

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
ENVIRONMENTAL PRESERVATION AND CONSERVATION
Senator Dean, Chair
Senator Oelrich, Vice Chair

MEETING DATE: Wednesday, October 19, 2011
TIME: 12:30 —2:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

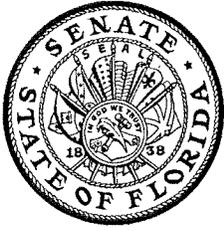
MEMBERS: Senator Dean, Chair; Senator Oelrich, Vice Chair; Senators Detert, Jones, Latvala, Rich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 182 Community Affairs / Garcia (Identical H 377)	Miami-Dade County Lake Belt Mitigation Plan; Deleting references to a report by the Miami-Dade County Lake Belt Plan Implementation Committee; providing for the redirection of funds for seepage mitigation projects; requiring the proceeds of the water treatment plant upgrade fee to be transferred by the Department of Revenue to the South Florida Water Management District and to be deposited into the Lake Belt Mitigation Trust Fund; providing criterion when the transfer is not required; providing for the proceeds of the mitigation fee to be used to conduct mitigation activities that are approved by the Miami-Dade County Lake Belt Mitigation Committee; clarifying the authorized uses for the proceeds from the water treatment plant upgrade fee, etc. CA 10/04/2011 Fav/CS EP 10/19/2011 Favorable BC	Favorable Yeas 7 Nays 0
2	SPB 7004	Fish and Wildlife Conservation; Repealing provisions relating to the publication of the Florida Wildlife Magazine and the Florida Wildlife Magazine Advisory Council; reducing the fee for soft-shell blue crab endorsements, etc.	Submitted as Committee Bill
3	SPB 7006	Premises Liability; Providing that an owner or lessee who makes an area available to another person for hunting, fishing, or wildlife viewing is entitled to certain limitations on liability if notice is provided to a person upon entry to the area; providing that an owner of an area who enters into a written agreement with the state for the area to be used for outdoor recreational purposes is entitled to certain limitations on liability; deleting a requirement that the area be leased to the state in order for the limitations on liability to apply; defining the term "area", etc.	Submitted as Committee Bill
4	Mandatory Review 2012-305 (Open Government Sunset Review of Section 267.076, F.S., Confidentiality of Certain Donor Information Related to Publicly Owned House Museums Designated as National Historic Landmarks) Presentation		Presented
5	Fiscal Year 2011-2012 Suwannee River Water Management District Budget Presentation		Presented

COMMITTEE MEETING EXPANDED AGENDA
Environmental Preservation and Conservation
Wednesday, October 19, 2011, 12:30 —2:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	Presentation by the Department of Environmental Protection on the Statewide Environmental Resource Permit		Presented

Other related committee documents



The Florida Senate

Committee Agenda Request

To: Senator Charles S. "Charlie" Dean, Sr., Chair
Committee on Environmental Preservation and Conservation

Subject: Committee Agenda Request

Date: October 4, 2011

I respectfully request that **Senate Bill #182**, relating to Miami-Dade County Lake Belt Mitigation Plan, be placed on the:

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

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

Senator Rene Garcia
Florida Senate, District 40



THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

Date

182

Bill Number

Barcode

Name DAVID COLLEN

Phone 941-323-2404

Address 1674 UNIVERSITY PKWY #296

E-mail collenasea@gol.com

Street

SARASOTA FL 34243

City

State

Zip

Job Title

Speaking: For Against Information

Appearing at request of Chair

Subject LAKE BELT MITIGATION

Representing SIERRA CLUB FLORIDA

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes. If designated employee: Time: from .m. to .m.

THE FLORIDA SENATE
APPEARANCE RECORD

TAB 1

(Deliver to Senator or Senate Professional Staff conducting the meeting)

10/19/2011

Meeting Date

182

Bill Number (if applicable)

Topic Mitigation PLAN

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title TRUSTEE

Address 1119 NEWTON AVE SOUTH

Phone 727/897-9291

Street

Saint Petersburg

florida

33705

City

State

Zip

E-mail justice2jesus@yahoo.com

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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.

For officially noticed committee meetings, pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee:

Time: from _____ to _____

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

S-001 (04/19/11)

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

① ②

10/19/11
Date

SB 182

Bill Number

Barcode

Name TOM MACVICAR

Phone 561 689 1708

Address 4524 Gun Club

E-mail _____

West Palm Beach FL 33467
City State Zip

Job Title _____

Speaking: For Against Information

Appearing at request of Chair

Subject SB 182

Representing Miami Pade Limestone & Products Assoc.

