Options Level II" means a "No Further
76 Action" closure where institutional controls and, if
77 appropriate, engineering controls apply if the controls are
78 protective of human health, public safety, and the environment.
79 This closure option applies subject to conditions in department
80 rules and agreements. ~~The owner, operator, or person otherwise~~
81 ~~responsible for conducting site rehabilitation shall adequately~~
82 ~~demonstrate the ability to meet the copayment obligation. The~~
83 ~~limited contamination assessment report and the copayment costs~~
84 ~~may be reduced or eliminated if the owner and all operators~~
85 ~~responsible for restoration under s. 376.308 demonstrate that~~
86 ~~they cannot financially comply with the copayment and limited~~
87 ~~contamination assessment report requirements. The department~~
88 ~~shall take into consideration the owner's and operator's net~~
89 ~~worth in making the determination of financial ability. In the~~
90 ~~event the department and the owner, operator, or person~~
91 ~~otherwise responsible for site rehabilitation cannot complete~~
92 ~~negotiation of the cost-sharing agreement within 120 days after~~
93 ~~beginning negotiations, the department shall terminate~~
94 ~~negotiations and the site shall be ineligible for state funding~~
95 ~~under this subsection and all liability protections provided for~~
96 ~~in this subsection shall be revoked.~~

97 (e) A report of a discharge made to the department by a



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98 person pursuant to this subsection or any rules adopted pursuant
99 to this subsection may not be used directly as evidence of
100 liability for such discharge in any civil or criminal trial
101 arising out of the discharge.

102 (f) This subsection does not preclude the department from
103 pursuing penalties under s. 403.141 for violations of any law or
104 any rule, order, permit, registration, or certification adopted
105 or issued by the department pursuant to its lawful authority.

106 (g) Upon the filing of a discharge reporting form under
107 paragraph (a), the department or local government may not pursue
108 any judicial or enforcement action to compel rehabilitation of
109 the discharge. This paragraph does not prevent any such action
110 with respect to discharges determined ineligible under this
111 subsection or to sites for which rehabilitation funding
112 assistance is available pursuant to subsections (5) and (6).

113 (h) The following are excluded from participation in the
114 program:

115 1. Sites at which the department has been denied reasonable
116 site access to implement this section.

117 2. Sites that were active facilities when owned or operated
118 by the Federal Government.

119 3. Sites that are identified by the United States
120 Environmental Protection Agency to be on, or which qualify for
121 listing on, the National Priorities List under Superfund. This
122 exception does not apply to those sites for which eligibility
123 has been requested or granted as of the effective date of this
124 act under the Early Detection Incentive Program established
125 pursuant to s. 15, chapter 86-159, Laws of Florida.

126 4. Sites for which contamination is covered under the Early



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127 Detection Incentive Program, the Abandoned Tank Restoration
128 Program, or the Petroleum Liability and Restoration Insurance
129 Program, in which case site rehabilitation funding assistance
130 shall continue under the respective program.

131 Section 2. Subsection (2) of section 376.30713, Florida
132 Statutes, is amended to read:

133

134 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

135 And the directory clause is amended as follows:

136 Delete line 20

137 and insert:

138 Section 1. Subsection (13) of section

By Senator Albritton

26-00620-20

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1 A bill to be entitled
2 An act relating to petroleum cleanup; amending s.
3 376.3071, F.S.; revising requirements for a limited
4 contamination assessment report required to be
5 provided by a property owner, operator, or person
6 otherwise responsible for site rehabilitation to the
7 Department of Environmental Protection under the
8 Petroleum Cleanup Participation Program; amending s.
9 376.30713, F.S.; revising the contents of an advanced
10 cleanup application to include a specified property
11 owner or responsible party agreement; requiring an
12 applicant to submit a scope of work after the
13 department has accepted the applicant's advanced
14 cleanup application; requiring the department to issue
15 a purchase order for a certain contamination
16 assessment; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraph (d) of subsection (13) of section
21 376.3071, Florida Statutes, is amended to read:

22 376.3071 Inland Protection Trust Fund; creation; purposes;
23 funding.—

24 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
25 detection, reporting, and cleanup of contamination caused by
26 discharges of petroleum or petroleum products, the department
27 shall, within the guidelines established in this subsection,
28 implement a cost-sharing cleanup program to provide
29 rehabilitation funding assistance for all property contaminated

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30 by discharges of petroleum or petroleum products from a
31 petroleum storage system occurring before January 1, 1995,
32 subject to a copayment provided for in a Petroleum Cleanup
33 Participation Program site rehabilitation agreement. Eligibility
34 is subject to an annual appropriation from the fund.
35 Additionally, funding for eligible sites is contingent upon
36 annual appropriation in subsequent years. Such continued state
37 funding is not an entitlement or a vested right under this
38 subsection. Eligibility shall be determined in the program,
39 notwithstanding any other provision of law, consent order,
40 order, judgment, or ordinance to the contrary.

41 (d) Upon notification by the department that rehabilitation
42 funding assistance is available for the site pursuant to
43 subsections (5) and (6), the property owner, operator, or person
44 otherwise responsible for site rehabilitation shall provide the
45 department with a limited contamination assessment report and
46 shall enter into a Petroleum Cleanup Participation Program site
47 rehabilitation agreement with the department. The limited
48 contamination assessment report must be sufficient to support
49 the proposed course of action and to estimate the cost of the
50 proposed course of action. The agreement must provide for a 25-
51 percent cost savings to the department and may use a copayment
52 by the owner, operator, or person otherwise responsible for
53 conducting site rehabilitation or a demonstrated savings to the
54 department, in the form of reduced rates by the proposed agency
55 term contractor or the difference in cost associated with an
56 RMO-I closure versus an RMO-II closure, or both the copayment
57 and demonstrated cost savings. ~~The owner, operator, or person~~
58 ~~otherwise responsible for conducting site rehabilitation shall~~

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59 ~~adequately demonstrate the ability to meet the copayment~~
60 ~~obligation. The limited contamination assessment report and the~~
61 ~~copayment costs may be reduced or eliminated if the owner and~~
62 ~~all operators responsible for restoration under s. 376.308~~
63 ~~demonstrate that they cannot financially comply with the~~
64 ~~copayment and limited contamination assessment report~~
65 ~~requirements. The department shall take into consideration the~~
66 ~~owner's and operator's net worth in making the determination of~~
67 ~~financial ability. In the event the department and the owner,~~
68 ~~operator, or person otherwise responsible for site~~
69 ~~rehabilitation cannot complete negotiation of the cost sharing~~
70 ~~agreement within 120 days after beginning negotiations, the~~
71 ~~department shall terminate negotiations and the site shall be~~
72 ~~ineligible for state funding under this subsection and all~~
73 ~~liability protections provided for in this subsection shall be~~
74 ~~revoked.~~

75 Section 2. Subsection (2) of section 376.30713, Florida
76 Statutes, is amended to read:

77 376.30713 Advanced cleanup.—

78 (2) The department may approve an application for advanced
79 cleanup at eligible sites, including applications submitted
80 pursuant to paragraph (c), notwithstanding the site's priority
81 ranking established pursuant to s. 376.3071(5)(a), pursuant to
82 this section. Only the facility owner or operator or the person
83 otherwise responsible for site rehabilitation qualifies as an
84 applicant under this section.

85 (a) Advanced cleanup applications may be submitted between
86 May 1 and June 30 and between November 1 and December 31 of each
87 fiscal year. Applications submitted between May 1 and June 30

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88 shall be for the fiscal year beginning July 1. An application
89 must consist of:

90 1. A commitment to pay 25 percent or more of the total
91 cleanup cost deemed recoverable under this section along with
92 proof of the ability to pay the cost share. The department shall
93 determine whether the cost savings demonstration is acceptable.
94 Such determination is not subject to chapter 120.

95 a. Applications for the aggregate cleanup of five or more
96 sites may be submitted in one of two formats to meet the cost-
97 share requirement:

98 (I) For an aggregate application proposing that the
99 department enter into a performance-based contract, the
100 applicant may use a commitment to pay, a demonstrated cost
101 savings to the department, or both to meet the requirement.

102 (II) For an aggregate application relying on a demonstrated
103 cost savings to the department, the applicant shall, in
104 conjunction with the proposed agency term contractor, establish
105 and provide in the application the percentage of cost savings in
106 the aggregate that is being provided to the department for
107 cleanup of the sites under the application compared to the cost
108 of cleanup of those same sites using the current rates provided
109 to the department by the proposed agency term contractor.

110 b. Applications for the cleanup of individual sites may be
111 submitted in one of two formats to meet the cost-share
112 requirement:

113 (I) For an individual application proposing that the
114 department enter into a performance-based contract, the
115 applicant may use a commitment to pay, a demonstrated cost
116 savings to the department, or both to meet the requirement.

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117 (II) For an individual application relying on a
118 demonstrated cost savings to the department, the applicant
119 shall, in conjunction with the proposed agency term contractor,
120 establish and provide in the application a 25-percent cost
121 savings to the department for cleanup of the site under the
122 application compared to the cost of cleanup of the same site
123 using the current rates provided to the department by the
124 proposed agency term contractor.

125 2. A nonrefundable review fee of \$250 to cover the
126 administrative costs associated with the department's review of
127 the application.

128 3. A property owner or responsible party agreement in which
129 the property owner or responsible party commits to continue to
130 participate in the advanced cleanup program upon completion of
131 the limited contamination assessment and finalization of the
132 proposed course of action ~~limited contamination assessment~~
133 ~~report~~.

134 4. A conceptual proposed course of action.

135 5. A department site access agreement, or similar
136 agreements approved by the department that do not violate state
137 law, entered into with the property owner or owners, as
138 applicable, and evidence of authorization from such owner or
139 owners for petroleum site rehabilitation program tasks
140 consistent with the proposed course of action where the
141 applicant is not the property owner for any of the sites
142 contained in the application.

143

144 ~~The limited contamination assessment report must be sufficient~~
145 ~~to support the proposed course of action and to estimate the~~

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146 ~~cost of the proposed course of action. Costs incurred related to~~
147 ~~conducting the limited contamination assessment report are not~~
148 ~~refundable from the Inland Protection Trust Fund. Site~~
149 ~~eligibility under this subsection or any other provision of this~~
150 ~~section is not an entitlement to advanced cleanup or continued~~
151 ~~restoration funding.~~

152 6. A certification ~~The applicant shall certify to the~~
153 ~~department~~ that the applicant has the prerequisite authority to
154 enter into an advanced cleanup contract with the department. The
155 certification must be submitted with the application.

156 (b) The department shall rank the applications based on the
157 percentage of cost-sharing commitment proposed by the applicant,
158 with the highest ranking given to the applicant who proposes the
159 highest percentage of cost sharing. If the department receives
160 applications that propose identical cost-sharing commitments and
161 that exceed the funds available to commit to all such proposals
162 during the advanced cleanup application period, the department
163 shall proceed to rerank those applicants. Those applicants
164 submitting identical cost-sharing proposals that exceed funding
165 availability must be so notified by the department and offered
166 the opportunity to raise their individual cost-share
167 commitments, in a period specified in the notice. At the close
168 of the period, the department shall proceed to rerank the
169 applications pursuant to this paragraph.

170 (c) Applications for the advanced cleanup of individual
171 sites scheduled for redevelopment are not subject to the
172 application period limitations or the requirement to pay 25
173 percent of the total cleanup cost specified in paragraph (a) or
174 to the cost-sharing commitment specified in paragraph (1) (d).

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175 Applications must be accepted on a first-come, first-served
176 basis and are not subject to the ranking provisions of paragraph
177 (b). Applications for the advanced cleanup of individual sites
178 scheduled for redevelopment must include:

179 1. A nonrefundable review fee of \$250 to cover the
180 administrative costs associated with the department's review of
181 the application.

182 2. A limited contamination assessment report. The report
183 must be sufficient to support the proposed course of action and
184 to estimate the cost of the proposed course of action. Costs
185 incurred related to conducting and preparing the report are not
186 refundable from the Inland Protection Trust Fund.

187 3. A proposed course of action for cleanup of the site.

188 4. If the applicant is not the property owner for any of
189 the sites contained in the application, a department site access
190 agreement, or a similar agreement approved by the department and
191 not in violation of state law, entered into with the property
192 owner or owners, as applicable, and evidence of authorization
193 from such owner or owners for petroleum site rehabilitation
194 program tasks consistent with the proposed course of action.

195 5. A certification to the department stating that the
196 applicant has the prerequisite authority to enter into an
197 advanced cleanup contract with the department. The advanced
198 cleanup contract must include redevelopment and site
199 rehabilitation milestones.

200 6. Documentation, in the form of a letter from the local
201 government having jurisdiction over the area where the site is
202 located, which states that the local government is in agreement
203 with or approves the proposed redevelopment and that the

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204 proposed redevelopment complies with applicable law and
205 requirements for such redevelopment.

206 7. A demonstrated reasonable assurance that the applicant
207 has sufficient financial resources to implement and complete the
208 redevelopment project.

209 (d) Upon acceptance of an advanced cleanup application, the
210 applicant's selected agency term contractor shall submit to the
211 department a scope of work for a limited contamination
212 assessment. When the scope of work is negotiated and agreed
213 upon, the department shall issue one or more purchase orders of
214 up to \$35,000 each for the limited contamination assessment. The
215 limited contamination assessment report must be sufficient to
216 support the proposed course of action and to estimate the cost
217 of the proposed course of action.

218 (e) Site eligibility under this section is not an
219 entitlement to advanced cleanup funding or continued restoration
220 funding.

221 Section 3. This act shall take effect July 1, 2020.

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 Committee on Environment and Natural Resources

BILL: CS/SB 1382

INTRODUCER: Environment and Natural Resources Committee and Senator Albritton

SUBJECT: Environmental Resource Management

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1382 authorizes basin management action plans (plans that address water quality on a basin-wide level, BMAPs) to include cooperative agricultural regional water quality improvements (agricultural element) and cooperative urban, suburban, commercial, or regional water quality improvements (nonagricultural element), in addition to existing strategies such as best management practices and interim measures. These agricultural and nonagricultural elements shall be implemented through a cost-sharing program and may be included in a BMAP during the 5-year update.

The bill requires adoption of nonpoint source best management practices (BMPs), interim measures, or other measures adopted by rule within 5 years of adoption of the BMAP or BMAP amendment.

The bill directs the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), and the Institute of Food and Agricultural Sciences (IFAS) of the University of Florida to address certain issues related to enhancing BMPs and the agricultural element.

The bill creates a nutrient reduction cost-share program and requires DEP to prioritize certain projects. DEP must submit an annual report to the Governor and Legislature regarding the projects funded by this program.

The bill creates a definition of “rural homesteads,” which would be parcels of 50 acres or less that act as noncommercial homesites. These parcels would not be subject to the nonpoint source requirements in the BMAP unless they were classified as bona fide agricultural lands.

The bill prohibits local governments from providing legal rights to any plant, animal, body of water, or other part of the natural environment unless otherwise specifically authorized by state law or the State Constitution.

II. Present Situation:

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life. The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.

Phosphorus and nitrogen are derived from natural and human-made sources. Natural inputs include the atmosphere, soils, and the decay of plants and animals. Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.¹

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.²

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.³ Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, DEP is required to establish a TMDL for impaired waterbodies.⁴ 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.⁵ Point sources are discernible,

¹ U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Dec. 2, 2019).

² EPA, *The Problem*, <https://www.epa.gov/nutrientpollution/problem> (last visited Dec. 2, 2019).

³ DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Dec. 2, 2019).

⁴ Section 403.067(1), F.S.

⁵ Section 403.031(21), F.S.

confined, and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.⁶

Basin Management Action Plans and Best Management Practices

DEP is the lead agency in coordinating the development and implementation of TMDLs.⁷ Basin management action plans (BMAPs) are one of the primary mechanisms DEP uses to achieve TMDLs. BMAPs are plans that 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;
- Best management practices (BMPs) and non-regulatory and incentive-based programs, including: cost sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.⁸

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.⁹ 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 cleanup responsibilities.¹⁰ BMAPs are adopted by secretarial order.¹¹

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.¹²

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

⁶ 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.

⁷ 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.

⁸ Section 403.067(7), F.S.

⁹ *Id.*

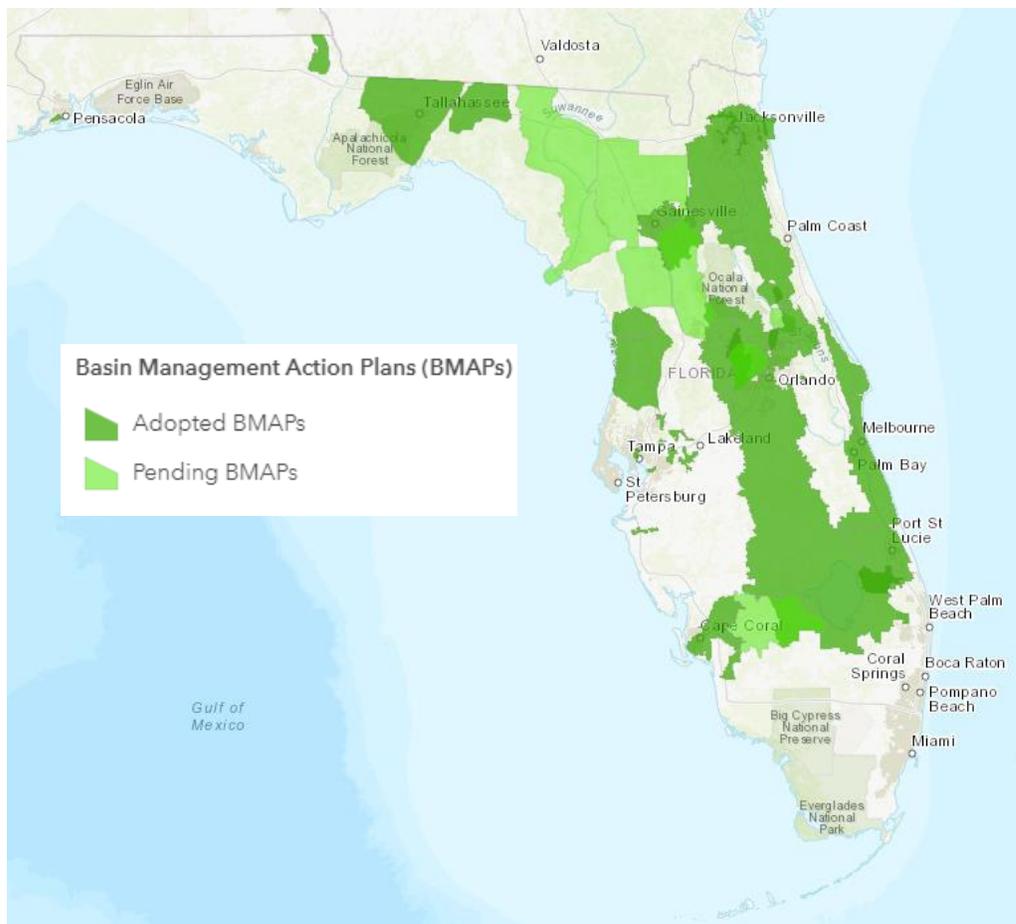
¹⁰ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Dec. 4, 2019).