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

By the Committee on Community Affairs; and Senators Garcia, Margolis, Braynon, and Diaz de la Portilla

578-00530-12

2012182c1

1 A bill to be entitled

2 An act relating to the Miami-Dade County Lake Belt
3 Mitigation Plan; amending s. 373.41492, F.S.; deleting
4 references to a report by the Miami-Dade County Lake
5 Belt Plan Implementation Committee; providing for the
6 redirection of funds for seepage mitigation projects;
7 requiring the proceeds of the water treatment plant
8 upgrade fee to be transferred by the Department of
9 Revenue to the South Florida Water Management District
10 and to be deposited into the Lake Belt Mitigation
11 Trust Fund; providing criterion when the transfer is
12 not required; providing for the proceeds of the
13 mitigation fee to be used to conduct mitigation
14 activities that are approved by the Miami-Dade County
15 Lake Belt Mitigation Committee; clarifying the
16 authorized uses for the proceeds from the water
17 treatment plant upgrade fee; providing an effective
18 date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsections (1), (2), (3), and (6) of section
23 373.41492, Florida Statutes, are amended to read:

24 373.41492 Miami-Dade County Lake Belt Mitigation Plan;
25 mitigation for mining activities within the Miami-Dade County
26 Lake Belt.—

27 (1) The Legislature finds that the impact of mining within
28 the rock mining supported and allowable areas of the Miami-Dade
29 County Lake Belt Plan adopted by s. 373.4149(1) can best be

578-00530-12

2012182c1

30 offset by the implementation of a comprehensive mitigation plan
31 ~~as recommended in the 1998 Progress Report to the Florida~~
32 ~~Legislature by the Miami-Dade County Lake Belt Plan~~
33 ~~Implementation Committee.~~ The Lake Belt Mitigation Plan consists
34 of those provisions contained in subsections (2)-(9). The per-
35 ton mitigation fee assessed on limestone sold from the Miami-
36 Dade County Lake Belt Area and sections 10, 11, 13, 14, Township
37 52 South, Range 39 East, and sections 24, 25, 35, and 36,
38 Township 53 South, Range 39 East, shall be used for acquiring
39 environmentally sensitive lands and for restoration,
40 maintenance, and other environmental purposes. It is the intent
41 of the Legislature that the per-ton mitigation fee ~~shall~~ not be
42 a revenue source for purposes other than enumerated in this
43 section herein. Further, the Legislature finds that the public
44 benefit of a sustainable supply of limestone construction
45 materials for public and private projects requires a coordinated
46 approach to permitting activities on wetlands within Miami-Dade
47 County in order to provide the certainty necessary to encourage
48 substantial and continued investment in the limestone processing
49 plant and equipment required to efficiently extract the
50 limestone resource. It is the intent of the Legislature that the
51 Lake Belt Mitigation Plan satisfy all local, state, and federal
52 requirements for mining activity within the rock mining
53 supported and allowable areas.

54 (2) To provide for the mitigation of wetland resources lost
55 to mining activities within the Miami-Dade County Lake Belt
56 Plan, effective October 1, 1999, a mitigation fee is imposed on
57 each ton of limerock and sand extracted by any person who
58 engages in the business of extracting limerock or sand from

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59 within the Miami-Dade County Lake Belt Area and the east one-
60 half of sections 24 and 25 and all of sections 35 and 36,
61 Township 53 South, Range 39 East. The mitigation fee is imposed
62 for each ton of limerock and sand sold from within the
63 properties where the fee applies in raw, processed, or
64 manufactured form, including, but not limited to, sized
65 aggregate, asphalt, cement, concrete, and other limerock and
66 concrete products. The mitigation fee imposed by this subsection
67 for each ton of limerock and sand sold shall be ~~12 cents per ton~~
68 ~~beginning January 1, 2007; 18 cents per ton beginning January 1,~~
69 ~~2008; 24 cents per ton beginning January 1, 2009;~~ and 45 cents
70 per ton beginning close of business December 31, 2011. To pay
71 for seepage mitigation projects, including groundwater and
72 surface water management structures designed to improve wetland
73 habitat and approved by the Lake Belt Mitigation Committee, and
74 to upgrade a water treatment plant that treats water coming from
75 the Northwest Wellfield in Miami-Dade County, a water treatment
76 plant upgrade fee is imposed within the same Lake Belt Area
77 subject to the mitigation fee and upon the same kind of mined
78 limerock and sand subject to the mitigation fee. The water
79 treatment plant upgrade fee imposed by this subsection for each
80 ton of limerock and sand sold shall be 15 cents per ton
81 ~~beginning on January 1, 2007,~~ and the collection of this fee
82 shall cease once the total amount of proceeds collected for this
83 fee reaches the amount of the actual moneys necessary to design
84 and construct the water treatment plant upgrade, as determined
85 in an open, public solicitation process. Any limerock or sand
86 that is used within the mine from which the limerock or sand is
87 extracted is exempt from the fees. The amount of the mitigation

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88 fee and the water treatment plant upgrade fee imposed under this
89 section must be stated separately on the invoice provided to the
90 purchaser of the limerock or sand product from the limerock or
91 sand miner, or its subsidiary or affiliate, for which the fee or
92 fees apply. The limerock or sand miner, or its subsidiary or
93 affiliate, who sells the limerock or sand product shall collect
94 the mitigation fee and the water treatment plant upgrade fee and
95 forward the proceeds of the fees to the Department of Revenue on
96 or before the 20th day of the month following the calendar month
97 in which the sale occurs. The proceeds of a fee imposed by this
98 section include all funds collected and received by the
99 Department of Revenue relating to the fee, including interest
100 and penalties on a delinquent fee. The amount deducted for
101 administrative costs may not exceed 3 percent of the total
102 revenues collected under this section and may equal only those
103 administrative costs reasonably attributable to the fee.

104 (3) The mitigation fee and the water treatment plant
105 upgrade fee imposed by this section must be reported to the
106 Department of Revenue. Payment of the mitigation and the water
107 treatment plant upgrade fees must be accompanied by a form
108 prescribed by the Department of Revenue.

109 (a) The proceeds of the mitigation fee, less administrative
110 costs, must be transferred by the Department of Revenue to the
111 South Florida Water Management District and deposited into the
112 Lake Belt Mitigation Trust Fund.

113 (b) Beginning July 1, 2012, the proceeds of the water
114 treatment plant upgrade fee, less administrative costs, must be
115 transferred by the Department of Revenue to the South Florida
116 Water Management District and deposited into the Lake Belt

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117 Mitigation Trust Fund until:

118 1. A total of \$20 million from the proceeds of the water
119 treatment plant upgrade fee, less administrative costs, is
120 deposited into the Lake Belt Mitigation Trust Fund; or

121 2. The quarterly pathogen sampling conducted as a condition
122 of the permits issued by the department for rock mining
123 activities in the Miami-Dade County Lake Belt Area demonstrates
124 that the water in any quarry lake in the vicinity of the
125 Northwest Wellfield would be classified as being in Bin 2 or
126 higher as defined in the Environmental Protection Agency's Long
127 Term 2 Enhanced Surface Water Treatment Rule.

128 (c) Upon the earliest occurrence of the criterion under
129 subparagraph (b)1. or subparagraph (b)2., the proceeds of the
130 water treatment plant upgrade fee, less administrative costs,
131 must be transferred by the Department of Revenue to a trust fund
132 established by Miami-Dade County, for the sole purpose
133 authorized by paragraph (6) (a). As used in this section, the
134 term "proceeds of the fee" means all funds collected and
135 received by the Department of Revenue under this section,
136 including interest and penalties on delinquent fees. The amount
137 deducted for administrative costs may not exceed 3 percent of
138 the total revenues collected under this section and may equal
139 only those administrative costs reasonably attributable to the
140 fees.

141 (6) (a) The proceeds of the mitigation fee must be used to
142 conduct mitigation activities that are appropriate to offset the
143 loss of the value and functions of wetlands as a result of
144 mining activities and ~~must be approved used in a manner~~
145 ~~consistent with the recommendations contained in the reports~~

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146 ~~submitted to the Legislature~~ by the Miami-Dade County Lake Belt
147 ~~Mitigation Plan Implementation Committee and adopted under s.~~
148 ~~373.4149~~. Such mitigation may include the purchase, enhancement,
149 restoration, and management of wetlands and uplands in the
150 Everglades watershed, the purchase of mitigation credit from a
151 permitted mitigation bank, and any structural modifications to
152 the existing drainage system to enhance the hydrology of the
153 Miami-Dade County Lake Belt Area or the Everglades watershed.
154 Funds may also be used to reimburse other funding sources,
155 including the Save Our Rivers Land Acquisition Program, the
156 Internal Improvement Trust Fund, the South Florida Water
157 Management District, and Miami-Dade County, for the purchase of
158 lands that were acquired in areas appropriate for mitigation due
159 to rock mining and to reimburse governmental agencies that
160 exchanged land under s. 373.4149 for mitigation due to rock
161 mining. The proceeds of the water treatment plant upgrade fee
162 deposited into the Lake Belt Mitigation Trust Fund shall be used
163 solely to pay for seepage mitigation projects, including
164 groundwater or surface water management structures designed to
165 improve wetland habitat and approved by the Lake Belt Mitigation
166 Committee. The proceeds of the water treatment plant upgrade fee
167 which are transmitted to a trust fund established by Miami-Dade
168 County shall be used to upgrade a water treatment plant that
169 treats water coming from the Northwest Wellfield in Miami-Dade
170 County. As used in this section, the terms "upgrade a water
171 treatment plant" or "treatment plant upgrade" mean ~~means~~ those
172 works necessary to treat or filter a surface water source or
173 supply or both.

174 (b) Expenditures of the mitigation fee must be approved by

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2012182c1

175 an interagency committee consisting of representatives from each
176 of the following: the Miami-Dade County Department of
177 Environmental Resource Management, the Department of
178 Environmental Protection, the South Florida Water Management
179 District, and the Fish and Wildlife Conservation Commission. In
180 addition, the limerock mining industry shall select a
181 representative to serve as a nonvoting member of the interagency
182 committee. At the discretion of the committee, additional
183 members may be added to represent federal regulatory,
184 environmental, and fish and wildlife agencies.