¹¹ Section 403.067(7)(a)5., F.S.

¹² Section 403.067(7)(a)6., F.S.

quality monitoring.¹³ A nonpoint source discharger may be subject to enforcement action by DEP or a water management district (WMD) based on a failure to implement these requirements.¹⁴ 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.¹⁵ Where there is an adopted BMP for a nonpoint source, the BMAP must require the nonpoint source to implement the applicable BMPs. The nonpoint source discharger must demonstrate compliance with BMP implementation or conduct water quality monitoring prescribed by DEP or the WMD, and may be subject to enforcement for failure to implement the BMPs.¹⁶

Currently, BMAPs are adopted or pending for a significant portion of the state and will continue to be developed as necessary to address water quality impairments. The graphic below shows the state’s adopted and pending BMAPs.¹⁷



¹³ 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.

¹⁴ Section 403.067(7)(b)2.h., F.S.

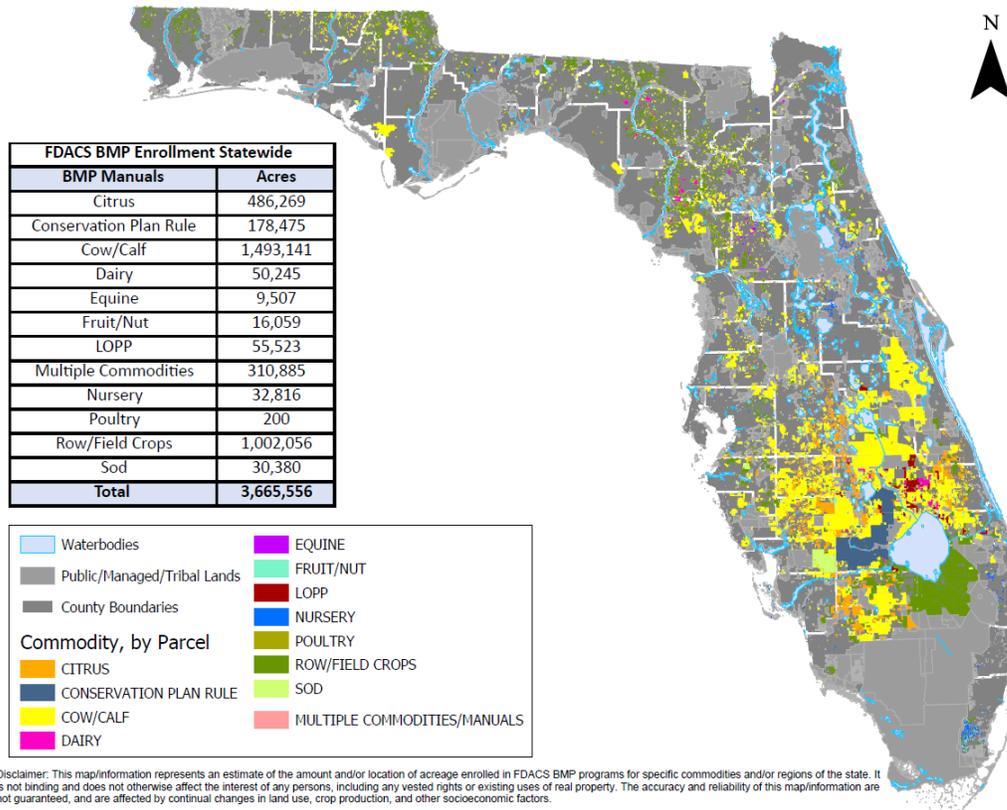
¹⁵ DEP, *NPDES Stormwater Program*, <https://floridadep.gov/Water/Stormwater> (last visited Dec. 2, 2019).

¹⁶ Sections 403.067(7)(b)g. and 403.067(7)(b)h., F.S.

¹⁷ DEP, *Impaired Waters, TMDLs, and Basin Management Action Plans Interactive Map*, <https://floridadep.gov/dear/water-quality-restoration/content/impaired-waters-tmdls-and-basin-management-action-plans> (last visited Dec. 5, 2019).

Agricultural BMPs

Agricultural best management practices (BMPs) are practical measures that agricultural producers undertake to reduce the impacts of fertilizer and water use and otherwise manage the landscape to further protect water resources. BMPs are developed using the best available science with economic and technical consideration and, in certain circumstances, can maintain or enhance agricultural productivity.¹⁸ Agricultural BMPs are implemented by the Department of Agriculture and Consumer Services (DACS). Since the BMP program was implemented in 1999, DACS has adopted nine BMP manuals and is currently developing two more that cover nearly all major agricultural commodities in Florida.¹⁹ According to the annual report on BMPs prepared by DACS, approximately 54 percent of agricultural acreage is enrolled in the DACS BMP program statewide (see map below).²⁰ BMP enrollment data is based on parcels designated as agricultural by the county property appraiser (see discussion below regarding bona fide agricultural purposes).²¹



¹⁸ Florida Department of Agriculture and Consumer Services Office of Agricultural Water Policy, *Status of Implementation of Agricultural Nonpoint Source Best Management Practices*, 3, (Jul. 1, 2019), [hereinafter FDACS OAWP, *BMP Status Report*] available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Jan. 25, 2020).

¹⁹ FDACS, *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Jan. 22, 2020).

²⁰ FDACS OAWP, *BMP Status Report*, 2; DACS, *Enrollment Map*, available at <https://www.fdacs.gov/ezs3download/download/78962/2320452/Media/Files/Agricultural-Water-Policy-Files/Maps/Statewide-Enrollment-Map/BMP-Enrollment-Statewide-%28online-map%29.pdf>.

²¹ FDACS OAWP, *BMP Status Report*, 5.

Producers implementing BMPs receive a presumption of compliance with state water quality standards for the pollutants addressed by the BMPs,²² and those who enroll in the BMP program become eligible for technical assistance and cost-share funding for BMP implementation. To enroll in the BMP program, producers must meet with the Office of Agricultural Water Policy (OAWP) to determine the BMPs that are applicable to their operation and submit a Notice of Intent to Implement the BMPs, along with the BMP checklist from the applicable BMP manual.²³ Where DEP adopts a BMAP that includes agriculture, producers must either implement DACS-adopted BMPs or conduct water quality monitoring (prescribed by DEP or the WMD and paid for by the producer) to show they are not violating water quality standards.²⁴

The University of Florida's Institute of Food and Agricultural Sciences (IFAS) is heavily involved in the adoption and implementation of BMPs. IFAS provides expertise to both DACS and agriculture producers and has extension offices throughout Florida. IFAS puts on summits and workshops on BMPs,²⁵ conducts research to issue recommendations for improving BMPs,²⁶ and issues training certificates for BMPs that require licenses such as Green Industry BMPs.²⁷

The Blue-Green Algae Task Force, a state task force addressing water pollution in Florida, recently recommended the following with respect to agricultural nutrient reduction:

- Increasing BMP enrollment;
- Improving records and additional data collection; and
- Accelerating updates to BMP manuals.²⁸

Progress Reports

Current law requires DEP, in conjunction with the WMDs, to submit an annual progress report (STAR report) to the Governor and the Legislature on the status of each TMDL, BMAP, minimum flow or minimum water level, and recovery or prevention strategy.²⁹ The report must include the status of each project identified to achieve a TMDL or an adopted minimum flow or minimum water level, as applicable.³⁰

DACS is required to submit an annual progress report (BMP report) to the Governor and the Legislature on the status of the implementation of the agricultural nonpoint source BMPs, including an implementation assurance report summarizing survey responses and response rates,

²² Section 403.067(7), F.S.

²³ FDACS OAWP, *BMP Status Report*, 3.

²⁴ DACS, *Agricultural Best Management Practices*, <https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices> (last visited Jan. 21, 2020).

²⁵ UF/IFAS, *BMP Resource*, <https://bmp.ifas.ufl.edu/> (last visited Jan. 26, 2020).

²⁶ UF/IFAS Everglades Research & Education Center, *Best Management Practices & Water Resources*, available at <https://erec.ifas.ufl.edu/featured-3-menus/research/-/best-management-practices--water-resources/> (last visited Dec. 5, 2019).

²⁷ UF/IFAS Florida-Friendly Landscaping, *GI-BMP Training Program Overview*, available at https://ffl.ifas.ufl.edu/professionals/BMP_overview.htm (last visited Dec. 5, 2019).

²⁸ DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

²⁹ Section 403.0675(1), F.S. See DEP, *2018 Statewide Annual Report on Total Maximum Daily Loads, Basin Management Action Plans, Minimum Flows or Minimum Water Levels, and Recovery or Prevention Strategies*, <https://floridadep.gov/dear/water-quality-restoration/content/statewide-annual-report> (last visited Jan. 25, 2020).

³⁰ *Id.*

site inspections, and other methods used to verify implementation of and compliance with BMPs pursuant to BMAPs.³¹

Restoration Plans as Alternatives to TMDLS

Under the Florida Watershed Restoration Act,³² DEP can forgo establishing a TMDL for a waterbody if DEP can document that there is reasonable assurance existing or proposed pollution control mechanisms or programs will effectively address the impairment.³³ These restoration plans depend on local stakeholders to gather necessary documentation to demonstrate reasonable assurance that the proposed control mechanisms will restore the particular waterbody.³⁴ Similar to the adoption of a BMAP, a finalized restoration plan is adopted by secretarial order.³⁵

The following information must be documented in a restoration plan:

- Description of the impaired waterbody;
- Description of water quality or aquatic ecological goals;
- Description of proposed management actions to be undertaken;
- Description of procedures for monitoring and reporting results; and
- Description of and commitment to proposed corrective actions.³⁶

Wastewater Treatment Facilities

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. Florida has approximately 2,000 permitted domestic wastewater treatment facilities.³⁷ Treated effluent and reclaimed water from these facilities amounts to over 1.5 billion gallons per day.³⁸ Any facility or activity which discharges wastes into waters of the state or which will reasonably be expected to be a source of water pollution must obtain a permit from DEP for operation and certain construction activities.³⁹

³¹ Section 403.0675(2), F.S. See FDACS OAWP, *BMP Status Report*, 3, (Jul. 1, 2019), available at <https://www.fdacs.gov/ezs3download/download/84080/2481615/Media/Files/Agricultural-Water-Policy-Files/Status-of-Implementation-of-BMPs-Report-2019.pdf> (last visited Jan. 25, 2020).

³² Chapter 99-223, Laws of Fla.

³³ DEP, *Guidance on Developing Restoration Plans as Alternatives to TMDLS – Assessment Category 4b and 4e Plans*, 2 (June 2015), available at <https://floridadep.gov/sites/default/files/4b4ePlansGuidance.pdf>.

³⁴ *Id.*

³⁵ DEP, *Reasonable Assurance Plans (RAPs) Category 4b Assessments and Documentation*, <https://floridadep.gov/dear/alternative-restoration-plans/content/reasonable-assurance-plans-raps-category-4b-assessments> (last visited Dec. 2, 2019).

³⁶ DEP, *Guidance on Developing Restoration Plans as Alternatives to TMDLS – Assessment Category 4b and 4e Plans*, 6-7 (June 2015), available at <https://floridadep.gov/sites/default/files/4b4ePlansGuidance.pdf>.

³⁷ 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 Dec. 2, 2019).

³⁸ *Id.*

³⁹ Section 403.087, F.S.

Advanced Waste Treatment

Under Florida law, facilities for sanitary sewage disposal are required to provide for advanced waste treatment, as deemed necessary by DEP.⁴⁰ The standard for advanced waste treatment is defined in statute using the maximum concentrations of nutrients or contaminants that a reclaimed water product may contain.⁴¹ The standard also requires a high-level disinfection.⁴²

Nutrient or Contaminant	Maximum Concentration Annually
Biochemical Oxygen Demand	5 mg/L
Suspended Solids	5 mg/L
Total Nitrogen	3 mg/L
Total Phosphorus	1 mg/L

Onsite Sewage Treatment and Disposal Systems



Onsite sewage treatment and disposal systems (OSTDS), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.⁴³ Waste from toilets, sinks, washing machines and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.⁴⁴

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.⁴⁵ Approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.⁴⁶ This

⁴⁰ Section 403.086(2), F.S.

⁴¹ Section 403.086(4), F.S.

⁴² Section 403.086(4)(b), F.S.; Fla. Admin. Code R. 62-600.440(6).

⁴³ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Dec. 2, 2019).

⁴⁴ *Id.*; Conventional Septic System graphic: see EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Dec. 2, 2019).

⁴⁵ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Dec. 2, 2019).

⁴⁶ DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/finalnitrogenlegislativereportsmall.pdf>; see Fla. Admin. Code R. 64E-6.006(2).

still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.⁴⁷

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as “advanced” or “enhanced nutrient-reducing” septic systems).⁴⁸ DOH publishes on its website approved products and resources on advanced systems.⁴⁹ Determining which advanced system is the best option can depend on site-specific conditions.

Stormwater Management

Stormwater is the flow of water resulting from, and immediately following, a rainfall event.⁵⁰ When stormwater falls on pavement, buildings, and other impermeable surfaces the runoff flows quickly and can pick up sediment, nutrients (such as nitrogen and phosphorous), chemicals, and other pollutants.⁵¹ Stormwater pollution is a major source of water pollution in Florida.⁵² Under the law, stormwater may be either a point source of pollution or a nonpoint source and is regulated by federal, state, and local governments.⁵³

Bona Fide Agricultural Purposes

Designation of a parcel as agricultural confers property tax benefits.⁵⁴ The property appraiser may require an owner to provide proof that the lands are actually used for a bona fide agricultural purpose.⁵⁵ For the purposes of property tax law, a bona fide agricultural purpose means the good faith commercial agricultural use of the land.⁵⁶ In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

- The length of time the land has been used for agriculture.
- Whether the use has been continuous.

⁴⁷ University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Feb. 2014), available at <http://edis.ifas.ufl.edu/pdf/files/SS/SS55000.pdf>.

⁴⁸ DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (2019), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/documents/bmap-n-reducing-tech-18-10-29.pdf>.

⁴⁹ DOH, *Onsite Sewage Programs, Product Listings and Approval Requirements*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/products/index.html> (last visited Dec. 2, 2019).

⁵⁰ DEP and Water Management Districts, *Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental)*, 2-10 (June 1, 2018), available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/Applicant_Hanbook_I_-_Combined.pdf.

⁵¹ DEP, *Stormwater Management*, 1 (2016), available at https://floridadep.gov/sites/default/files/stormwater-management_0.pdf. When rain falls on fields, forests, and other areas with naturally permeable surfaces the water not absorbed by plants filters through the soil and replenishes Florida's groundwater supply.

⁵² DEP, *Stormwater Support*, <https://floridadep.gov/water/engineering-hydrology-geology/content/stormwater-support> (last visited Dec. 2, 2019); DEP, *Nonpoint Source Program Update*, 10 (2015), available at <https://floridadep.gov/sites/default/files/NPS-ManagementPlan2015.pdf>.

⁵³ National Pollutant Discharge Elimination System (NPDES), 33 U.S.C. s. 1342(p) (2019) 40 C.F.R. pt. 122; Chapter 373, pt. IV, F.S.; Fla. Admin. Code Ch. 62-330.

⁵⁴ Rather than being assessed at its highest and best use (see 193.011), the agricultural property is assessed based on its actual use. FLA. CONST. art. VII s. 4(a).

⁵⁵ Section 193.461(3)(a), F.S.

⁵⁶ Section 193.461(b), F.S.

- The purchase price paid.
- Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.⁵⁷
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices.
- Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.
- Such other factors as may become applicable.⁵⁸

The maintenance of a dwelling on part of the lands used for agricultural purposes does not in itself preclude an agricultural classification.⁵⁹ When property receiving an agricultural classification contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage⁶⁰ must be assessed separately.⁶¹ In addition to statutory criteria, case law and rules by the Florida Department of Revenue give additional lists of criteria and general guidance on what bona fide agricultural operations include.⁶²

Good faith commercial agricultural use, for the purposes of qualifying for agricultural tax classification, does not necessitate a profit by the landowner.⁶³ The Second District Court of Appeals in *Straughn v. K. & K. Land Management, Inc.*, found that if the profits are only enough to sustain the agricultural use itself, pay for the upkeep of the lands, or reduce the investment until the property is sold, it may still qualify as an agricultural use.⁶⁴

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community, or region of rural communities, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.⁶⁵ By executive order, the Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative (REDI) agencies. The Governor can waive the criteria, requirements, or any similar provisions of any state economic development incentive for projects in a RAO.⁶⁶

⁵⁷ See also Fla. Admin. Code R. 12D-5.004(3); *Czagas v. Maxwell*, 393 So. 2d 645 (Fla. 5th DCA 1981).

⁵⁸ *Id.*

⁵⁹ Section 193.461(3)(c), F.S.

⁶⁰ BLACK'S LAW DICTIONARY, 329 (8th ed. 2005). "Curtilage" means the land or yard adjoining a house, usually within an enclosure.

⁶¹ Section 193.461(3)(d), F.S.

⁶² See Fla. Admin. Code R. 12D-5.004; *Greenwood v. Oates*, 251 So. 2d 665 (Fla. 1971).

⁶³ *Wilkinson v. Kirby*, 654 So. 2d 194 (Fla. 2d DCA 1995); *Fisher v. Schooley*, 371 So. 2d 496 (Fla. 2d DCA 1979).