185 Section 2. This act shall take effect upon becoming a law.

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 Community Affairs Committee

BILL: CS/SB 182

INTRODUCER: Community Affairs Committee, Senator Garcia, and others

SUBJECT: Miami-Dade County Lake Belt Mitigation Plan

DATE: October 17, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.	Uchino	Yeatman	EP	Fav
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This committee substitute (CS) shifts from Miami-Dade County, for a limited time, existing revenue of the Lake Belt water treatment upgrade fee to the South Florida Water Management District to fund a seepage control project.

This CS substantially amends section 373.41492 of the Florida Statutes.

II. Present Situation:

Mitigation for Mining Activities Within the Miami-Dade County Lake Belt

The Miami-Dade County Lake Belt Area encompasses 77.5 square miles of environmentally sensitive land at the western edge of the Miami-Dade County urban area. The wetlands and lakes of the Lake Belt offer the potential to buffer the Everglades from the potentially adverse impacts of urban development.¹ The Northwest Wellfield, located at the eastern edge of the Lake Belt, is

¹ SOUTH FLORIDA WATER MANAGEMENT DISTRICT, MIAMI DADE, <http://my.sfwmd.gov/portal/page/portal/xweb%20about%20us/miami%20dade%20service%20center> (last visited Sept. 23, 2011).

the largest drinking water wellfield in Florida and supplies approximately 40 percent of the potable water for Miami-Dade County.

Construction aggregates provide the basic materials needed for concrete, asphalt, and road base. Aggregate materials are located in various natural deposits around the state. Geologic conditions and other issues affect decisions in mine planning. These issues include the quality of the rock, thickness of overburden, water table levels, and sinkhole conditions. Rock mined from the Lake Belt supplies one half of the limestone used annually in Florida. Approximately 50 percent of the land within the Lake Belt Area is owned by the mining industry, 25 percent is owned by government agencies, and the remaining 25 percent is owned by non-mining private landowners.²

The Florida Legislature recognized the importance of the Lake Belt Area to the citizens of Florida and mandated that a plan be prepared to address a number of concerns critical to the State in s. 373.4139, F.S. The Legislature established the Lake Belt Committee and assigned it the task of developing a long-term plan for the Lake Belt Area. Through a cooperative process involving government agencies, mining interests, non-mining interests, and environmental groups, the Lake Belt Committee completed the Miami-Dade County Lake Belt Plan.

Limestone operations in the Lake Belt are guided by the Lake Belt Mitigation Plan. Under the plan, the Lake Belt limestone companies pay a special mitigation fee to acquire, restore and preserve environmentally sensitive lands and fund other important environmental projects. The fee is collected from the mining industry by the Department of Revenue and transferred to the District's Lake Belt Mitigation Trust Fund. The Lake Belt limestone companies also pay a water treatment plant upgrade fee of 15 cents per ton. According to the Department of Environmental Protection (department), this fee was established to address the concern that the expansion of mining may cause the wellfield to be designated as "under the influence of surface water," which would mandate upgraded treatment. To date, this designation has not been made by the department, and water quality sampling and studies conducted indicate that such a designation is unlikely.³ Limestone operations in the Lake Belt require water quality certification from the state and a dredge and fill permit from the U.S. Army Corps of Engineers.

In 2008, Miami-Dade County retained an engineering consultant to plan and design the needed water treatment facilities. The consultant determined that previous estimates for such facilities failed to account for upgrades that would be needed to existing water plant facilities such that constructing the needed facilities would not be practical at the existing water plant site. The minimum design and construction cost for facilities that will meet the current surface water treatment costs is approximately \$350 million. Future bond funding, in addition to the rock mining fees, is identified in the County's capital plan for this project. To date Miami-Dade County has received approximately \$17.6 million in rock mining fees. About \$11.2 million has been spent on planning and design, and about \$6.3 million remains, of which \$3 million is committed to the current design contract.⁴

² *Id.*

³ Department of Environmental Protection, Draft Bill Analysis for SB 514 (2011), on record with the Senate Committee on Community Affairs.

⁴ Email from Miami Dade Water and Sewer Department, on file with the Senate Committee on Community Affairs.

Two seepage control projects are identified in the recent Environmental Impact Statement for mining in the Lake Belt. One is required by the recent state and federal mining permits and the other, while not required, is an important wetland enhancement project for Everglades National Park.

A new one-mile long bridge is under construction that will allow a broad flow section into the Park in an area that has not seen comparable sheet flow since the trail was constructed almost 100 years ago. Unless the groundwater seepage from the Park is controlled, releasing additional flow to the Park will not be possible, and the benefits of the bridge will not be realized.

The Environmental Protection Agency's (EPA) Long Term 2 Enhanced Surface Water Treatment Rule

EPA has developed the Long Term 2 Enhanced Surface Water Treatment Rule (LT2 rule) to improve drinking water quality and provide additional protection from disease-causing microorganisms and contaminants that can form during drinking water treatment. The purpose of the LT2 rule is to reduce disease incidence associated with *Cryptosporidium* and other pathogenic microorganisms in drinking water.⁵ The rule applies to all public water systems that use surface water or ground water that is under the direct influence of surface water. The rule bolsters existing regulations:

- Targeting additional *Cryptosporidium* treatment requirements to higher risk systems;
- Requiring provisions to reduce risks from uncovered finished water storage facilities; and
- Providing provisions to ensure that systems maintain microbial protection as they take steps to reduce the formation of disinfection byproducts.

This combination of steps, together with the existing regulations, is designed to provide protection from microbial pathogens while simultaneously minimizing health risks to the population from disinfection byproducts. "Bin classifications" indicate the concentration of pathogens in the water sample.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 373.41492, F.S., to allow the mitigation fees for limerock mining to be applied to seepage mitigation projects, including groundwater and surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee. This would be an explicit authorization to use the funds for more than just upgrading water treatment plants.

The CS clarifies existing law that "proceeds of a fee" means all funds collected and received by the Department of Revenue under s. 373.41492, F.S., including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues and may equal only those administrative costs reasonably attributable to the fees.

⁵ U.S. ENVIRONMENTAL PROTECTION AGENCY, WATER: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE, <http://water.epa.gov/lawsregs/rulesregs/sdwa/lt2/basicinformation.cfm> (last visited Sept. 26, 2011).

⁶ 40 CFR § 141.710; U.S. ENVIRONMENTAL PROTECTION AGENCY, SOURCE WATER MONITORING GUIDANCE MANUAL FOR PUBLIC WATER SYSTEMS, 49 (Feb. 2006) available at http://www.epa.gov/ogwdw/disinfection/lt2/pdfs/guide_lt2_swmonitoringguidance.pdf.

Beginning July 1, 2012, the proceeds of the water treatment plant upgrade fee will be deposited into the Lake Belt Mitigation Trust Fund until:

- \$20 million is placed in the trust fund, or
- pathogen sampling demonstrates that the water in any quarry lake in the vicinity of the Northwest Wellfield would be classified as being in Bin 2 or higher.

Once either of these qualifications is triggered, the proceeds would again be directed toward a water treatment plant that treats water coming from the Northwest Wellfield. The CS changes the allowed uses of the mitigation fee to require approval by the Miami-Dade County Lake Belt Mitigation Committee rather than simply requiring them to be used in a manner consistent with the recommendations submitted to the Legislature under s. 337.4149, F.S. The CS allows modifications of the hydrology in the Everglades watershed in addition to the Miami-Dade Lake Belt Area.

Proceeds from the Lake Belt Mitigation Trust Fund shall be used to pay for seepage mitigation projects, including groundwater or surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee.

Proceeds from a trust fund established by Miami-Dade County shall be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield.

Section 2 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See government sector impact section.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The CS temporarily diverts rock mining fees away from drinking water treatment facilities. Even though the diversion is for a limited time, it may adversely impact Miami-Dade County's ability to design and construct the additional treatment facilities needed to protect the drinking water supply in the area. Miami-Dade is concerned that if contamination occurs and no filtration is available, the drinking water for one million people will be unsafe to drink for at least 18 months and up to three years while the facility is constructed. This fee is 15 cents per ton of extracted limerock and sand that is subject to the fee. The South Florida WMD will receive the proceeds of the fee to deposit into the appropriate trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Community Affairs on October 4, 2011:

The CS is largely the same as the original bill, except:

- The CS changes the allowed uses of the mitigation fee to require approval by the Miami-Dade County Lake Belt Mitigation Committee rather than simply requiring them to be used in a manner consistent with the recommendations submitted to the Legislature under s. 337.4149, F.S.
- The CS allows modifications of the hydrology in the Everglades watershed in addition to the Miami-Dade Lake Belt Area.

B. Amendments:

None.

Waive

2

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/19/11

Date

PCS 7004

Bill Number

Barcode

Name Lane Stephens

Phone 513-0004

Address 201 S. Monroe St.

E-mail

Street Tallahassee FL 01

Job Title

City State Zip

Speaking: For [checked] Against Information Appearing at request of Chair

Subject Fla Wildlife Magazine Advisory Council

Representing myself

Lobbyist registered with Legislature: Yes [checked] No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes. If designated employee: Time: from .m. to .m.