⁶⁴ 347 So. 2d 724 (Fla. 2d DCA 1977), *judgment aff'd*, 368 So. 2d 588 (Fla. 1978).

⁶⁵ Section 288.0656(2)(d), F.S.

⁶⁶ Section 288.0656(7), F.S.

The Rights of Nature Movement

The Rights of Nature Movement is the concept of recognizing that nature has legal rights and legal standing in a court of law.⁶⁷ “It is the recognition that our ecosystems – including trees, oceans, animals, mountains – have rights just as human beings have rights.”⁶⁸

Standing is a party’s right to make a legal claim or seek judicial enforcement of a duty or right.⁶⁹ To have standing in federal court, a plaintiff must show that the challenged conduct has caused the plaintiff actual injury and that the interest sought to be protected is within the zone of interests meant to be regulated by the statutory or constitutional guarantee.⁷⁰ Under the Rights of Nature concept, an ecosystem could be named as an injured party in a court of law, with its own legal standing rights. Proponents of the Rights of Nature see legal personhood as a promising tool for protecting nature and analogous to corporate personhood and the protection of corporate rights.⁷¹

Ecuador includes a Rights of Nature provision in its constitution.⁷² Under the Ecuadorian constitution, nature has rights “to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.”⁷³ Bolivia, New Zealand, India,⁷⁴ and Colombia⁷⁵ have also taken steps toward recognizing rights of nature.

The Pennsylvania Constitution contains a provision stating “the people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”⁷⁶ Based on this constitutional provision, a court overturned a Pennsylvania law protecting extractive interests from local ordinances undertaking to limit environmentally harmful activities.⁷⁷ Local governments in

⁶⁷ Global Alliance for the Rights of Nature, *What is Rights of Nature?*, <https://therightsofnature.org/what-is-rights-of-nature/> (last visited Jan. 18, 2020); Community Environmental Defense Fund, *Champion the Rights of Nature*, <https://celdf.org/advancing-community-rights/rights-of-nature/> (last visited Jan. 18, 2020).

⁶⁸ *Id.*

⁶⁹ BLACK’S LAW DICTIONARY, 1536 (9th ed. 2009).

⁷⁰ *Id.*

⁷¹ Gwendolyn J. Gordon, *Environmental Personhood*, 50, 43 COLUM. J. ENVTL. L. 49 (Jan. 11, 2019) (citing *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010)).

⁷² Constitución Política de la República del Ecuador, art. 10, 71-74 (Ecuador), English translation available at <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

⁷³ *Id.*

⁷⁴ See generally, Gwendolyn J. Gordon, *Environmental Personhood*, 50, 43 COLUM. J. ENVTL. L. 49 (Jan. 11, 2019).

⁷⁵ See, Patrick Parenteau, *Green Justice Revisited: Dick Brooks on the Laws of Nature and the Nature of Law*, 20 VT. J. ENVTL. L. 183, 186 (2019); Global Alliance for the Rights of Nature, *Columbia Constitutional Court Finds Atrato River Possesses Rights*, <https://therightsofnature.org/colombia-constitutional-court-finds-atrato-river-possesses-rights/> (last visited Jan. 19, 2020).

⁷⁶ PA. CONST. art. 1, § 27

⁷⁷ *Robinson v. Commonwealth*, 83 A.3d 901 (2013).

Pennsylvania,⁷⁸ Maine,⁷⁹ New Hampshire,⁸⁰ and California,⁸¹ among others, have enacted rights of nature provisions in their local ordinances. The idea is being discussed in various Florida communities, but no local ordinances have been adopted at this time.⁸²

The Florida Environmental Protection Act

The Environmental Protection Act of 1971 authorizes the bringing of an action for injunctive relief to compel a governmental authority to enforce laws, rules, and regulations for the protection of the air, water, and other natural resources of the state of Florida or to enjoin a person or governmental agency or authority from violating any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state.⁸³ In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, the government or a citizen of the state has standing to intervene as a party on the filing of a pleading asserting that the activity to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state.⁸⁴ A citizen's substantial interests are considered to be affected if the party demonstrates it may suffer an injury in fact which is of sufficient immediacy and is of the type and nature intended to be protected by law. No demonstration of special injury different in kind from the general public at large is required. A sufficient demonstration of a substantial interest may be made by a petitioner who establishes that the proposed activity, conduct, or product to be licensed or permitted affects the petitioner's use or enjoyment of air, water, or natural resources protected by law.⁸⁵

In *Florida Wildlife Federation v. State Dept. of Environmental Regulation*, the Florida Supreme Court held that the Environmental Protection Act sets out substantive rights not previously possessed.⁸⁶ Private citizens of Florida may institute a suit under the Environmental Protection Act without showing of special injury required by traditional rules of standing.⁸⁷ The Act does not constitute an impermissible intrusion by the legislature into the Supreme Court's power over practice and procedure in state courts, but rather creates a new cause of action setting out substantive rights not previously possessed and enabling the citizens of Florida to institute suit for the protection of their environment without a showing of "special injury" as previously required.⁸⁸

⁷⁸ See City of Pittsburgh Code of Ordinances, § 618.03.

⁷⁹ Town of Shapleigh Code, §99-16.

⁸⁰ Barrington, NH, Community Bill of Rights §2(e), available at https://www.barrington.nh.gov/sites/barringtonnh/files/uploads/bill_of_rights.pdf.

⁸¹ Santa Monica Municipal Code, Ch. 12.02.030.

⁸² SAFEBOR, *Welcome to the Santa Fe River Bill of Rights Campaign*, <https://safebor.org/> (last visited Jan. 23, 2020); Global Alliance for the Rights of Nature, *The Rights of Nature Movement has Arrived to Florida*, <https://therightsofnature.org/the-rights-of-nature-movement-has-arrived-to-florida/> (last visited Jan. 23, 2020).

⁸³ Section 403.412(2)(a), F.S.

⁸⁴ Section 403.412(5), F.S.

⁸⁵ *Id.*

⁸⁶ 390 So.2d 64 (Fla. 1980).

⁸⁷ *Id.*

⁸⁸ *Id.*

III. Effect of Proposed Changes:

Basin Management Action Plans: Compliance and Verification (Section 1 and Section 2)

The bill specifies that a nonagricultural and agricultural nonpoint source owner or operator who discharges into a basin included in an adopted basin management action plan (BMAP) must comply with the following, as applicable, within 5 years after the date of the adoption of the BMAP or an amendment thereto that imposes new requirements to implement:

- For a nonagricultural nonpoint source discharger, nonagricultural:
 - Interim measures,
 - Best management practices (BMPs),
 - Management measures, or
 - Other measures.
- For an agricultural nonpoint source discharger, agricultural:
 - Interim measures,
 - BMPs, or
 - Other measures adopted by rule and implemented according to a notice of intent filed by the agricultural nonpoint source discharger.
- Water quality monitoring for any nonpoint source discharger who opts to implement water quality monitoring in BMPs.

Implementation of these actions must be verified by a site visit at least once every 2 years by the responsible agency as follows:

- For nonagricultural interim measures, nonagricultural BMPs, or other measures, DEP or water management district, as appropriate.
- For agricultural interim measures, agricultural BMPs, or other measures, verification by the Department of Agriculture and Consumer Services (DACS).
- For management measures adopted in a basin management action plan (BMAP), verification by DEP.

If DEP or DACS cannot verify site implementation every 2 years, DEP or DACS must include recommendations for meeting the intent of the verification along with a budget request as part of its STAR report or its BMP progress report (currently required in s. 403.0675, F.S.), respectively.

Beginning in 2021, DEP must include in its annual STAR report:

- The status of the results of verification of the stormwater systems and nonagricultural BMPs.
- The number of landowners, dischargers, or other responsible persons required to implement applicable management strategies, including BMPs or water quality monitoring, who did not comply with such requirements.

Beginning July 1, 2021, DACS must include in its annual BMP progress report the results of implementation of agricultural nonpoint source BMPs in the following categories:

- Irrigated and nonirrigated agricultural acres.
- Fallow agricultural acres.

- Agricultural parcels of fewer than 50 acres, excluding rural homesteads (see discussion below).

For the progress reports submitted on July 1, 2021, and July 1, 2022, DEP and DACS will address the priority focus areas identified in the BMAPs.

Basin Management Action Plan Elements (Section 1)

The bill adds the requirement that BMAP strategies involve technically and financially practical actions. The bill adds the following as examples of strategies that BMAPs can include:

- Interim measures, BMPs, or other measures;
- Implementation of cooperative agricultural regional water quality improvement projects or practices (see below for a description of the agricultural element); and
- Cooperative urban, suburban, commercial, or institutional regional water quality improvement projects or practices (see below for a description of the nonagricultural element).

The bill requires DEP, DACS, and owners of agricultural operations in the basin to develop a cooperative agricultural regional water quality improvement element (agricultural element) in the BMAP, but only if:

- DACS's agricultural measures have been adopted and implemented but the waterbody remains impaired;
- Agricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- DEP determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the BMAP, are necessary to achieve the total maximum daily load (TMDL).

The agricultural element will be implemented through a cost-sharing program (see below). The agricultural element must include cost-effective and technically and financially practical cooperative regional agricultural nutrient reduction projects that can be implemented on private properties on a site-specific, cooperative basis if funding is made available. Such projects may include land acquisition in fee or conservation easements on the lands of willing sellers and site-specific water quality improvement or dispersed water management projects on the lands of program participants.

To qualify for participation in the agricultural element, the participant must have already implemented the interim measures, BMPs, or other measures adopted by DACS. The agricultural element may be included in the BMAP as a part of its next 5-year assessment.

The bill requires DEP, the Department of Health, local governments, and water management districts with jurisdiction in the basin to develop a cooperative urban, suburban, commercial, or institutional regional water quality improvement element (nonagricultural element) as part of a BMAP in which:

- Nonagricultural interim measures and nonagricultural BMPs have been implemented but the waterbody remains impaired;

- Nonagricultural nonpoint sources contribute to at least 20 percent of nonpoint source nutrient discharges; and
- DEP determines that additional measures, in combination with state-sponsored regional projects and other management strategies included in the BMAP, are necessary to achieve the TMDL.

The nonagricultural element must be implemented through a cost-sharing program (see below). The nonagricultural element must include cost-effective and technically and financially practical cooperative regional nutrient reduction projects that can be implemented on urban, suburban, commercial, or institutional properties if funding is made available as provided by general law. The nonagricultural element must be included in the BMAP as a part of its next 5-year assessment.

Data Collection and Research (Section 1)

The bill directs DACS to work with DEP to improve the accuracy of data used to estimate agricultural land uses in BMAPs. The departments must work with producers to identify agricultural technologies that could be implemented, subject to available funding, on properties where the technologies are deemed technically and financially practical.

The Institute of Food and Agricultural Sciences (IFAS) of the University of Florida, in cooperation with the DACS, must develop a research plan and a legislative budget request to:

- Evaluate and suggest cost-effective enhancements to the adopted BMPs.
- Develop new, cost-effective BMPs that, when proven, may be considered by DACS for rule adoption.
- Develop cooperative agricultural nutrient reduction projects to be considered by water management districts for inclusion in the agricultural element of a BMAP.

All such proposals must be technically and financially practical.

DEP must work with IFAS and the regulated entities to consider the adoption by rule of BMPs for the management of nutrient impacts from golf courses.

Nutrient Reduction Cost-Share Program (Section 1)

The bill creates a nutrient reduction cost-share program within DEP. Subject to legislative appropriation, DEP may provide funding for projects that will individually or collectively reduce nutrient pollution under a BMAP or an alternative restoration plan for the following:

- The following wastewater projects (wastewater projects require a 50 percent local match of funds which can be waived for a rural area of opportunity):
 - Projects to retrofit onsite sewage treatment and disposal systems.
 - Projects to construct, upgrade, or expand facilities to provide advanced waste treatment.
 - Projects to connect onsite sewage treatment and disposal systems to central sewer facilities.
- Projects in the nonagricultural element of a BMAP (created in the bill and described above).
- Projects in the agricultural element of a BMAP (created in the bill and described above).
- The data collection and research activities created in the bill (See Technical Issues Section).

DEP is directed to prioritize projects in subbasins with the highest nutrient concentrations within a BMAP and wastewater projects, projects in the nonagricultural element, and projects in the agricultural element. For wastewater projects and projects in the nonagricultural element, projects that subsidize the connection of onsite sewage treatment and disposal systems to a wastewater treatment plant or that subsidize inspections and assessments of onsite sewage treatment and disposal systems will receive priority. DEP must consider: the estimated reduction in nutrient load per project, project readiness, the cost effectiveness of the project, the overall environmental benefit of a project, the location of a project within the plan area, the availability of local matching funds, and the projected water savings or quantity improvements associated with the project.

DEP must coordinate with DACS, IFAS, and each water management district, as necessary, in allocating funds for the cost-share program. Beginning January 1, 2021, DEP must submit an annual report regarding the projects funded pursuant to this program to the Governor and Legislature. The bill clarifies that the nutrient reduction cost-share program is in addition to, and does not replace, existing funding authorizations.

Rural Homesteads (Section 1)

The bill states that the Legislature recognizes that lands classified as agricultural by property appraisers may include rural homesteads in addition to producing agricultural lands. It is the intent of the Legislature to support those who seek to establish and maintain rural homesteads and focus on a sustainable, self-supporting lifestyle.

The bill defines “rural homesteads” to mean low-density rural residential properties up to 50 acres in size which are homesites and noncommercial in nature that include single-family homes and accessory structures together with the keeping of livestock, horses, traditional farm animals and poultry, and the planting and maintenance of groves and gardens for the primary purpose of serving the needs and interests of those living on the property.

Rural homesteads are not subject to the requirements of the nonpoint source requirements of the BMAP. However, if any activity on a rural homestead rises to the level of bona fide agricultural activity and is classified as agricultural by the property appraiser, then the land owner must comply with the nonpoint source requirements of the BMAP.

Rights of Nature (Section 3)

The bill amends the Florida Environmental Protection Act to prohibit local governments from recognizing, granting, conveying, or extending legal standing or legal rights to a plant, an animal, a body of water, or any other part of the natural environment unless otherwise specifically authorized by state law or the State Constitution.

The changes in the bill explicitly do not:

- Limit the ability of the Department of Legal Affairs, any political subdivision of the state, or a resident of the state to maintain an action for injunctive relief for pollution violations under existing law.

- Limit the ability of an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan, or to file an action for injunctive relief to enforce the terms of a development agreement or to challenge compliance of the agreement with the Florida Local Government Development Agreement Act.

Effective Date (Section 4)

The bill provides an effective date of July 1, 2020.

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 private sector could see a positive fiscal impact from the cost-share program.

C. Government Sector Impact:

There would be a negative fiscal impact to the state associated with funding the bill's research and cost-share programs, but there may be a long-term positive fiscal impact associated with pollution prevention.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 403.067, 403.0675, and 403.412 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 Environment and Natural Resources Committee on January 27, 2020:

- Requires BMPs or water quality monitoring to be adopted within 5 years of completion of a BMAP or amendment to a BMAP.
- Requires site visits at least every 2 years.
- If DEP or DACS cannot verify site implementation every 2 years, DEP or DACS must include recommendations for meeting the intent of the verification along with a budget request as part of its report to the Governor and Legislature.
- Adds other topics to be included in the reports by DEP and DACS to the Governor and Legislature under s. 403.0675, F.S.
- For the progress reports in 2021 and 2022, DEP and DACS will address the priority focus areas identified in the BMAPs.
- Revises the prioritization of the cost-share program direct DEP to prioritize projects in subbasins with the highest nutrient concentrations within a BMAP and wastewater projects, projects in the nonagricultural element, and projects in the agricultural element.
- Defines “rural homesteads.”
- Provides that rural homesteads are not subject to the nonpoint source requirements of the BMAP with certain exceptions.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/27/2020	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (7) of section 403.067, Florida Statutes, is amended, and subsections (14) and (15) are added to that section, to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND



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11 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

12 (a) *Basin management action plans.*—

13 1. In developing and implementing the total maximum daily
14 load for a water body, the department, or the department in
15 conjunction with a water management district, may develop a
16 basin management action plan that addresses some or all of the
17 watersheds and basins tributary to the water body. Such plan
18 must integrate the appropriate management strategies available
19 to the state through existing water quality protection programs
20 to achieve the total maximum daily loads and may provide for
21 phased implementation of these management strategies to promote
22 timely, cost-effective, and technically and financially
23 practical actions as provided for in s. 403.151. The plan must
24 establish a schedule implementing the management strategies,
25 establish a basis for evaluating the plan's effectiveness, and
26 identify feasible funding strategies for implementing the plan's
27 management strategies. The management strategies may include:

28 a. Regional treatment systems or other public works, where
29 appropriate;~~—and~~

30 b. Voluntary trading of water quality credits to achieve
31 the needed pollutant load reductions;

32 c. Interim measures, best management practices, or other
33 measures in paragraph (c);

34 d. Implementation of cooperative agricultural regional
35 water quality improvement projects or practices in paragraph
36 (e); and

37 e. Cooperative urban, suburban, commercial, or
38 institutional regional water quality improvement projects or
39 practices in paragraph (f).



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40 2. A basin management action plan must equitably allocate,
41 pursuant to paragraph (6) (b), pollutant reductions to individual
42 basins, as a whole to all basins, or to each identified point
43 source or category of nonpoint sources, as appropriate. For
44 nonpoint sources for which best management practices have been
45 adopted, the initial requirement specified by the plan must be
46 those practices developed pursuant to paragraph (c). Where
47 appropriate, the plan may take into account the benefits of
48 pollutant load reduction achieved by point or nonpoint sources
49 that have implemented management strategies to reduce pollutant
50 loads, including best management practices, before the
51 development of the basin management action plan. The plan must
52 also identify the mechanisms that will address potential future
53 increases in pollutant loading.

54 3. The basin management action planning process is intended
55 to involve the broadest possible range of interested parties,
56 with the objective of encouraging the greatest amount of
57 cooperation and consensus possible. In developing a basin
58 management action plan, the department shall assure that key
59 stakeholders, including, but not limited to, applicable local
60 governments, water management districts, the Department of
61 Agriculture and Consumer Services, other appropriate state
62 agencies, local soil and water conservation districts,
63 environmental groups, regulated interests, and affected
64 pollution sources, are invited to participate in the process.
65 The department shall hold at least one public meeting in the
66 vicinity of the watershed or basin to discuss and receive
67 comments during the planning process and shall otherwise
68 encourage public participation to the greatest practicable



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69 extent. Notice of the public meeting must be published in a
70 newspaper of general circulation in each county in which the
71 watershed or basin lies not less than 5 days nor more than 15
72 days before the public meeting. A basin management action plan
73 does not supplant or otherwise alter any assessment made under
74 subsection (3) or subsection (4) or any calculation or initial
75 allocation.

76 4. Each new or revised basin management action plan shall
77 include:

78 a. The appropriate management strategies available through
79 existing water quality protection programs to achieve total
80 maximum daily loads, which may provide for phased implementation
81 to promote timely, cost-effective actions as provided for in s.
82 403.151;

83 b. A description of best management practices adopted by
84 rule;

85 c. A list of projects in priority ranking with a planning-
86 level cost estimate and estimated date of completion for each
87 listed project;

88 d. The source and amount of financial assistance to be made
89 available by the department, a water management district, or
90 other entity for each listed project, if applicable; and

91 e. A planning-level estimate of each listed project's
92 expected load reduction, if applicable.

93 5. The department shall adopt all or any part of a basin
94 management action plan and any amendment to such plan by
95 secretarial order pursuant to chapter 120 to implement ~~the~~
96 ~~provisions of~~ this section.

97 6. The basin management action plan must include milestones



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98 for implementation and water quality improvement, and an
99 associated water quality monitoring component sufficient to
100 evaluate whether reasonable progress in pollutant load
101 reductions is being achieved over time. An assessment of
102 progress toward these milestones shall be conducted every 5
103 years, and revisions to the plan shall be made as appropriate.
104 Revisions to the basin management action plan shall be made by
105 the department in cooperation with basin stakeholders. Revisions
106 to the management strategies required for nonpoint sources must
107 follow the procedures ~~set forth~~ in subparagraph (c)4. Revised
108 basin management action plans must be adopted pursuant to
109 subparagraph 5.

110 7. In accordance with procedures adopted by rule under
111 paragraph (9)(c), basin management action plans, and other
112 pollution control programs under local, state, or federal
113 authority as provided in subsection (4), may allow point or
114 nonpoint sources that will achieve greater pollutant reductions
115 than required by an adopted total maximum daily load or
116 wasteload allocation to generate, register, and trade water
117 quality credits for the excess reductions to enable other
118 sources to achieve their allocation; however, the generation of
119 water quality credits does not remove the obligation of a source
120 or activity to meet applicable technology requirements or
121 adopted best management practices. Such plans must allow trading
122 between NPDES permittees, and trading that may or may not
123 involve NPDES permittees, where the generation or use of the
124 credits involve an entity or activity not subject to department
125 water discharge permits whose owner voluntarily elects to obtain
126 department authorization for the generation and sale of credits.



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127 8. The provisions of the department's rule relating to the
128 equitable abatement of pollutants into surface waters do not
129 apply to water bodies or water body segments for which a basin
130 management plan that takes into account future new or expanded
131 activities or discharges has been adopted under this section.

132 (b) *Total maximum daily load implementation.*—

133 1. The department shall be the lead agency in coordinating
134 the implementation of the total maximum daily loads through
135 existing water quality protection programs. Application of a
136 total maximum daily load by a water management district must be
137 consistent with this section and does not require the issuance
138 of an order or a separate action pursuant to s. 120.536(1) or s.
139 120.54 for the adoption of the calculation and allocation
140 previously established by the department. Such programs may
141 include, but are not limited to:

142 a. Permitting and other existing regulatory programs,
143 including water-quality-based effluent limitations;

144 b. Nonregulatory and incentive-based programs, including
145 best management practices, cost sharing, waste minimization,
146 pollution prevention, agreements established pursuant to s.
147 403.061(21), and public education;

148 c. Other water quality management and restoration
149 activities, for example surface water improvement and management
150 plans approved by water management districts or basin management
151 action plans developed pursuant to this subsection;

152 d. Trading of water quality credits or other equitable
153 economically based agreements;

154 e. Public works including capital facilities; or

155 f. Land acquisition.



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156 2. For a basin management action plan adopted pursuant to
157 paragraph (a), any management strategies and pollutant reduction
158 requirements associated with a pollutant of concern for which a
159 total maximum daily load has been developed, including effluent
160 limits ~~set forth~~ for a discharger subject to NPDES permitting,
161 if any, must be included in a timely manner in subsequent NPDES
162 permits or permit modifications for that discharger. The
163 department may not impose limits or conditions implementing an
164 adopted total maximum daily load in an NPDES permit until the
165 permit expires, the discharge is modified, or the permit is
166 reopened pursuant to an adopted basin management action plan.

167 a. Absent a detailed allocation, total maximum daily loads
168 must be implemented through NPDES permit conditions that provide
169 for a compliance schedule. In such instances, a facility's NPDES
170 permit must allow time for the issuance of an order adopting the
171 basin management action plan. The time allowed for the issuance
172 of an order adopting the plan may not exceed 5 years. Upon
173 issuance of an order adopting the plan, the permit must be
174 reopened or renewed, as necessary, and permit conditions
175 consistent with the plan must be established. Notwithstanding
176 the other provisions of this subparagraph, upon request by an
177 NPDES permittee, the department as part of a permit issuance,
178 renewal, or modification may establish individual allocations
179 before the adoption of a basin management action plan.

180 b. For holders of NPDES municipal separate storm sewer
181 system permits and other stormwater sources, implementation of a
182 total maximum daily load or basin management action plan must be
183 achieved, to the maximum extent practicable, through the use of
184 best management practices or other management measures.



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185 c. The basin management action plan does not relieve the
186 discharger from any requirement to obtain, renew, or modify an
187 NPDES permit or to abide by other requirements of the permit.

188 d. Management strategies ~~set forth~~ in a basin management
189 action plan to be implemented by a discharger subject to
190 permitting by the department must be completed pursuant to the
191 schedule ~~set forth~~ in the basin management action plan. This
192 implementation schedule may extend beyond the 5-year term of an
193 NPDES permit.

194 e. Management strategies and pollution reduction
195 requirements ~~set forth~~ in a basin management action plan for a
196 specific pollutant of concern are not subject to challenge under
197 chapter 120 at the time they are incorporated, in an identical
198 form, into a subsequent NPDES permit or permit modification.

199 f. For nonagricultural pollutant sources not subject to
200 NPDES permitting but permitted pursuant to other state,
201 regional, or local water quality programs, the pollutant
202 reduction actions adopted in a basin management action plan must
203 be implemented to the maximum extent practicable as part of
204 those permitting programs.

205 g. A nonpoint source discharger included in a basin
206 management action plan must demonstrate compliance with the
207 pollutant reductions established under subsection (6) by
208 implementing the appropriate best management practices
209 established pursuant to paragraph (c) or conducting water
210 quality monitoring prescribed by the department or a water
211 management district. A nonpoint source discharger may, in
212 accordance with department rules, supplement the implementation
213 of best management practices with water quality credit trades in



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214 order to demonstrate compliance with the pollutant reductions
215 established under subsection (6).

216 h. A nonpoint source discharger included in a basin
217 management action plan may be subject to enforcement action by
218 the department or a water management district based upon a
219 failure to implement the responsibilities ~~set forth~~ in sub-
220 subparagraph g.

221 i. A landowner, discharger, or other responsible person who
222 is implementing applicable management strategies specified in an
223 adopted basin management action plan may not be required by
224 permit, enforcement action, or otherwise to implement additional
225 management strategies, including water quality credit trading,
226 to reduce pollutant loads to attain the pollutant reductions
227 established pursuant to subsection (6) and shall be deemed to be
228 in compliance with this section. This subparagraph does not
229 limit the authority of the department to amend a basin
230 management action plan as specified in subparagraph (a)6.

231 (c) *Best management practices.*—

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



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

264 3. When ~~where~~ interim measures, best management practices,
265 or other measures are adopted by rule, the effectiveness of such
266 practices in achieving the levels of pollution reduction
267 established in allocations developed by the department pursuant
268 to subsection (6) and this subsection or in programs implemented
269 pursuant to paragraph (12) (b) must be verified at representative
270 sites by the department. The department shall use best
271 professional judgment in making the initial verification that



272 the best management practices are reasonably expected to be
273 effective and, where applicable, must notify the appropriate
274 water management district or the Department of Agriculture and
275 Consumer Services of its initial verification before the
276 adoption of a rule proposed pursuant to this paragraph.
277 Implementation, in accordance with rules adopted under this
278 paragraph, of practices that have been initially verified to be
279 effective, or verified to be effective by monitoring at
280 representative sites, by the department, shall provide a
281 presumption of compliance with state water quality standards and
282 release from ~~the provisions of~~ s. 376.307(5) for those
283 pollutants addressed by the practices, and the department is not
284 authorized to institute proceedings against the owner of the
285 source of pollution to recover costs or damages associated with
286 the contamination of surface water or groundwater caused by
287 those pollutants. Research projects funded by the department, a
288 water management district, or the Department of Agriculture and
289 Consumer Services to develop or demonstrate interim measures or
290 best management practices shall be granted a presumption of
291 compliance with state water quality standards and a release from
292 ~~the provisions of~~ s. 376.307(5). The presumption of compliance
293 and release is limited to the research site and only for those
294 pollutants addressed by the interim measures or best management
295 practices. Eligibility for the presumption of compliance and
296 release is limited to research projects on sites where the owner
297 or operator of the research site and the department, a water
298 management district, or the Department of Agriculture and
299 Consumer Services have entered into a contract or other
300 agreement that, at a minimum, specifies the research objectives,



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301 the cost-share responsibilities of the parties, and a schedule
302 that details the beginning and ending dates of the project.

303 4. ~~When~~ ~~Where~~ water quality problems are demonstrated,
304 despite the appropriate implementation, operation, and
305 maintenance of best management practices and other measures
306 required by rules adopted under this paragraph, the department,
307 a water management district, or the Department of Agriculture
308 and Consumer Services, in consultation with the department,
309 shall institute a reevaluation of the best management practice
310 or other measure. Should the reevaluation determine that the
311 best management practice or other measure requires modification,
312 the department, a water management district, or the Department
313 of Agriculture and Consumer Services, as appropriate, shall
314 revise the rule to require implementation of the modified
315 practice within a reasonable time period as specified in the
316 rule.

317 5. Agricultural records relating to processes or methods of
318 production, costs of production, profits, or other financial
319 information held by the Department of Agriculture and Consumer
320 Services pursuant to subparagraphs 3. and 4. or pursuant to any
321 rule adopted pursuant to subparagraph 2. are confidential and
322 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
323 Constitution. Upon request, records made confidential and exempt
324 pursuant to this subparagraph shall be released to the
325 department or any water management district provided that the
326 confidentiality specified by this subparagraph for such records
327 is maintained.

328 6. ~~The provisions of~~ Subparagraphs 1. and 2. do not
329 preclude the department or water management district from



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

337 (d) *Enforcement and verification of basin management action*
338 *plans and management strategies.*—

339 1. Basin management action plans are enforceable pursuant
340 to this section and ss. 403.121, 403.141, and 403.161.

341 Management strategies, including best management practices and
342 water quality monitoring, are enforceable under this chapter.

343 2. No later than January 1, 2017:

344 a. The department, in consultation with the water
345 management districts and the Department of Agriculture and
346 Consumer Services, shall initiate rulemaking to adopt procedures
347 to verify implementation of water quality monitoring required in
348 lieu of implementation of best management practices or other
349 measures pursuant to sub-subparagraph (b)2.g.;

350 b. The department, in consultation with the water
351 management districts and the Department of Agriculture and
352 Consumer Services, shall initiate rulemaking to adopt procedures
353 to verify implementation of nonagricultural interim measures,
354 best management practices, or other measures adopted by rule
355 pursuant to subparagraph (c)1.; and

356 c. The Department of Agriculture and Consumer Services, in
357 consultation with the water management districts and the
358 department, shall initiate rulemaking to adopt procedures to



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359 verify implementation of agricultural interim measures, best
360 management practices, or other measures adopted by rule pursuant
361 to subparagraph (c)2.

362
363 The rules required under this subparagraph shall include
364 enforcement procedures applicable to the landowner, discharger,
365 or other responsible person required to implement applicable
366 management strategies, including best management practices or
367 water quality monitoring as a result of noncompliance.

368 3. A nonagricultural and agricultural nonpoint source owner
369 or operator who discharges into a basin included in an adopted
370 basin management action plan must comply with the following, as
371 applicable, within 5 years after the date of the adoption of the
372 basin management action plan or an amendment thereto that
373 imposes new requirements:

374 a. For a nonagricultural nonpoint source discharger,
375 nonagricultural interim measures, nonagricultural best
376 management practices, or other measures adopted by rule pursuant
377 to subparagraph (c)1. or management measures adopted in a basin
378 management action plan.

379 b. For an agricultural nonpoint source discharger,
380 agricultural interim measures, agricultural best management
381 practices, or other measures adopted by rule pursuant to
382 subparagraph (c)2. and implemented according to a notice of
383 intent filed by the agricultural nonpoint source discharger.

384 c. For an agricultural and nonagricultural nonpoint source
385 discharger who opts to implement water quality monitoring in
386 lieu of compliance with sub-subparagraph a. or sub-subparagraph
387 b., water quality monitoring required under sub-subparagraph



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388 (b)2.g.
389 4. Implementation of actions in subparagraph 3. shall be
390 verified by a site visit at least once every 2 years by the
391 responsible agency as follows:
392 a. For nonagricultural interim measures, nonagricultural
393 best management practices, or other measures adopted by rule
394 pursuant to subparagraph (c)1., verification by the department
395 or water management district, as appropriate.
396 b. For agricultural interim measures, agricultural best
397 management practices, or other measures adopted by rule pursuant
398 to subparagraph (c)2., verification by the Department of
399 Agriculture and Consumer Services.
400 c. For management measures adopted in a basin management
401 action plan, verification by the department.
402
403 If verification pursuant to this subparagraph cannot be
404 accomplished every 2 years, the responsible agency shall include
405 recommendations for meeting the intent of the verification along
406 with a budget request as part of the progress report required
407 under s. 403.0675.
408 (e) Cooperative agricultural regional water quality
409 improvement element.—
410 1. The department, the Department of Agriculture and
411 Consumer Services, and owners of agricultural operations in the
412 basin shall develop a cooperative agricultural regional water
413 quality improvement element as part of a basin management action
414 plan only if:
415 a. Agricultural measures have been adopted by the
416 Department of Agriculture and Consumer Services pursuant to



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417 subparagraph (c)2. and have been implemented and the waterbody
418 remains impaired;

419 b. Agricultural nonpoint sources contribute to at least 20
420 percent of nonpoint source nutrient discharges; and

421 c. The department determines that additional measures, in
422 combination with state-sponsored regional projects and other
423 management strategies included in the basin management action
424 plan, are necessary to achieve the total maximum daily load.

425 2. The element will be implemented through a cost-sharing
426 program as provided by law. The element must include cost-
427 effective and technically and financially practical cooperative
428 regional agricultural nutrient reduction projects that can be
429 implemented on private properties on a site-specific,
430 cooperative basis if funding is made available as provided by
431 law. Such cooperative regional agricultural nutrient reduction
432 projects may include land acquisition in fee or conservation
433 easements on the lands of willing sellers and site-specific
434 water quality improvement or dispersed water management projects
435 on the lands of program participants.

436 3. To qualify for participation in the cooperative
437 agricultural regional water quality improvement element, the
438 participant must have already implemented the interim measures,
439 best management practices, or other measures adopted by the
440 Department of Agriculture and Consumer Services pursuant to
441 subparagraph (c)2. The element may be included in the basin
442 management action plan as a part of the next 5-year assessment
443 under subparagraph (a)6.

444 (f) Cooperative urban, suburban, commercial, or
445 institutional regional water quality improvement element.-



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446 1. The department, the Department of Health, local
447 governments, and water management districts with jurisdiction in
448 the basin shall develop a cooperative urban, suburban,
449 commercial, or institutional regional water quality improvement
450 element as part of a basin management action plan in which:

451 a. Nonagricultural interim measures and nonagricultural
452 best management practices have been implemented and the
453 waterbody remains impaired;

454 b. Nonagricultural nonpoint sources contribute to at least
455 20 percent of nonpoint source nutrient discharges; and

456 c. The department determines that additional measures, in
457 combination with state-sponsored regional projects and other
458 management strategies included in the basin management action
459 plan, are necessary to achieve the total maximum daily load.

460 2. The element shall be implemented through a cost-sharing
461 program as provided by general law. The element must include
462 cost-effective and technically and financially practical
463 cooperative regional nutrient reduction projects that can be
464 implemented on urban, suburban, commercial, or institutional
465 properties if funding is made available as provided by general
466 law. The element must be included in the basin management action
467 plan as a part of the next 5-year assessment under subparagraph
468 (a) 6.

469 (g) Data collection and research.—

470 1. The Department of Agriculture and Consumer Services
471 shall work with the department to improve the accuracy of data
472 used to estimate agricultural land uses in the basin management
473 action plan and work with producers to identify agricultural
474 technologies that are cost-effective and technically and



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475 financially practical and could be implemented on agricultural
476 lands if funding is made available as provided by general law.

477 2. The University of Florida Institute of Food and
478 Agricultural Sciences shall work with the Department of
479 Agriculture and Consumer Services to develop a research plan and
480 a legislative budget request to:

481 a. Evaluate and, if cost-effective and technically and
482 financially practical, suggest enhancements to adopted best
483 management practices;

484 b. Develop new best management practices that are cost-
485 effective and technically and financially practical and that,
486 when proven, can be considered by the Department of Agriculture
487 and Consumer Services for rule adoption pursuant to paragraph
488 (c); and

489 c. Develop technically and financially practical
490 cooperative agricultural nutrient reduction projects to be
491 considered by water management districts for inclusion in a
492 basin management action plan pursuant to paragraph (e) that will
493 reduce the nutrient impacts from agricultural operations on
494 surface and groundwater quality.