FOR CONSIDERATION By the Committee on Environmental Preservation and Conservation

592-00463-12

20127004

1 A bill to be entitled
2 An act relating to fish and wildlife conservation;
3 repealing s. 379.2342(2), F.S., relating to the
4 publication of the Florida Wildlife Magazine and the
5 Florida Wildlife Magazine Advisory Council; amending
6 s. 379.366, F.S.; reducing the fee for soft-shell blue
7 crab endorsements; providing effective dates.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsection (2) of section 379.2342, Florida
12 Statutes, is repealed.

13 Section 2. Effective upon the commencement of the 2012-2013
14 blue crab license year, paragraph (a) of subsection (3) of
15 section 379.366, Florida Statutes, is amended to read:

16 379.366 Blue crab; regulation.—

17 (3) (a) *Endorsement fees.*—

18 1. The fee for a hard-shell blue crab endorsement for the
19 taking of hard-shell blue crabs, as authorized by rule of the
20 commission, is \$125, \$25 of which must be used solely for the
21 trap retrieval program authorized under s. 379.2424 and in
22 commission rules.

23 2. The fee for a soft-shell blue crab endorsement for the
24 taking of soft-shell blue crabs, as authorized by rule of the
25 commission, is \$125 ~~\$250~~, \$25 of which must be used solely for
26 the trap retrieval program authorized under s. 379.2424 and in
27 commission rules.

28 3. The fee for a nontransferable hard-shell blue crab
29 endorsement for the taking of hard-shell blue crabs, as

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20127004__

30 authorized by rule of the commission, is \$125, \$25 of which must
31 be used solely for the trap retrieval program authorized under
32 s. 379.2424 and in commission rules.

33 4. The fee for an incidental take blue crab endorsement for
34 the taking of blue crabs as bycatch in shrimp trawls and stone
35 crab traps is \$25, as authorized in commission rules.

36 Section 3. Except as otherwise expressly provided in this
37 act, this act shall take effect July 1, 2012.

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 Environmental Preservation and Conservation Committee

BILL: SPB 7004

INTRODUCER: For consideration by the Environmental Preservation and Conservation Committee

SUBJECT: Fish and wildlife conservation

DATE: October 10, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill would reduce the fee for a commercial blue crab soft shell endorsement by one-half, from \$250 to \$125 for each endorsement. This will make the endorsements the same for all trap fisheries: spiny lobster, stone crab, soft shell blue crab, and hard shell blue crab.

The bill would repeal the law requiring a printed version of the *Florida Wildlife* magazine, as well as dissolve the Florida Wildlife Magazine Advisory Council (Council), a seven-member group whose role is to provide advice to the Fish and Wildlife Conservation Commission (FWC) on the publication *Florida Wildlife*.

The bill repeals s. 379.2342(2), and amends s. 379.366, of the Florida Statutes.

II. Present Situation:

A Saltwater Products License (SPL) is the fishing license for commercial fishermen harvesting in Florida's state waters. The SPL authorizes the licensee to fish for commercial quantities of fish, rather than recreational bag limits. The price of the SPL is \$50 for Florida residents, \$100 for nonresidents, and for aliens¹ is \$150. Anyone may purchase an SPL.

An endorsement is required for some fisheries in addition to the SPL. As used by the FWC, an "endorsement" gives permission to the commercial fisherman to legally harvest and/or use

¹ Alien is defined as a person who does not have documentation from the Immigration and Naturalization Service showing permanent residency status in the United States.

specific methods of commercial harvest in a particular fishery, and may be based on qualifying criteria.

During the 1998 Legislative Session, concerns about the rapidly increasing number of traps in the blue crab fishery and the resulting stress on marine natural resources resulted in a moratorium on the issuance of new blue crab endorsements. The moratorium was established to allow for the completion and adoption of a blue crab effort management program. The moratorium was extended two times and lasted until July 1, 2007.

In 2003, the FWC assembled an ad hoc 15 member industry advisory board made up of blue crab harvesters and wholesale dealers to develop an effort management program. Included in the management program would be management of the blue crab fishery, trap retrieval, research, enforcement, public education activities, and issuance of licenses, endorsements, and trap tags. The ad hoc Blue Crab Advisory Board endorsed the adoption of an effort management program that would limit the total number of participants in the fishery, and allow for an equal number of trap tags available for each endorsement issued. They further recommended separating the hard shell blue crab fishery from the soft shell blue crab fishery and the creation of a distinct endorsement for each fishery.

In order to qualify for a hard shell crab endorsement, an applicant had to demonstrate reported hard shell blue crab landings of 500 pounds on their SPL during any one of the qualifying years (license years 2000-2001, 2001-2002, or 2002-2003). In order to qualify for additional hard shell crab endorsements, applicants had to demonstrate reported landings of at least 7,500 pounds on any of their SPLs during any one of the qualifying years. Each qualified hard shell crab endorsement is allotted 600 trap tags, which can be used anywhere, and an additional 400 trap tags to be used only in offshore waters of the Gulf of Mexico.