495 3. The department shall work with the University of Florida
496 Institute of Food and Agricultural Sciences and regulated
497 entities to consider the adoption by rule of best management
498 practices for nutrient impacts from golf courses. Such adopted
499 best management practices are subject to the requirements of
500 paragraph (c).

501 (14) NUTRIENT REDUCTION COST-SHARE PROGRAM.—A nutrient
502 reduction cost-share program is established within the
503 department.



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504 (a) Subject to appropriation, the department may provide
505 funding for the following projects in a basin management action
506 plan or an alternative restoration plan that will individually
507 or collectively reduce nutrient pollution:

508 1. Projects to retrofit onsite sewage treatment and
509 disposal systems.

510 2. Projects to construct, upgrade, or expand facilities to
511 provide advanced waste treatment as defined in s. 403.086(4).

512 3. Projects to connect onsite sewage treatment and disposal
513 systems to central sewer facilities.

514 4. Projects identified in the cooperative urban, suburban,
515 commercial, or institutional regional water quality improvement
516 element pursuant to paragraph (7) (f).

517 5. Projects identified in the cooperative agricultural
518 regional water quality improvement element pursuant to paragraph
519 (7) (e).

520 6. Data collection and research activities identified in
521 paragraph (7) (g).

522 (b) In allocating funds for projects, the department shall
523 prioritize projects in subbasins with the highest nutrient
524 concentrations within a basin management action plan and
525 projects that are identified in subparagraphs (a)1.-5. For
526 projects identified in subparagraphs (a)1.-4., further
527 prioritization must be given to projects that subsidize the
528 connection of onsite sewage treatment and disposal systems to a
529 wastewater treatment plant or that subsidize inspections and
530 assessments of onsite sewage treatment and disposal systems.

531 (c) In determining the priority of projects pursuant to
532 paragraph (b), the department shall consider the following for



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533 each project:

534 1. The estimated reduction in nutrient load.

535 2. Readiness.

536 3. Cost-effectiveness.

537 4. Overall environmental benefit.

538 5. The location within the plan area.

539 6. The availability of local matching funds.

540 7. Projected water savings or water quantity improvements.

541 (d) Each project described in subparagraphs (a)1.-3. must
542 require a minimum of 50 percent local matching funds. However,
543 the department may, at its discretion, waive, in whole or in
544 part, consideration of the local contribution for proposed
545 projects within an area designated as a rural area of
546 opportunity as defined in s. 288.0656(2).

547 (e) The department shall coordinate with the Department of
548 Agriculture and Consumer Services, the University of Florida
549 Institute of Food and Agricultural Sciences, and each water
550 management district, as necessary, in allocating funds
551 appropriated pursuant to paragraph (a).

552 (f) Beginning January 1, 2021, and each January 1
553 thereafter, the department shall submit a report regarding the
554 projects funded pursuant to this subsection to the Governor, the
555 President of the Senate, and the Speaker of the House of
556 Representatives.

557 (g) The nutrient reduction cost-share program is in
558 addition to, and does not replace, existing funding
559 authorizations.

560 (15) RURAL HOMESTEADS.-

561 (a) The Legislature recognizes that lands classified as



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562 agricultural by property appraisers may include rural homesteads
563 in addition to producing agricultural lands. It is the intent of
564 the Legislature to support those who seek to establish and
565 maintain rural homesteads and focus on a sustainable, self-
566 supporting lifestyle.

567 (b) As used in this subsection, the term "rural homesteads"
568 means low-density rural residential properties up to 50 acres in
569 size which are homesites and noncommercial in nature that
570 include single-family homes and accessory structures together
571 with the keeping of livestock, horses, traditional farm animals
572 and poultry, and the planting and maintenance of groves and
573 gardens for the primary purpose of serving the needs and
574 interests of those living on the property.

575 (c) Rural homesteads are not subject to the requirements of
576 paragraph (7) (c). However, if any activity on a rural homestead
577 rises to the level of bona fide agricultural activity and is
578 classified as agricultural use pursuant to s. 193.461, the land
579 owner must comply with the requirements of paragraph (7) (c).

580 Section 2. Section 403.0675, Florida Statutes, is amended
581 to read:

582 403.0675 Progress reports. ~~On or before July 1 of each~~
583 ~~year, beginning in 2018:~~

584 (1) On or before July 1 of each year:

585 (a) Beginning in 2018, the department, in conjunction with
586 the water management districts, shall post on its website and
587 submit electronically an annual progress report to the Governor,
588 the President of the Senate, and the Speaker of the House of
589 Representatives on the status of each total maximum daily load,
590 basin management action plan, minimum flow or minimum water



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591 level, and recovery or prevention strategy adopted pursuant to
592 s. 403.067 or parts I and VIII of chapter 373. The report must
593 include the status of each project identified to achieve a total
594 maximum daily load or an adopted minimum flow or minimum water
595 level, as applicable. If a report indicates that any of the 5-
596 year, 10-year, or 15-year milestones, or the 20-year target
597 date, if applicable, for achieving a total maximum daily load or
598 a minimum flow or minimum water level will not be met, the
599 report must include an explanation of the possible causes and
600 potential solutions. If applicable, the report must include
601 project descriptions, estimated costs, proposed priority ranking
602 for project implementation, and funding needed to achieve the
603 total maximum daily load or the minimum flow or minimum water
604 level by the target date. Each water management district shall
605 post the department's report on its website.

606 (b) Beginning in 2020, the department shall include in the
607 report required under paragraph (a):

608 1. The status of the results of verification of the
609 stormwater systems and nonagricultural best management
610 practices.

611 2. The number of landowners, dischargers, or other
612 responsible persons required to implement applicable management
613 strategies, including best management practices or water quality
614 monitoring, who did not comply with such requirements.

615 (2) (a) The Department of Agriculture and Consumer Services
616 shall post on its website and submit electronically an annual
617 progress report to the Governor, the President of the Senate,
618 and the Speaker of the House of Representatives on the status of
619 the implementation of the agricultural nonpoint source best



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620 management practices, including an implementation assurance
621 report summarizing survey responses and response rates, site
622 inspections, and other methods used to verify implementation of
623 and compliance with best management practices pursuant to basin
624 management action plans.

625 (b) Beginning July 1, 2020, and each July 1 thereafter, the
626 Department of Agriculture and Consumer Services shall include in
627 the progress report required under paragraph (a) a status of the
628 results of implementation of agricultural nonpoint source best
629 management practices in the following categories:

- 630 1. Irrigated and nonirrigated agricultural acres.
631 2. Fallow agricultural acres.
632 3. Agricultural parcels of fewer than 50 acres, excluding
633 rural homesteads as defined in s. 403.067(15).

634 (c) Beginning July 1, 2020, and each July 1 thereafter, the
635 department shall include in the progress report the number of
636 landowners, dischargers, or other responsible persons required
637 to implement applicable management strategies, including best
638 management practices or water quality monitoring, who did not
639 comply with such requirements.

640 (3) A nonagricultural and agricultural nonpoint source
641 owner and operator who discharges into a basin included in an
642 adopted basin management action plan must comply with the
643 following, as applicable, within 5 years after the date of the
644 adoption of the basin management action plan or an amendment
645 thereto:

646 (a) For a nonagricultural nonpoint source discharger,
647 nonagricultural interim measures, nonagricultural best
648 management practices, other measures adopted by rule pursuant to



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649 s. 403.067(7)(c)1., or management measures adopted in a basin
650 management action plan.

651 (b) For an agricultural nonpoint source discharger,
652 agricultural interim measures, agricultural best management
653 practices, or other measures adopted by rule pursuant to s.
654 403.067(7)(c)2. and implemented according to a notice of intent
655 filed by the agricultural nonpoint source discharger.

656 (c) For an agricultural and nonagricultural nonpoint source
657 discharger who opts to implement water quality monitoring in
658 lieu of compliance with paragraph (a) or paragraph (b), water
659 quality monitoring required under s. 403.067(7)(b)2.g.

660 (4) For the progress reports submitted on July 1, 2020,
661 July 1, 2021, and July 1, 2022, the department and the
662 Department of Agriculture and Consumer Services shall focus on
663 the priority areas identified in the basin management action
664 plans.

665 Section 3. Subsection (9) is added to section 403.412,
666 Florida Statutes, to read:

667 403.412 Environmental Protection Act.—

668 (9)(a) A local government regulation, ordinance, code,
669 rule, comprehensive plan, or charter may not recognize, grant,
670 convey, or extend legal standing or legal rights, as those terms
671 are generally construed, to a plant, an animal, a body of water,
672 or any other part of the natural environment which is not a
673 person or a political subdivision as defined in s. 1.01(8),
674 unless otherwise specifically authorized by state law or the
675 State Constitution.

676 (b) This subsection may not be interpreted or construed to
677 do any of the following:



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678 1. Limit the ability of the Department of Legal Affairs,
679 any political subdivision of the state, or a resident of this
680 state to maintain an action for injunctive relief as provided in
681 this section.

682 2. Limit the ability of an aggrieved or adversely affected
683 party to appeal and challenge the consistency of a development
684 order with a comprehensive plan, as provided in s. 163.3215, or
685 to file an action for injunctive relief to enforce the terms of
686 a development agreement or to challenge compliance of the
687 agreement with the Florida Local Government Development
688 Agreement Act, as provided in s. 163.3243.

689 Section 4. This act shall take effect July 1, 2020.

690
691 ===== T I T L E A M E N D M E N T =====

692 And the title is amended as follows:

693 Delete everything before the enacting clause
694 and insert:

695 A bill to be entitled

696 An act relating to environmental resource management;
697 amending s. 403.067, F.S.; providing additional
698 management strategies for basin management action
699 plans; requiring certain basin management action plans
700 to include certain cooperative regional water quality
701 improvement elements; providing requirements for the
702 Department of Environmental Protection, the Department
703 of Agriculture and Consumer Services, and owners of
704 agricultural operations in developing and implementing
705 such elements; requiring the Department of Agriculture
706 and Consumer Services to work with the Department of



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707 Environmental Protection to improve the accuracy of
708 data used to estimate certain agricultural land uses
709 and to work with producers to identify certain
710 agricultural technologies; requiring the University of
711 Florida Institute of Food and Agricultural Sciences to
712 work with the Department of Agriculture and Consumer
713 Services to develop a specified research plan and a
714 legislative budget request; requiring the Department
715 of Environmental Protection to work with the
716 University of Florida Institute of Food and
717 Agricultural Sciences to consider the adoption of best
718 management practices for nutrient impacts from golf
719 courses; establishing a nutrient reduction cost-share
720 program within the Department of Environmental
721 Protection; providing requirements for such program;
722 providing legislative intent regarding rural
723 homesteads; defining the term "rural homesteads";
724 exempting such homesteads from certain best management
725 practices under certain conditions; amending s.
726 403.0675, F.S.; requiring the Department of
727 Environmental Protection and the Department of
728 Agriculture and Consumer Services to include specified
729 information in annual progress reports for basin
730 management action plans; amending s. 403.412, F.S.;
731 prohibiting local governments from recognizing,
732 granting, conveying, or extending legal rights or
733 legal standing to animals or certain parts of the
734 natural environment under certain circumstances;
735 providing construction; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2020	.	
	.	
	.	
	.	

The Committee on Environment and Natural Resources (Albritton) recommended the following:

1 **Senate Substitute for Amendment (887650) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Subsection (7) of section 403.067, Florida
7 Statutes, is amended, and subsections (14) and (15) are added to
8 that section, to read:

9 403.067 Establishment and implementation of total maximum
10 daily loads.-



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

13 (a) *Basin management action plans.*—

14 1. In developing and implementing the total maximum daily
15 load for a water body, the department, or the department in
16 conjunction with a water management district, may develop a
17 basin management action plan that addresses some or all of the
18 watersheds and basins tributary to the water body. Such plan
19 must integrate the appropriate management strategies available
20 to the state through existing water quality protection programs
21 to achieve the total maximum daily loads and may provide for
22 phased implementation of these management strategies to promote
23 timely, cost-effective, and technically and financially
24 practical actions as provided for in s. 403.151. The plan must
25 establish a schedule implementing the management strategies,
26 establish a basis for evaluating the plan's effectiveness, and
27 identify feasible funding strategies for implementing the plan's
28 management strategies. The management strategies may include:

29 a. Regional treatment systems or other public works, where
30 appropriate; ~~and~~

31 b. Voluntary trading of water quality credits to achieve
32 the needed pollutant load reductions;

33 c. Interim measures, best management practices, or other
34 measures in paragraph (c);

35 d. Implementation of cooperative agricultural regional
36 water quality improvement projects or practices in paragraph
37 (e); and

38 e. Cooperative urban, suburban, commercial, or
39 institutional regional water quality improvement projects or



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40 practices in paragraph (f).

41 2. A basin management action plan must equitably allocate,
42 pursuant to paragraph (6) (b), pollutant reductions to individual
43 basins, as a whole to all basins, or to each identified point
44 source or category of nonpoint sources, as appropriate. For
45 nonpoint sources for which best management practices have been
46 adopted, the initial requirement specified by the plan must be
47 those practices developed pursuant to paragraph (c). Where
48 appropriate, the plan may take into account the benefits of
49 pollutant load reduction achieved by point or nonpoint sources
50 that have implemented management strategies to reduce pollutant
51 loads, including best management practices, before the
52 development of the basin management action plan. The plan must
53 also identify the mechanisms that will address potential future
54 increases in pollutant loading.

55 3. The basin management action planning process is intended
56 to involve the broadest possible range of interested parties,
57 with the objective of encouraging the greatest amount of
58 cooperation and consensus possible. In developing a basin
59 management action plan, the department shall assure that key
60 stakeholders, including, but not limited to, applicable local
61 governments, water management districts, the Department of
62 Agriculture and Consumer Services, other appropriate state
63 agencies, local soil and water conservation districts,
64 environmental groups, regulated interests, and affected
65 pollution sources, are invited to participate in the process.
66 The department shall hold at least one public meeting in the
67 vicinity of the watershed or basin to discuss and receive
68 comments during the planning process and shall otherwise



69 encourage public participation to the greatest practicable
70 extent. Notice of the public meeting must be published in a
71 newspaper of general circulation in each county in which the
72 watershed or basin lies not less than 5 days nor more than 15
73 days before the public meeting. A basin management action plan
74 does not supplant or otherwise alter any assessment made under
75 subsection (3) or subsection (4) or any calculation or initial
76 allocation.

77 4. Each new or revised basin management action plan shall
78 include:

79 a. The appropriate management strategies available through
80 existing water quality protection programs to achieve total
81 maximum daily loads, which may provide for phased implementation
82 to promote timely, cost-effective actions as provided for in s.
83 403.151;

84 b. A description of best management practices adopted by
85 rule;

86 c. A list of projects in priority ranking with a planning-
87 level cost estimate and estimated date of completion for each
88 listed project;

89 d. The source and amount of financial assistance to be made
90 available by the department, a water management district, or
91 other entity for each listed project, if applicable; and

92 e. A planning-level estimate of each listed project's
93 expected load reduction, if applicable.

94 5. The department shall adopt all or any part of a basin
95 management action plan and any amendment to such plan by
96 secretarial order pursuant to chapter 120 to implement ~~the~~
97 ~~provisions of~~ this section.



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98 6. The basin management action plan must include milestones
99 for implementation and water quality improvement, and an
100 associated water quality monitoring component sufficient to
101 evaluate whether reasonable progress in pollutant load
102 reductions is being achieved over time. An assessment of
103 progress toward these milestones shall be conducted every 5
104 years, and revisions to the plan shall be made as appropriate.
105 Revisions to the basin management action plan shall be made by
106 the department in cooperation with basin stakeholders. Revisions
107 to the management strategies required for nonpoint sources must
108 follow the procedures ~~set forth~~ in subparagraph (c)4. Revised
109 basin management action plans must be adopted pursuant to
110 subparagraph 5.

111 7. In accordance with procedures adopted by rule under
112 paragraph (9)(c), basin management action plans, and other
113 pollution control programs under local, state, or federal
114 authority as provided in subsection (4), may allow point or
115 nonpoint sources that will achieve greater pollutant reductions
116 than required by an adopted total maximum daily load or
117 wasteload allocation to generate, register, and trade water
118 quality credits for the excess reductions to enable other
119 sources to achieve their allocation; however, the generation of
120 water quality credits does not remove the obligation of a source
121 or activity to meet applicable technology requirements or
122 adopted best management practices. Such plans must allow trading
123 between NPDES permittees, and trading that may or may not
124 involve NPDES permittees, where the generation or use of the
125 credits involve an entity or activity not subject to department
126 water discharge permits whose owner voluntarily elects to obtain



127 department authorization for the generation and sale of credits.

128 8. The provisions of the department's rule relating to the
129 equitable abatement of pollutants into surface waters do not
130 apply to water bodies or water body segments for which a basin
131 management plan that takes into account future new or expanded
132 activities or discharges has been adopted under this section.

133 (b) *Total maximum daily load implementation.*—

134 1. The department shall be the lead agency in coordinating
135 the implementation of the total maximum daily loads through
136 existing water quality protection programs. Application of a
137 total maximum daily load by a water management district must be
138 consistent with this section and does not require the issuance
139 of an order or a separate action pursuant to s. 120.536(1) or s.
140 120.54 for the adoption of the calculation and allocation
141 previously established by the department. Such programs may
142 include, but are not limited to:

143 a. Permitting and other existing regulatory programs,
144 including water-quality-based effluent limitations;

145 b. Nonregulatory and incentive-based programs, including
146 best management practices, cost sharing, waste minimization,
147 pollution prevention, agreements established pursuant to s.
148 403.061(21), and public education;

149 c. Other water quality management and restoration
150 activities, for example surface water improvement and management
151 plans approved by water management districts or basin management
152 action plans developed pursuant to this subsection;

153 d. Trading of water quality credits or other equitable
154 economically based agreements;

155 e. Public works including capital facilities; or



156 f. Land acquisition.

157 2. For a basin management action plan adopted pursuant to
158 paragraph (a), any management strategies and pollutant reduction
159 requirements associated with a pollutant of concern for which a
160 total maximum daily load has been developed, including effluent
161 limits ~~set forth~~ for a discharger subject to NPDES permitting,
162 if any, must be included in a timely manner in subsequent NPDES
163 permits or permit modifications for that discharger. The
164 department may not impose limits or conditions implementing an
165 adopted total maximum daily load in an NPDES permit until the
166 permit expires, the discharge is modified, or the permit is
167 reopened pursuant to an adopted basin management action plan.

168 a. Absent a detailed allocation, total maximum daily loads
169 must be implemented through NPDES permit conditions that provide
170 for a compliance schedule. In such instances, a facility's NPDES
171 permit must allow time for the issuance of an order adopting the
172 basin management action plan. The time allowed for the issuance
173 of an order adopting the plan may not exceed 5 years. Upon
174 issuance of an order adopting the plan, the permit must be
175 reopened or renewed, as necessary, and permit conditions
176 consistent with the plan must be established. Notwithstanding
177 the other provisions of this subparagraph, upon request by an
178 NPDES permittee, the department as part of a permit issuance,
179 renewal, or modification may establish individual allocations
180 before the adoption of a basin management action plan.

181 b. For holders of NPDES municipal separate storm sewer
182 system permits and other stormwater sources, implementation of a
183 total maximum daily load or basin management action plan must be
184 achieved, to the maximum extent practicable, through the use of



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185 best management practices or other management measures.
186 c. The basin management action plan does not relieve the
187 discharger from any requirement to obtain, renew, or modify an
188 NPDES permit or to abide by other requirements of the permit.
189 d. Management strategies ~~set forth~~ in a basin management
190 action plan to be implemented by a discharger subject to
191 permitting by the department must be completed pursuant to the
192 schedule ~~set forth~~ in the basin management action plan. This
193 implementation schedule may extend beyond the 5-year term of an
194 NPDES permit.
195 e. Management strategies and pollution reduction
196 requirements ~~set forth~~ in a basin management action plan for a
197 specific pollutant of concern are not subject to challenge under
198 chapter 120 at the time they are incorporated, in an identical
199 form, into a subsequent NPDES permit or permit modification.
200 f. For nonagricultural pollutant sources not subject to
201 NPDES permitting but permitted pursuant to other state,
202 regional, or local water quality programs, the pollutant
203 reduction actions adopted in a basin management action plan must
204 be implemented to the maximum extent practicable as part of
205 those permitting programs.
206 g. A nonpoint source discharger included in a basin
207 management action plan must demonstrate compliance with the
208 pollutant reductions established under subsection (6) by
209 implementing the appropriate best management practices
210 established pursuant to paragraph (c) or conducting water
211 quality monitoring prescribed by the department or a water
212 management district. A nonpoint source discharger may, in
213 accordance with department rules, supplement the implementation



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214 of best management practices with water quality credit trades in
215 order to demonstrate compliance with the pollutant reductions
216 established under subsection (6).

217 h. A nonpoint source discharger included in a basin
218 management action plan may be subject to enforcement action by
219 the department or a water management district based upon a
220 failure to implement the responsibilities ~~set forth~~ in sub-
221 subparagraph g.

222 i. A landowner, discharger, or other responsible person who
223 is implementing applicable management strategies specified in an
224 adopted basin management action plan may not be required by
225 permit, enforcement action, or otherwise to implement additional
226 management strategies, including water quality credit trading,
227 to reduce pollutant loads to attain the pollutant reductions
228 established pursuant to subsection (6) and shall be deemed to be
229 in compliance with this section. This subparagraph does not
230 limit the authority of the department to amend a basin
231 management action plan as specified in subparagraph (a)6.

232 (c) *Best management practices.*—

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



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243 nonpoint source pollution.

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

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



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272 professional judgment in making the initial verification that
273 the best management practices are reasonably expected to be
274 effective and, where applicable, must notify the appropriate
275 water management district or the Department of Agriculture and
276 Consumer Services of its initial verification before the
277 adoption of a rule proposed pursuant to this paragraph.
278 Implementation, in accordance with rules adopted under this
279 paragraph, of practices that have been initially verified to be
280 effective, or verified to be effective by monitoring at
281 representative sites, by the department, shall provide a
282 presumption of compliance with state water quality standards and
283 release from ~~the provisions of~~ s. 376.307(5) for those
284 pollutants addressed by the practices, and the department is not
285 authorized to institute proceedings against the owner of the
286 source of pollution to recover costs or damages associated with
287 the contamination of surface water or groundwater caused by
288 those pollutants. Research projects funded by the department, a
289 water management district, or the Department of Agriculture and
290 Consumer Services to develop or demonstrate interim measures or
291 best management practices shall be granted a presumption of
292 compliance with state water quality standards and a release from
293 ~~the provisions of~~ s. 376.307(5). The presumption of compliance
294 and release is limited to the research site and only for those
295 pollutants addressed by the interim measures or best management
296 practices. Eligibility for the presumption of compliance and
297 release is limited to research projects on sites where the owner
298 or operator of the research site and the department, a water
299 management district, or the Department of Agriculture and
300 Consumer Services have entered into a contract or other



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

304 4. ~~When~~ ~~where~~ water quality problems are demonstrated,
305 despite the appropriate implementation, operation, and
306 maintenance of best management practices and other measures
307 required by rules adopted under this paragraph, the department,
308 a water management district, or the Department of Agriculture
309 and Consumer Services, in consultation with the department,
310 shall institute a reevaluation of the best management practice
311 or other measure. Should the reevaluation determine that the
312 best management practice or other measure requires modification,
313 the department, a water management district, or the Department
314 of Agriculture and Consumer Services, as appropriate, shall
315 revise the rule to require implementation of the modified
316 practice within a reasonable time period as specified in the
317 rule.

318 5. Agricultural records relating to processes or methods of
319 production, costs of production, profits, or other financial
320 information held by the Department of Agriculture and Consumer
321 Services pursuant to subparagraphs 3. and 4. or pursuant to any
322 rule adopted pursuant to subparagraph 2. are confidential and
323 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
324 Constitution. Upon request, records made confidential and exempt
325 pursuant to this subparagraph shall be released to the
326 department or any water management district provided that the
327 confidentiality specified by this subparagraph for such records
328 is maintained.

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



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

338 (d) *Enforcement and verification of basin management action*
339 *plans and management strategies.*—

340 1. Basin management action plans are enforceable pursuant
341 to this section and ss. 403.121, 403.141, and 403.161.
342 Management strategies, including best management practices and
343 water quality monitoring, are enforceable under this chapter.

344 2. No later than January 1, 2017:

345 a. The department, in consultation with the water
346 management districts and the Department of Agriculture and
347 Consumer Services, shall initiate rulemaking to adopt procedures
348 to verify implementation of water quality monitoring required in
349 lieu of implementation of best management practices or other
350 measures pursuant to sub-subparagraph (b)2.g.;

351 b. The department, in consultation with the water
352 management districts and the Department of Agriculture and
353 Consumer Services, shall initiate rulemaking to adopt procedures
354 to verify implementation of nonagricultural interim measures,
355 best management practices, or other measures adopted by rule
356 pursuant to subparagraph (c)1.; and

357 c. The Department of Agriculture and Consumer Services, in
358 consultation with the water management districts and the



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359 department, shall initiate rulemaking to adopt procedures to
360 verify implementation of agricultural interim measures, best
361 management practices, or other measures adopted by rule pursuant
362 to subparagraph (c)2.

363

364 The rules required under this subparagraph shall include
365 enforcement procedures applicable to the landowner, discharger,
366 or other responsible person required to implement applicable
367 management strategies, including best management practices or
368 water quality monitoring as a result of noncompliance.

369 3. A nonagricultural and agricultural nonpoint source owner
370 or operator who discharges into a basin included in an adopted
371 basin management action plan must comply with the following, as
372 applicable, within 5 years after the date of the adoption of the
373 basin management action plan or an amendment thereto that
374 imposes new requirements:

375 a. For a nonagricultural nonpoint source discharger,
376 nonagricultural interim measures, nonagricultural best
377 management practices, or other measures adopted by rule pursuant
378 to subparagraph (c)1. or management measures adopted in a basin
379 management action plan.

380 b. For an agricultural nonpoint source discharger,
381 agricultural interim measures, agricultural best management
382 practices, or other measures adopted by rule pursuant to
383 subparagraph (c)2. and implemented according to a notice of
384 intent filed by the agricultural nonpoint source discharger.

385 c. For an agricultural and nonagricultural nonpoint source
386 discharger who opts to implement water quality monitoring in
387 lieu of compliance with sub-subparagraph a. or sub-subparagraph



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388 b., water quality monitoring required under sub-subparagraph
389 (b)2.g.

390 4. Implementation of actions in subparagraph 3. shall be
391 verified by a site visit at least once every 2 years by the
392 responsible agency as follows:

393 a. For nonagricultural interim measures, nonagricultural
394 best management practices, or other measures adopted by rule
395 pursuant to subparagraph (c)1., verification by the department
396 or water management district, as appropriate.

397 b. For agricultural interim measures, agricultural best
398 management practices, or other measures adopted by rule pursuant
399 to subparagraph (c)2., verification by the Department of
400 Agriculture and Consumer Services.

401 c. For management measures adopted in a basin management
402 action plan, verification by the department.

403
404 If verification pursuant to this subparagraph cannot be
405 accomplished every 2 years, the responsible agency shall include
406 recommendations for meeting the intent of the verification along
407 with a budget request as part of the progress report required
408 under s. 403.0675.

409 (e) *Cooperative agricultural regional water quality*
410 *improvement element.*

411 1. The department, the Department of Agriculture and
412 Consumer Services, and owners of agricultural operations in the
413 basin shall develop a cooperative agricultural regional water
414 quality improvement element as part of a basin management action
415 plan only if:

416 a. Agricultural measures have been adopted by the



417 Department of Agriculture and Consumer Services pursuant to
418 subparagraph (c)2. and have been implemented and the waterbody
419 remains impaired;

420 b. Agricultural nonpoint sources contribute to at least 20
421 percent of nonpoint source nutrient discharges; and

422 c. The department determines that additional measures, in
423 combination with state-sponsored regional projects and other
424 management strategies included in the basin management action
425 plan, are necessary to achieve the total maximum daily load.

426 2. The element will be implemented through a cost-sharing
427 program as provided by law. The element must include cost-
428 effective and technically and financially practical cooperative
429 regional agricultural nutrient reduction projects that can be
430 implemented on private properties on a site-specific,
431 cooperative basis if funding is made available as provided by
432 law. Such cooperative regional agricultural nutrient reduction
433 projects may include land acquisition in fee or conservation
434 easements on the lands of willing sellers and site-specific
435 water quality improvement or dispersed water management projects
436 on the lands of program participants.

437 3. To qualify for participation in the cooperative
438 agricultural regional water quality improvement element, the
439 participant must have already implemented the interim measures,
440 best management practices, or other measures adopted by the
441 Department of Agriculture and Consumer Services pursuant to
442 subparagraph (c)2. The element may be included in the basin
443 management action plan as a part of the next 5-year assessment
444 under subparagraph (a)6.

445 (f) Cooperative urban, suburban, commercial, or



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446 institutional regional water quality improvement element.-

447 1. The department, the Department of Health, local
448 governments, and water management districts with jurisdiction in
449 the basin shall develop a cooperative urban, suburban,
450 commercial, or institutional regional water quality improvement
451 element as part of a basin management action plan in which:

452 a. Nonagricultural interim measures and nonagricultural
453 best management practices have been implemented and the
454 waterbody remains impaired;

455 b. Nonagricultural nonpoint sources contribute to at least
456 20 percent of nonpoint source nutrient discharges; and

457 c. The department determines that additional measures, in
458 combination with state-sponsored regional projects and other
459 management strategies included in the basin management action
460 plan, are necessary to achieve the total maximum daily load.

461 2. The element shall be implemented through a cost-sharing
462 program as provided by general law. The element must include
463 cost-effective and technically and financially practical
464 cooperative regional nutrient reduction projects that can be
465 implemented on urban, suburban, commercial, or institutional
466 properties if funding is made available as provided by general
467 law. The element must be included in the basin management action
468 plan as a part of the next 5-year assessment under subparagraph
469 (a) 6.

470 (g) Data collection and research.-

471 1. The Department of Agriculture and Consumer Services
472 shall work with the department to improve the accuracy of data
473 used to estimate agricultural land uses in the basin management
474 action plan and work with producers to identify agricultural



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475 technologies that are cost-effective and technically and
476 financially practical and could be implemented on agricultural
477 lands if funding is made available as provided by general law.

478 2. The University of Florida Institute of Food and
479 Agricultural Sciences shall work with the Department of
480 Agriculture and Consumer Services to develop a research plan and
481 a legislative budget request to:

482 a. Evaluate and, if cost-effective and technically and
483 financially practical, suggest enhancements to adopted best
484 management practices;

485 b. Develop new best management practices that are cost-
486 effective and technically and financially practical and that,
487 when proven, can be considered by the Department of Agriculture
488 and Consumer Services for rule adoption pursuant to paragraph
489 (c); and

490 c. Develop technically and financially practical
491 cooperative agricultural nutrient reduction projects to be
492 considered by the department for inclusion in a basin management
493 action plan pursuant to paragraph (e) that will reduce the
494 nutrient impacts from agricultural operations on surface and
495 groundwater quality.

496 3. The department shall work with the University of Florida
497 Institute of Food and Agricultural Sciences and regulated
498 entities to consider the adoption by rule of best management
499 practices for nutrient impacts from golf courses. Such adopted
500 best management practices are subject to the requirements of
501 paragraph (c).

502 (14) NUTRIENT REDUCTION COST-SHARE PROGRAM.—A nutrient
503 reduction cost-share program is established within the



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504 department.

505 (a) Subject to appropriation, the department may provide
506 funding for the following projects in a basin management action
507 plan or an alternative restoration plan that will individually
508 or collectively reduce nutrient pollution:

509 1. Projects to retrofit onsite sewage treatment and
510 disposal systems.

511 2. Projects to construct, upgrade, or expand facilities to
512 provide advanced waste treatment as defined in s. 403.086(4).

513 3. Projects to connect onsite sewage treatment and disposal
514 systems to central sewer facilities.

515 4. Projects identified in the cooperative urban, suburban,
516 commercial, or institutional regional water quality improvement
517 element pursuant to paragraph (7) (f).

518 5. Projects identified in the cooperative agricultural
519 regional water quality improvement element pursuant to paragraph
520 (7) (e).

521 6. Data collection and research activities identified in
522 paragraph (7) (g).

523 (b) In allocating funds for projects, the department shall
524 prioritize projects in subbasins with the highest nutrient
525 concentrations within a basin management action plan and
526 projects that are identified in subparagraphs (a)1.-5. For
527 projects identified in subparagraphs (a)1.-4., further
528 prioritization must be given to projects that subsidize the
529 connection of onsite sewage treatment and disposal systems to a
530 wastewater treatment plant or that subsidize inspections and
531 assessments of onsite sewage treatment and disposal systems.

532 (c) In determining the priority of projects pursuant to



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533 paragraph (b), the department shall consider the following for
534 each project:

- 535 1. The estimated reduction in nutrient load.
536 2. Readiness.
537 3. Cost-effectiveness.
538 4. Overall environmental benefit.
539 5. The location within the plan area.
540 6. The availability of local matching funds.
541 7. Projected water savings or water quantity improvements.

542 (d) Each project described in subparagraphs (a)1.-3. must
543 require a minimum of 50 percent local matching funds. However,
544 the department may, at its discretion, waive, in whole or in
545 part, consideration of the local contribution for proposed
546 projects within an area designated as a rural area of
547 opportunity as defined in s. 288.0656(2).

548 (e) The department shall coordinate with the Department of
549 Agriculture and Consumer Services, the University of Florida
550 Institute of Food and Agricultural Sciences, and each water
551 management district, as necessary, in allocating funds
552 appropriated pursuant to paragraph (a).

553 (f) Beginning January 1, 2021, and each January 1
554 thereafter, the department shall submit a report regarding the
555 projects funded pursuant to this subsection to the Governor, the
556 President of the Senate, and the Speaker of the House of
557 Representatives.

558 (g) The nutrient reduction cost-share program is in
559 addition to, and does not replace, existing funding
560 authorizations.

561 (15) RURAL HOMESTEADS.-



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562 (a) The Legislature recognizes that lands classified as
563 agricultural by property appraisers may include rural homesteads
564 in addition to producing agricultural lands. It is the intent of
565 the Legislature to support those who seek to establish and
566 maintain rural homesteads and focus on a sustainable, self-
567 supporting lifestyle.

568 (b) As used in this subsection, the term "rural homesteads"
569 means low-density rural residential properties up to 50 acres in
570 size which are homesites and noncommercial in nature that
571 include single-family homes and accessory structures together
572 with the keeping of livestock, horses, traditional farm animals
573 and poultry, and the planting and maintenance of groves and
574 gardens for the primary purpose of serving the needs and
575 interests of those living on the property.

576 (c) Rural homesteads are not subject to the requirements of
577 paragraph (7)(c). However, if any activity on a rural homestead
578 rises to the level of bona fide agricultural activity and is
579 classified as agricultural use pursuant to s. 193.461, the land
580 owner must comply with the requirements of paragraph (7)(c).

581 Section 2. Section 403.0675, Florida Statutes, is amended
582 to read:

583 403.0675 Progress reports. ~~On or before July 1 of each~~
584 ~~year, beginning in 2018:~~

585 (1) On or before July 1 of each year:

586 (a) Beginning in 2018, the department, in conjunction with
587 the water management districts, shall post on its website and
588 submit electronically an annual progress report to the Governor,
589 the President of the Senate, and the Speaker of the House of
590 Representatives on the status of each total maximum daily load,



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591 basin management action plan, minimum flow or minimum water
592 level, and recovery or prevention strategy adopted pursuant to
593 s. 403.067 or parts I and VIII of chapter 373. The report must
594 include the status of each project identified to achieve a total
595 maximum daily load or an adopted minimum flow or minimum water
596 level, as applicable. If a report indicates that any of the 5-
597 year, 10-year, or 15-year milestones, or the 20-year target
598 date, if applicable, for achieving a total maximum daily load or
599 a minimum flow or minimum water level will not be met, the
600 report must include an explanation of the possible causes and
601 potential solutions. If applicable, the report must include
602 project descriptions, estimated costs, proposed priority ranking
603 for project implementation, and funding needed to achieve the
604 total maximum daily load or the minimum flow or minimum water
605 level by the target date. Each water management district shall
606 post the department's report on its website.