In order to qualify for a soft shell crab endorsement, applicants had to demonstrate reported soft shell (or peeler) blue crab landings of 750 crabs on their SPL during any one of the same qualifying years (license years 2000-2001, 2001-2002, or 2002-2003). In order to qualify for an additional soft shell crab endorsement on one additional SPL, an applicant had to demonstrate reported landings of 2,500 soft shell crabs. Each qualified soft shell crab endorsement is allotted 400 trap tags with an additional 250 trap tags for a subsequent qualified endorsement. After the initial allotment, endorsements could be traded or sold between participants.

In addition to the ad hoc Blue Crab Advisory Board recommendation, the FWC elected to allow qualified commercial fishermen affected by the Net Limitation Amendment to be issued a non-transferable blue crab endorsement that is allotted 100 trap tags.

The hard and soft shell endorsements must be requalified every three years. To requalify endorsements, the holder must document crab landings in one of the three previous years. The requalifying amounts are the same as the amounts that qualified the applicant to obtain an endorsement originally. If the endorsement holder does not requalify, the endorsement is not renewed the next year and is required to be forfeited.

The FWC also addressed commercial fisheries (such as shrimp and stone crab) in which blue crab harvest is permitted as a bycatch. In the years prior to the moratorium, blue crab

endorsements were provided to these commercial fisheries at no additional cost and were renewed over the years as additional fishery options. The FWC has permitted a blue crab bycatch in shrimp trawls (200 pounds per day) since 1993, and nominal amounts of blue crabs have historically been landed as bycatch from stone crab traps. Therefore, FWC established an incidental take endorsement to allow the incidental harvest, possession, and sale of 200 pounds of blue crabs from shrimp trawls and stone crab traps.

The endorsement fees were set by the Legislature, at the recommendation of FWC and the ad hoc Blue Crab Advisory Board, at \$125 for the hard shell crab and net limitation endorsements, \$250 for the soft shell crab endorsement, and \$25 for the incidental take endorsement. The original fee for the soft shell crab endorsement was set higher because the market value of soft shell crabs is higher and therefore the value of the endorsement to the crabber was greater. To illustrate, in 2010, the price per pound of hardshell crabs averaged \$1.16 while the price per pound of soft shell crabs was \$8.34.

In 2007, at the beginning of the current limited endorsement program, there were 152 qualified crabbers that purchased and were issued a soft shell crab endorsement, as opposed to 1,016 hard shell crab endorsements. The effort management program stipulates that only endorsements that were issued in the 2007-2008 license year can be eligible for renewal, thereby capping the number of available endorsements. Additionally, if an endorsement is not renewed by September 30 each year, the endorsement is forfeited and is removed from the fishery. Because of the cap on the fishery and the forfeiture of non-renewed licenses, the number of soft shell crab endorsements has dropped from 152 the first year of the program to 83 available to be issued for the 2012 license year. If endorsement holders wish to leave the fishery, they are able to sell or transfer their endorsement(s) to another commercial harvester; however, many have not renewed or sold their endorsements, therefore permanently reducing the number of available soft shell crab endorsements.

Once the management plan was adopted by the FWC and the Legislature passed the endorsement fees and penalties for violations, a Blue Crab Advisory Board was formally established to make recommendations on the fishery. Due to the significantly reduced number of soft shell crab endorsements, the Blue Crab Advisory Board voted unanimously in 2009, recommending that FWC reduce the fee for the soft shell crab endorsement from \$250 to \$125 annually.

Industry representatives from the Organized Fisherman of Florida and the Southeastern Fisheries Association, Inc., are also in favor of reducing the price of the soft shell crab endorsement.

Currently, the fees for all other commercial fishing license endorsements that allow the use of traps, spiny lobster and stone crab are set at \$125.

Section 379.366(3)(d), F.S., directs moneys generated from the sale of all blue crab endorsements (soft shell, hard shell, net limitation, and incidental take), trap tags, replacement tags, and from the assessment of administrative penalties into the Marine Resources Conservation Trust Fund (Trust Fund). Revenues are to be used for management of the fishery, trap retrieval, research, law enforcement, and public education. In Fiscal Year 2010-11, \$244,179.50 was deposited into the Trust Fund from the purchase of blue crab endorsements and blue crab trap tags.

Florida Wildlife magazine repeal

The Game and Fresh Water Fish Commission, predecessor to the FWC, first published *Florida Wildlife* magazine in 1947. It began as a monthly magazine, switching to a bi-monthly schedule in the 1970s. As the official magazine of the FWC, the goal of *Florida Wildlife* is to promote the heritage of hunting, fishing and nature-based recreation in Florida and to encourage wise stewardship of the State's fish and wildlife resources.

During the 2003 Session, the Florida Legislature concurred with the FWC's potential reductions submission to eliminate the magazine's budget and positions. There were approximately 15,000 paid subscribers at the time, and the magazine ceased accepting new and renewal subscriptions. After *Florida Wildlife* published its final issue in November-December 2003, the FWC processed approximately \$84,000 in refunds for the approximately 6,000 remaining subscribers.