607 (b) Beginning in 2021, the department shall include in the
608 report required under paragraph (a):

609 1. The status of the results of verification of the
610 stormwater systems and nonagricultural best management
611 practices.

612 2. The number of landowners, dischargers, or other
613 responsible persons required to implement applicable management
614 strategies, including best management practices or water quality
615 monitoring, who did not comply with such requirements.

616 (2) (a) The Department of Agriculture and Consumer Services
617 shall post on its website and submit electronically an annual
618 progress report to the Governor, the President of the Senate,
619 and the Speaker of the House of Representatives on the status of



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620 the implementation of the agricultural nonpoint source best
621 management practices, including an implementation assurance
622 report summarizing survey responses and response rates, site
623 inspections, and other methods used to verify implementation of
624 and compliance with best management practices pursuant to basin
625 management action plans.

626 (b) Beginning July 1, 2021, and each July 1 thereafter, the
627 Department of Agriculture and Consumer Services shall include in
628 the progress report required under paragraph (a) a status of the
629 results of implementation of agricultural nonpoint source best
630 management practices in the following categories:

- 631 1. Irrigated and nonirrigated agricultural acres.
632 2. Fallow agricultural acres.
633 3. Agricultural parcels of fewer than 50 acres, excluding
634 rural homesteads as defined in s. 403.067(15).

635 (3) For the progress reports submitted on July 1, 2021, and
636 July 1, 2022, the department and the Department of Agriculture
637 and Consumer Services shall address the priority focus areas
638 identified in the basin management action plans.

639 Section 3. Subsection (9) is added to section 403.412,
640 Florida Statutes, to read:

641 403.412 Environmental Protection Act.—

642 (9) (a) A local government regulation, ordinance, code,
643 rule, comprehensive plan, or charter may not recognize, grant,
644 convey, or extend legal standing or legal rights, as those terms
645 are generally construed, to a plant, an animal, a body of water,
646 or any other part of the natural environment which is not a
647 person or a political subdivision as defined in s. 1.01(8),
648 unless otherwise specifically authorized by state law or the



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649 State Constitution.

650 (b) This subsection may not be interpreted or construed to
651 do any of the following:

652 1. Limit the ability of the Department of Legal Affairs,
653 any political subdivision of the state, or a resident of this
654 state to maintain an action for injunctive relief as provided in
655 this section.

656 2. Limit the ability of an aggrieved or adversely affected
657 party to appeal and challenge the consistency of a development
658 order with a comprehensive plan, as provided in s. 163.3215, or
659 to file an action for injunctive relief to enforce the terms of
660 a development agreement or to challenge compliance of the
661 agreement with the Florida Local Government Development
662 Agreement Act, as provided in s. 163.3243.

663 Section 4. This act shall take effect July 1, 2020.

664
665 ===== T I T L E A M E N D M E N T =====

666 And the title is amended as follows:

667 Delete everything before the enacting clause
668 and insert:

669 A bill to be entitled
670 An act relating to environmental resource management;
671 amending s. 403.067, F.S.; providing additional
672 management strategies for basin management action
673 plans; requiring certain basin management action plans
674 to include certain cooperative regional water quality
675 improvement elements; providing requirements for the
676 Department of Environmental Protection, the Department
677 of Agriculture and Consumer Services, and owners of



678 agricultural operations in developing and implementing
679 such elements; requiring the Department of Agriculture
680 and Consumer Services to work with the Department of
681 Environmental Protection to improve the accuracy of
682 data used to estimate certain agricultural land uses
683 and to work with producers to identify certain
684 agricultural technologies; requiring the University of
685 Florida Institute of Food and Agricultural Sciences to
686 work with the Department of Agriculture and Consumer
687 Services to develop a specified research plan and a
688 legislative budget request; requiring the Department
689 of Environmental Protection to work with the
690 University of Florida Institute of Food and
691 Agricultural Sciences to consider the adoption of best
692 management practices for nutrient impacts from golf
693 courses; establishing a nutrient reduction cost-share
694 program within the Department of Environmental
695 Protection; providing requirements for such program;
696 providing legislative intent regarding rural
697 homesteads; defining the term "rural homesteads";
698 exempting such homesteads from certain best management
699 practices under certain conditions; amending s.
700 403.0675, F.S.; requiring the Department of
701 Environmental Protection and the Department of
702 Agriculture and Consumer Services to include specified
703 information in annual progress reports for basin
704 management action plans; amending s. 403.412, F.S.;
705 prohibiting local governments from recognizing,
706 granting, conveying, or extending legal rights or



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707 legal standing to animals or certain parts of the
708 natural environment under certain circumstances;
709 providing construction; providing an effective date.

By Senator Albritton

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1 A bill to be entitled
2 An act relating to environmental resource management;
3 amending s. 403.067, F.S.; providing that basin
4 management action plan management strategies may
5 include certain water quality improvement elements;
6 requiring the Department of Environmental Protection,
7 in coordination with the Department of Agriculture and
8 Consumer Services, to develop and implement a
9 cooperative agricultural regional water quality
10 improvement element; providing guidelines for the
11 element; providing requirements for participation in
12 the element; requiring the Department of Environmental
13 Protection, in coordination with the Department of
14 Health or water management districts, to develop and
15 implement a cooperative urban, suburban, commercial,
16 or institutional water quality improvement element;
17 providing guidelines for the element; requiring the
18 Department of Environmental Protection to work with
19 the Department of Agriculture and Consumer Services
20 and producers to improve certain data and technology
21 resources; requiring the Institute of Food and
22 Agriculture Sciences of the University of Florida, in
23 cooperation with the Department of Agriculture and
24 Consumer Services, to develop a research plan and a
25 legislative budget request; providing requirements for
26 the plan; establishing a nutrient reduction cost-share
27 program within the Department of Environmental
28 Protection; providing requirements for the program,
29 subject to legislative appropriation; providing

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30 priorities for funding allocations; authorizing the
31 department to waive a local match requirement under
32 certain circumstances; requiring an annual report to
33 the Governor and the Legislature; amending s. 403.412,
34 F.S.; prohibiting local governments from recognizing,
35 granting, conveying, or extending legal rights or
36 legal standing to animals or the natural environment
37 under certain circumstances; providing construction;
38 providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Paragraph (a) of subsection (7) of section
43 403.067, Florida Statutes, is amended, paragraphs (e), (f), and
44 (g) are added to that subsection, and subsection (14) is added
45 to that section, to read:

46 403.067 Establishment and implementation of total maximum
47 daily loads.—

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

50 (a) *Basin management action plans.*—

51 1. In developing and implementing the total maximum daily
52 load for a water body, the department, or the department in
53 conjunction with a water management district, may develop a
54 basin management action plan that addresses some or all of the
55 watersheds and basins tributary to the water body. Such plan
56 must integrate the appropriate management strategies available
57 to the state through existing water quality protection programs
58 to achieve the total maximum daily loads and may provide for

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59 phased implementation of these management strategies to promote
60 timely, technically cost-effective actions as provided for in s.
61 403.151. The plan must establish a schedule for implementing the
62 management strategies, establish a basis for evaluating the
63 plan's effectiveness, and identify feasible funding strategies
64 for implementing the plan's management strategies. The
65 management strategies may include regional treatment systems or
66 other public works, where appropriate, and voluntary trading of
67 water quality credits to achieve the needed pollutant load
68 reductions. In addition to the interim measures, best management
69 practices, or other measures required in paragraph (c),
70 management strategies may include a cooperative agricultural
71 regional water quality improvement element, as set forth in
72 paragraph (e), or a cooperative urban, suburban, commercial, or
73 institutional regional water quality improvement element, as set
74 forth in paragraph (f).

75 2. A basin management action plan must equitably allocate,
76 pursuant to paragraph (6) (b), pollutant reductions to individual
77 basins, as a whole to all basins, or to each identified point
78 source or category of nonpoint sources, as appropriate. For
79 nonpoint sources for which best management practices have been
80 adopted, the initial requirement specified by the plan must be
81 those practices developed pursuant to paragraph (c). Where
82 appropriate, the plan may take into account the benefits of
83 pollutant load reduction achieved by point or nonpoint sources
84 that have implemented management strategies to reduce pollutant
85 loads, including best management practices, before the
86 development of the basin management action plan. The plan must
87 also identify the mechanisms that will address potential future

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88 increases in pollutant loading.

89 3. The basin management action planning process is intended
90 to involve the broadest possible range of interested parties,
91 with the objective of encouraging the greatest amount of
92 cooperation and consensus possible. In developing a basin
93 management action plan, the department shall assure that key
94 stakeholders, including, but not limited to, applicable local
95 governments, water management districts, the Department of
96 Agriculture and Consumer Services, other appropriate state
97 agencies, local soil and water conservation districts,
98 environmental groups, regulated interests, and affected
99 pollution sources, are invited to participate in the process.
100 The department shall hold at least one public meeting in the
101 vicinity of the watershed or basin to discuss and receive
102 comments during the planning process and shall otherwise
103 encourage public participation to the greatest practicable
104 extent. Notice of the public meeting must be published in a
105 newspaper of general circulation in each county in which the
106 watershed or basin lies not less than 5 days nor more than 15
107 days before the public meeting. A basin management action plan
108 does not supplant or otherwise alter any assessment made under
109 subsection (3) or subsection (4) or any calculation or initial
110 allocation.

111 4. Each new or revised basin management action plan must
112 ~~shall~~ include:

113 a. The appropriate management strategies available through
114 existing water quality protection programs to achieve total
115 maximum daily loads, which may provide for phased implementation
116 to promote timely, cost-effective actions as provided for in s.

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117 403.151;

118 b. A description of best management practices adopted by
119 rule;

120 c. A list of projects in priority ranking with a planning-
121 level cost estimate and estimated date of completion for each
122 listed project;

123 d. The source and amount of financial assistance to be made
124 available by the department, a water management district, or
125 other entity for each listed project, if applicable; and

126 e. A planning-level estimate of each listed project's
127 expected load reduction, if applicable.

128 5. The department shall adopt all or any part of a basin
129 management action plan and any amendment to such plan by
130 secretarial order pursuant to chapter 120 to implement ~~the~~
131 ~~provisions of~~ this section.

132 6. The basin management action plan must include milestones
133 for implementation and water quality improvement, and an
134 associated water quality monitoring component sufficient to
135 evaluate whether reasonable progress in pollutant load
136 reductions is being achieved over time. An assessment of
137 progress toward these milestones shall be conducted every 5
138 years, and revisions to the plan shall be made as appropriate.
139 Revisions to the basin management action plan shall be made by
140 the department in cooperation with basin stakeholders. Revisions
141 to the management strategies required for nonpoint sources must
142 follow the procedures set forth in subparagraph (c)4. Revised
143 basin management action plans must be adopted pursuant to
144 subparagraph 5.

145 7. In accordance with procedures adopted by rule under

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146 paragraph (9) (c), basin management action plans, and other
147 pollution control programs under local, state, or federal
148 authority as provided in subsection (4), may allow point or
149 nonpoint sources that will achieve greater pollutant reductions
150 than required by an adopted total maximum daily load or
151 wasteload allocation to generate, register, and trade water
152 quality credits for the excess reductions to enable other
153 sources to achieve their allocation; however, the generation of
154 water quality credits does not remove the obligation of a source
155 or activity to meet applicable technology requirements or
156 adopted best management practices. Such plans must allow trading
157 between NPDES permittees, and trading that may or may not
158 involve NPDES permittees, where the generation or use of the
159 credits involves ~~involve~~ an entity or activity not subject to
160 department water discharge permits whose owner voluntarily
161 elects to obtain department authorization for the generation and
162 sale of credits.

163 8. The provisions of the department's rule relating to the
164 equitable abatement of pollutants into surface waters do not
165 apply to water bodies or water body segments for which a basin
166 management plan that takes into account future new or expanded
167 activities or discharges has been adopted under this section.

168 (e) Cooperative agricultural regional water quality
169 improvement element.—A basin management action plan may include
170 as an additional management strategy a cooperative agricultural
171 regional water quality improvement element.

172 1. The department, in coordination with the Department of
173 Agriculture and Consumer Services, shall develop the element and
174 implement it through a cost-sharing program. The element may

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175 include cost-effective, technically and financially practical
176 cooperative agricultural nutrient reduction projects that may be
177 implemented on private properties, subject to available funding.
178 The projects may include any of the following on lands of
179 willing sellers or willing participants, which, in combination
180 with state-sponsored regional projects and other management
181 strategies included in the basin management action plan, will
182 reduce the nutrient impacts from agricultural operations:

183 a. Land acquisition in fee or in conservation easements.
184 b. Site-specific water quality improvement or dispersed
185 water management projects.

186 2. To qualify for participation in the element, the
187 participant must have already implemented the interim measures,
188 best management practices, or other measures adopted by the
189 department pursuant to subparagraph (c)2.

190 3. The element may be included in the basin management
191 action plan as a part of the 5-year assessment under
192 subparagraph (a)6.

193 (f) Cooperative urban, suburban, commercial, or
194 institutional water quality improvement element.—The basin
195 management action plan may include as an additional management
196 strategy a cooperative urban, suburban, commercial, or
197 institutional regional water quality improvement element.

198 1. The department, in coordination with the Department of
199 Health or water management districts, shall develop the element
200 and implement it through a cost-sharing program. The element may
201 include cost-effective, technically and financially practical
202 cooperative urban, suburban, commercial, or institutional
203 regional nutrient reduction projects that may be implemented on

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204 properties, subject to available funding. The projects may
205 include those that reduce stormwater pollutant loading, which,
206 in combination with state-sponsored regional projects and other
207 management strategies included in the basin management action
208 plan, will reduce the nutrient impacts from urban, suburban,
209 commercial, or institutional operations.

210 2. The element may be included in the basin management
211 action plan as a part of the 5-year assessment under
212 subparagraph (a)6.

213 (g) Data collection and research.—

214 1. The department shall work with the Department of
215 Agriculture and Consumer Services to improve the accuracy of
216 data used to estimate agricultural land uses in basin management
217 action plans. The departments shall work with producers to
218 identify agricultural technologies that could be implemented,
219 subject to available funding, on properties where the
220 technologies are deemed technically and financially practical.

221 2. The Institute of Food and Agricultural Sciences of the
222 University of Florida, in cooperation with the Department of
223 Agriculture and Consumer Services, shall develop a research plan
224 and a legislative budget request to:

225 a. Evaluate and, where cost-effective and technically and
226 financially practical, suggest enhancements to the adopted best
227 management practices;

228 b. Develop new best management practices that are cost-
229 effective and technically and financially practical and that,
230 when proven, may be considered by the department for rule
231 adoption pursuant to paragraph (c).

232 c. Develop technically and financially practical

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233 agricultural nutrient reduction projects that would be
234 implemented with willing participants on a site-specific,
235 cooperative basis in addition to best management practices, and
236 that would be considered for inclusion in a basin management
237 action plan pursuant to paragraph (e).

238 3. The department, in cooperation with the Institute of
239 Food and Agricultural Sciences of the University of Florida and
240 the regulated entities, shall consider the adoption by rule of
241 best management practices for the management of nutrient impacts
242 from golf courses and other recreational areas.

243 (14) NUTRIENT REDUCTION COST-SHARE PROGRAM.—A nutrient
244 reduction cost-share program is established within the
245 department.

246 (a) Subject to legislative appropriation, the department
247 may provide funding for projects that will individually or
248 collectively reduce nutrient pollution under a basin management
249 action plan or an alternative restoration plan for the
250 following:

251 1. Projects to retrofit onsite sewage treatment and
252 disposal systems.

253 2. Projects to construct, upgrade, or expand facilities to
254 provide advanced waste treatment, as defined in s. 403.086(4).

255 3. Projects to connect onsite sewage treatment and disposal
256 systems to central sewer facilities.

257 4. Projects identified in the cooperative urban, suburban,
258 commercial, or institutional regional water quality improvement
259 element pursuant to paragraph (7) (f).

260 5. Projects identified in the cooperative agricultural
261 regional water quality improvement element pursuant to paragraph

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262 (7) (e).

263 6. Data collection and research activities identified in
264 paragraph (7) (f).

265 (b) In allocating funds for projects, the department shall
266 equally prioritize projects identified in subparagraphs (a)1.-4.
267 with projects identified in subparagraph (a)5. For projects
268 identified in subparagraphs (a)1.-4., priority must be given to
269 projects that subsidize the connection of onsite sewage
270 treatment and disposal systems to a wastewater treatment plant
271 or that subsidize inspections and assessments of onsite sewage
272 treatment and disposal systems. In determining such priorities,
273 the department shall consider the estimated reduction in
274 nutrient load per project, project readiness, the cost
275 effectiveness of the project, the overall environmental benefit
276 of a project, the location of a project within the plan area,
277 the availability of local matching funds, and the projected
278 water savings or quantity improvements associated with the
279 project.

280 (c) Each project described in subparagraphs (a)1.-3. must
281 require a minimum of a 50 percent local match of funds. However,
282 the department may waive, in whole or in part, this
283 consideration of the local contribution for proposed projects
284 within an area designated as a rural area of opportunity
285 pursuant to s. 288.0656.

286 (d) The department shall coordinate with the Department of
287 Agriculture and Consumer Services, the Institute of Food and
288 Agricultural Sciences of the University of Florida, and each
289 water management district, as necessary, in allocating funds
290 pursuant to this subsection.

26-00785A-20

20201382__

291 (e) Beginning January 1, 2021, and each January 1
292 thereafter, the department shall submit a report regarding the
293 projects funded pursuant to this section to the Governor, the
294 President of the Senate, and the Speaker of the House of
295 Representatives.

296 Section 2. Subsection (9) is added to section 403.412,
297 Florida Statutes, to read:

298 403.412 Environmental Protection Act.—

299 (9) (a) A local government regulation, ordinance, code,
300 rule, comprehensive plan, or charter may not recognize, grant,
301 convey, or extend legal standing or legal rights, as those terms
302 are generally construed, to a plant, an animal, a body of water,
303 or any other part of the natural environment which is not a
304 person or a political subdivision, as defined in s. 1.01(8),
305 unless otherwise specifically authorized by state law or the
306 State Constitution.

307 (b) This subsection may not be interpreted or construed to
308 do any of the following:

309 1. Limit the ability of the Department of Legal Affairs,
310 any political subdivision of the state, or a resident of the
311 state to maintain an action for injunctive relief as provided in
312 this section.

313 2. Limit the ability of an aggrieved or adversely affected
314 party to appeal and challenge the consistency of a development
315 order with a comprehensive plan, as provided in s. 163.3215, or
316 to file an action for injunctive relief to enforce the terms of
317 a development agreement or to challenge compliance of the
318 agreement with the Florida Local Government Development
319 Agreement Act, as provided in s. 163.3243.

26-00785A-20

20201382__

320

Section 3. This act shall take effect July 1, 2020.

Bonn, Kim

From: Martinez, Daniel
Sent: Friday, January 24, 2020 4:08 PM
To: Bonn, Kim; Peck, Taylor
Cc: Rogers, Ellen; Converse, Elisha; Anderson, Crystal
Subject: SB 1618

Chair Montford,

Sen Wright will be presenting SB 1618 in Environment and Natural Resources on behalf on Senator Diaz.

Please let me know if you have any questions or concerns.

Daniel Martinez
Legislative Aide
Senator Manny Diaz Jr.
District 36

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27

Meeting Date

Bill Number (if applicable)

Topic CSD Presentation

Amendment Barcode (if applicable)

Name Eric Draper

Job Title Director, Division of Recreation & Parks

Address 3900 Commonwealth Blvd

Phone _____

Street

Tallahassee

FL

32399

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FL Dept. of Environmental Protection

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)

APPEARANCE RECORD

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

11/27/2020

Meeting Date

SB 702

Bill Number (if applicable)

Topic Petroleum Clean up

Amendment Barcode (if applicable)

Name Ned Bowman

Job Title Ex Director

Address 1983 Centre Pointe Blvd

Phone 850-524-6609

Street

Tallahassee

FL

32308

City

State

Zip

Email Ned@FLMA.org

Speaking: [] For [] Against [] Information

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

Representing FL Petroleum Markets

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/20

Meeting Date

SB 702

Bill Number (if applicable)

Topic Petroleum Cleanup

Amendment Barcode (if applicable)

Name Robert D. Fingar

Job Title General Counsel

Address 1983 Centre Pointe Blvd #200

Phone 850-224-7091

Street

Tallahassee

FL

32308

City

State

Zip

Email bob@quindaylaw.com

Speaking: [] For [] Against [] Information

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

Representing Florida Petroleum Marketers Association

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/27/2020
Meeting Date

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

SB 702
Bill Number (if applicable)

Topic Petroleum Clean up

Amendment Barcode (if applicable)

Name Elizabeth Waring

Job Title Busy Bee

Address 197 SW Waterford Court
Street

Phone 850 973 2277

Lake City, FL 32025
City State Zip

Email elizabeth@jj-fuel.com

Speaking: For Against Information

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

Representing self

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-27-20
Meeting Date

SP 702
Bill Number (if applicable)

Topic Petro Pollution

Amendment Barcode (if applicable)

Name Josh Roberts

Job Title _____

Address 7557 Fieldcrest dr

Phone 850-567-8892

Tallahassee FL 32305
City State Zip

Email Josh@eliroberts.com

Speaking: For Against Information

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

Representing self

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/20
Meeting Date

SB 1382
Bill Number (if applicable)

259090
Amendment Barcode (if applicable)

Topic _____

Name Anna Upton

Job Title _____

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 The Everglades Foundation

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/20

Meeting Date

1382

Bill Number (if applicable)

Topic Home rule - envir. resource mgmt.

Amendment Barcode (if applicable)

Name Barbara Cady

Job Title Advocate for FL Rights of Nature

Address 2920 Winding Trail

Phone 321-320-4386

Kissimmee FL 34746

Email bcady326@gmail.com

Speaking: For [] Against [x] Information []

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

Representing Florida Rights of Nature #KISSBOR #WEBOR

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [] No [x]

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

11/27/20
~~11/27/18~~
Meeting Date

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

1382
Bill Number (if applicable)

Topic Env. Resource Mgt

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Director of Legislative Affairs

Address 310 W College Ave
Street

Phone 222-2557

Tallahassee FL 32301
City State Zip

Email Adam.Basford@FSB.org

Speaking: For Against Information

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

Representing Florida 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/20

Meeting Date

1382

Bill Number (if applicable)

Topic Rights of Nature

Amendment Barcode (if applicable)

Name Scott Jenkins

Job Title Senior Gov't Consultant

Address 215 S. Monroe St. Ste. 500

Phone 850 661 0829

Street

TLH

FL

State

32301

Zip

Email sjenkins@carbonfields.com

Speaking: [] For [] Against [] Information

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

Representing FL HOME BUILDERS ASSOC.

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [x] 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

01/27/2020

Meeting Date

1382

Bill Number (if applicable)

Topic Environmental Resource Management

Amendment Barcode (if applicable)

Name Lindsay Cross

Job Title Government Relations Director

Address 1700 N Monroe 11-286

Phone

Street

Tally

City

State

32303

Zip

Email

lindsaye@voters.org

Speaking: [] For [] Against [X] Information

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

Representing Florida Conservation Voters

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] 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.

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S-001 (10/14/14)

APPEARANCE RECORD

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

1/27/20
Meeting Date

1382
Bill Number (if applicable)

Topic Environmental Resource Management

Amendment Barcode (if applicable)

Name Jim SPEATT

Job Title _____

Address PO Box 10011

Phone 850-228-1296

Street

TALLAHASSEE FL 32302

Email Jimemagnolia@statelinks.com

City State Zip

Speaking: For Against Information

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

Representing ~~Association~~ Associated Industries of 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/20

Meeting Date

1382

Bill Number (if applicable)

Topic Env. Res - Mgmt

Amendment Barcode (if applicable)

Name Sam Ard

Job Title

Address PO Box 10406

Phone 8505776580

Street

TLH

City

FL

State

32302

Zip

Email sard@asrlegal.com

Speaking: For Against Information

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

Representing Fla. Cattlemen's Assn

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

1/27/2020

Meeting Date

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

SB 382

Bill Number (if applicable)

Topic Preemption of Rights of Nature

Amendment Barcode (if applicable)

Name DAVID W. MORITZ

Job Title Chair, SAFEBOR

Address 927 SW 60th Terr. Apt B

Phone 352 332-2385

Street

Gainesville FL 32607

City

State

Zip

Email davidmrt@bellsouth.net

Speaking: For [] Against [x] Information []

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

Representing SANTA FE River Bill of Rights

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [] No [x]

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/10
Meeting Date

1382
Bill Number (if applicable)

Topic PRE-EMPTION OF RIGHTS OF NATURE

Amendment Barcode (if applicable)

Name MICHAEL ROTH

Job Title PRES, OUR SANTA FE RIVER, INC.

Address 846 NW 120 TRAIL

Phone 352-316-4705

Street

BRANFORD

FL

32008

City

State

Zip

Email MIKOLROJ@gmail.com

Speaking: For Against Information
SECTION 3

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

Representing OSFR, SANTA FE BILL OF RIGHTS PAC

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.

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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)

1/27/20

Meeting Date

SB 1382

Bill Number (if applicable)

Topic Rights of Nature pre-emption

Amendment Barcode (if applicable)

Name John Moran

Job Title nature photographer

Address 1327 SE 69th Way

Phone 352 514 7670

Street Gainesville FL 32641

Email johnmoranphoto@gmail.com

Speaking: For [] Against [x] Information []

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

Representing Santa Fe River Bill of Rights Campaign

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [] No [x]

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-27-20
Meeting Date

SB 1382
Bill Number (if applicable)

Topic ~~SB 1382~~ Preemption of Nature Rights

Amendment Barcode (if applicable)

Name Merrilee Malwitz Jipson

Job Title _____

Address 2070 SW CR 138
Street

Phone _____

Fort White FL 32038
City State Zip

Email Merrileeart@gmail.com

Speaking: For Against Information

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

Representing Santa Fe River Bill of Rights

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/20

Meeting Date

1382

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

David Cullen

Job Title

Address

104-2 Crest Street

Phone

941-323-2404

Street

Tallahassee

FL

State

32301

Zip

Email

cullenasea@aol.com

City

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.

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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)

1/27/20
Meeting Date

1382
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ~~10200~~ Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300
Street

Phone 222-7500

Tallahassee FL 32301
City State Zip

Email garyh@hgslaw.com

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

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.

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THE FLORIDA SENATE APPEARANCE RECORD

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

01/27/20

Meeting Date

1382

Bill Number (if applicable)

Topic Env'tl Resource Mgmt - Legal Standing/Preemption

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850.222.9684

Street

Tallahassee

FL

32302-1757

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.

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THE FLORIDA SENATE APPEARANCE RECORD

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

01/27/20

Meeting Date

1390

Bill Number (if applicable)

Topic Everglades Protection Area

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850.222.9684

Street

Tallahassee

FL

32302-1757

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/2020

Meeting Date

SB 1390

Bill Number (if applicable)

Topic EVERGLADES ENVIRONMENTAL PROTECTION AREA

Amendment Barcode (if applicable)

Name BETH ALVI

Job Title DIR. OF POLICY

Address 308 N. MONROE
Street

Phone 813-999-1028

FL 32301
City State Zip

Email Beth.Alvi@audubon.org

Speaking: For Against Information

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

Representing AUDUBON 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)

1/27/20

Meeting Date

SB 1390

Bill Number (if applicable)

Topic Everglades Protection

Amendment Barcode (if applicable)

Name Paul Owens

Job Title President, 1000 Friends of Florida

Address 308 N. Monroe St.

Phone 850-222-6277

Street

Tallahassee, FL

32301

Email powens@1000fot.org

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/20

Meeting Date

SB 1390

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Anna Upton

Job Title _____

Address 960 Live Oak Plantation Rd.

Phone _____

Street

Tallahassee

FL

32312

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing The Everglades Foundation

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.

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S-001 (10/14/14)

APPEARANCE RECORD

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

01/27/2020

Meeting Date

1390

Bill Number (if applicable)

Topic Everglades Protection Area

Amendment Barcode (if applicable)

Name Lindsay Cross

Job Title Government Relations Director

Address 1700 N Monroe II-286

Phone _____

Street

Tally

City

State

32303

Zip

Email lindsay@fvoters.org

Speaking: For Against Information

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

Representing Florida conservation 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1-27-2020

Meeting Date

SB 1390

Bill Number (if applicable)

Topic Everglades Restoration

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Activist

Address

Phone (850) 322-7599

Street

Tallahassee

Email amali@datz.com

City

State

Zip

Speaking: For Against Information

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

Representing Environmental Caucus of Florida (Non Partisan)

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.

ENR 37

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/20
Meeting Date

1390
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 CREST ST
Street

Phone 941-323-2404

TH FL 32301
City State Zip

Email dcullen@sen.gov
col. cullen

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.

ENR 37

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/20

Meeting Date

1450

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name David Cunniff

Job Title _____

Address 1041 CREST SW #2

Street

Phone 941-323-2424

TLH

FL

32301

Email duncunniff@tlh.com

City

State

Zip

Speaking: For Against Information

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

Representing SIERRA CLUB FL

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27
Meeting Date

1450
Bill Number (if applicable)

Topic SB 1450

Amendment Barcode (if applicable)

Name Alex Bickley

Job Title Legislative Affairs Director

Address 3908 Commonwealth Blvd

Phone

Tallahassee FL 32399
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. of Environmental Protection

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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APPEARANCE RECORD

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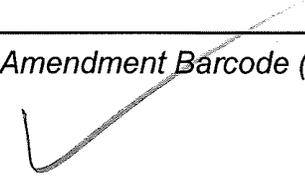
1/27/20
Meeting Date

1618
~~7390~~
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name David Cullen



Job Title _____

Address 104-Z Crest Street
Street
Tallahassee FL 32301
City State Zip

Phone 941-323-2404

Email Cullenasec@aol.com

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

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CourtSmart Tag Report

Room: LL 37
Caption: Senate Environment and Natural Resources Committee

Case No.:

Type:
Judge:

Started: 1/27/2020 4:12:18 PM

Ends: 1/27/2020 5:26:23 PM

Length: 01:14:06

4:12:17 PM Meeting called to order
4:12:22 PM Roll call
4:12:27 PM
4:12:31 PM Quorum present
4:13:39 PM Take up tab 1
4:14:17 PM Presentation, DEP on Citizen Support Organizations by Director Eric Draper
4:17:05 PM Questions on the presentation
4:18:05 PM Senator Mayfield with comment
4:18:41 PM Chair Montford with question on DSO
4:19:02 PM Eric Draper responds
4:19:11 PM Chair Montford with follow up question
4:19:30 PM Eric Draper responds
4:19:39 PM No public testimony
4:19:45 PM Tab 4 - SB1618 by Senator Wright presenting for Senator Diaz
4:20:12 PM Senator Wright explains the bill
4:20:21 PM Questions on the bill
4:21:05 PM None
4:21:09 PM Appearance- David Cullen Sierra Club in support
4:21:20 PM No debate
4:21:22 PM Senator Wright waives close
4:21:28 PM Roll call on SB1618
4:21:34 PM SB 1618 is reported favorably
4:21:44 PM Informal five minute recess
4:22:21 PM Recording Paused
4:23:44 PM Recording Resumed
4:23:44 PM Meeting is resumed
4:23:55 PM Tab 2 – by Senator Simmons
4:24:12 PM SB 1390 is explained
4:24:21 PM Questions on the bill
4:25:19 PM None
4:25:25 PM Rebecca O'Hara Deputy General Counsel Florida League of Cities with info
4:29:53 PM Paul Owens 1000 Friends of Florida
4:30:16 PM Anna Upton of the Everglades Foundation; Beth Alvi Director of Policy, Audubon Florida; Lindsay Cross Florida Conservation Voters in support
4:30:25 PM Amy Datz information Env Caucus of FL
4:31:08 PM David Cullen in support; Lindsay Cross in support
4:31:26 PM Senator Simmons closes on the bill
4:32:33 PM Roll Call on SB 1390
4:33:36 PM SB1390 is reported favorably
4:33:48 PM Tab 3 - SB1450 by Senator Gruters
4:33:59 PM Senator Gruters explains the bill
4:34:15 PM Questions on the bill
4:35:11 PM Amendment 815520 is explained
4:35:28 PM SA 680760 explained
4:35:51 PM No questions
4:35:54 PM No debate
4:35:57 PM Senator Gruters closes on amendments
4:36:05 PM Amendment is adopted
4:36:11 PM Bill is amended
4:36:29 PM Alex Bickley in support
4:36:39 PM David Cullen in support
4:36:44 PM Senator Gruters closes on the bill

4:36:51 PM Roll call on CS/SB1450
4:37:00 PM CS/SB 1450 is reported favorably
4:37:21 PM Tab 5 - SB 702 by Senator Albritton
4:37:40 PM Senator Albritton explains the bill
4:37:51 PM Amendment 153816 is explained
4:39:36 PM Questions on the Strike all amendment
4:40:35 PM Senator Berman with question
4:40:46 PM Senator Albritton responds
4:40:55 PM Senator Albritton closes on amendment
4:41:29 PM No debate - amendment is adopted
4:41:44 PM No questions on the bill as amended
4:41:52 PM No questions on the bill as amended
4:41:54 PM Ned Bowman Exec Director FL Petroleum Markets in support
4:41:57 PM Robert Finger, General Council, FL Petroleum Marketers Association in support
4:42:00 PM Elizabeth Waring, BusyBee, - Lake City in support
4:42:14 PM Josh Roberts Tallahassee in support
4:42:19 PM No debate
4:42:25 PM Senator Albritton closes on bill
4:42:36 PM Roll call on CS/SB 702
4:42:44 PM CS/SB 702 reported favorably
4:42:49 PM Tab 6 - SB 1382 start with DA amendment # 887650
4:43:39 PM Senator Albritton explains the Delete All amendment
4:52:56 PM Questions on delete all amendment- none
4:54:04 PM Senator Albritton explains Amendment 295090
4:54:15 PM No questions
4:54:28 PM Anna Upton, Everglades Foundation, with information on the amendment
4:55:24 PM Debate on the strike all amendment
4:56:24 PM none
4:56:39 PM Senator Albritton closes on the delete all amendment
4:57:49 PM Amendment is adopted
4:58:49 PM Back on bill SB 1382 as amended
4:58:56 PM Questions on the bill as amended
4:59:26 PM None
4:59:28 PM Public appearance cards
4:59:42 PM Barbara Cady of Kissimmee FL, Rights of Nature against the bill
5:02:05 PM Rebecca O'Hara called - Deputy General Counsel - against the bill
5:02:17 PM Adam Basford - Dir Legislative Affairs - Florida Farm Bureau in support; Scott Jenkins - FL Home Builders Association in support
5:02:34 PM Lindsay Cross, Govt Relations Director, FL Conservation Voters with information; Jim Spratt, Associated Industries, of FL in support
5:05:00 PM Sam Ard, FL Cattlemen's Association, in support
5:05:21 PM David W Moritz, Chair of Safe-Bor Gainesville, Santa Fe River Bill of Rights against the bill
5:10:12 PM Michael Roth President of Santa Fe River Inc.
5:10:54 PM Michael explains the piles of amendments sitting on the podium signed by over 4000 constituents
5:11:38 PM Representing OSEA, The Santa Fe River Bill of Rights Campaign from Branford FL against the bill
5:13:19 PM John Moran Nature photographer from Gainesville - for Santa Fe River Bill of Rights Campaign against the bill
5:14:39 PM Merrillee Mawitz-Jipson Fort White FL for Santa Fe River Bill of Rights against the bill
5:18:02 PM David Cullen Sierra Club Florida is against the bill
5:19:09 PM Gary Hunter Attorney of TLH for Florida Chamber of Commerce in support
5:20:11 PM In debate
5:20:28 PM No debate
5:20:33 PM Vice-Chair Albritton closes on the bill
5:24:10 PM Roll call on CS/SB 1382
5:25:14 PM CS/SB 1382 is reported favorably
5:25:25 PM Senator Albritton makes motion to allow staff to make technical changes to any CS bill; Senator Albritton motions to have vote after recorded Yea for SB 1618
5:25:54 PM Motions are adopted
5:25:59 PM Senator Mayfield moves we adjourn
5:26:09 PM Meeting is adjourned