During the 2004 Session, the Legislature reinstated the funding of the magazine and included statutory provisions that allowed the sale of advertising and established a seven-member Florida Wildlife Magazine Advisory Council. The Council's role was to provide advice and guidance regarding the editorial and advertising content of the magazine, as well as strategies to increase circulation and reduce costs. The first issue of the re-established *Florida Wildlife* was published in April 2005. The Council has been inactive since 2006.

During the 2011 Session, the Legislature concurred with the FWC's potential reductions submissions to eliminate the printed publication of the *Florida Wildlife* magazine. Beginning July 1, 2011, the budget for the *Florida Wildlife* magazine was permanently cut by \$240,000. Section 41 of the Implementing bill (SB 2002) states: "notwithstanding the provisions of s. 379.2342(2), Florida Statutes, for the 2011-2012 fiscal year only, the Fish and Wildlife Conservation Commission shall suspend the publication of a printed version of the *Florida Wildlife* magazine and the operations of the Florida Wildlife Magazine Advisory Council." The implementing bill is tied to the annual General Appropriations Act and is therefore limited to adjusting statutory requirements for one year only. The 2011-12 General Appropriations Act, however, reduced the funding permanently. A statutory change is needed for the FWC to carry out the legislative intent of the permanent cut to the funding of the printed version, and to repeal the authorization of the Council.

The number of paid subscriptions to *Florida Wildlife* was approximately 4,900, as of May 2011.

III. Effect of Proposed Changes:

This bill would reduce the fee for a soft shell crab endorsement by one-half, from \$250 to \$125 for each endorsement, making the fee for endorsements for all trap fisheries the same. This change would mostly affect soft shell crab trap fishermen who operate as small businesses.

The bill would permanently end the printing of the *Florida Wildlife* magazine and would dissolve the Florida Wildlife Magazine Advisory Council. It is FWC's intent to provide the majority of the magazine's content on their website at no cost.

Those 4,900 subscribers are eligible for refunds totaling approximately \$68,000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill would have a positive fiscal impact for commercial soft shell blue crabbers in Florida. Each commercial soft shell blue crabber would see a reduction in licensing fees of \$125 per endorsement, of which they can hold two.

C. Government Sector Impact:

The proposed change would result in a slight reduction of revenues to the Trust Fund. There are 83 current soft shell crab endorsements in the fishery. If all 83 of these endorsements are renewed for Fiscal Year 2011-2012, at a cost of \$125 rather than \$250, the reduction of revenue to the Trust Fund would be \$10,375 (4.25% of the monies generated from blue crab regulation). All of the blue crab revenues in the Trust Fund are appropriated to the FWC's Division of Marine Fisheries Management, Fish and Wildlife Research Institute, Division of Law Enforcement, and the Office of Licensing and Permitting. The small reduction of revenue to the Trust Fund resulting from this proposal would be absorbed by these entities.

The cost of administrating the soft shell crab endorsement is the same as the hard shell crab and net limitation endorsements. Therefore, reducing the fee of the soft shell crab endorsement to the same price as the other two endorsements should still adequately fund the soft shell portion of the blue crab management program.

This proposal would eliminate annual *Florida Wildlife* magazine subscription fees to FWC of approximately \$38,000.

Some members of the public who currently have subscriptions to *Florida Wildlife* will not receive all printed volumes to which they subscribed and will receive refunds. This change will provide the public with free access to magazine content in an electronic format where previously they had to pay a subscription fee for the printed magazine.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

3

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

Oct. 19, 2011
Date

SPB 7006
Bill Number

Barcode

Name Jackie Fauls

Phone 487-3795

Address 620 S. Meridian Street

E-mail jackie.fauls@myfwc.com

Street
Tallahassee
City State Zip

Job Title Legislative Affairs Director

Speaking: For Against Information Appearing at request of Chair

Subject Premises Liability proposed bill

Representing Fish & Wildlife Conservation Commission

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

3

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

10/19/11
Date

SPB 7006
Bill Number

Barcode

Name Bud Vielhauer

Phone (850)921-5461

Address 620 S. Meridian Street

E-mail bud.vielhauer@myfwc.com

Tallahassee FL 32312
City State Zip

Job Title General Counsel

Speaking: For Against Information

Appearing at request of Chair

Subject Premise liability

Representing FFWCC

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

Waive Support

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

3

10/19/11

Date

will defer to AFTER
bill is referred.

PCB 7006

Bill Number

Barcode

Name Lane Stephens

Phone 513-0004

Address 201 S. Monroe St, Ste 300

E-mail lane@scg800.com

Tallahassee FL 01
City State Zip

Job Title _____

Speaking: For Against Information Appearing at request of Chair

Subject Prenise liability

Representing Allied Sportsmen's Associations of Florida

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.



THE FLORIDA SENATE

APPEARANCE RECORD

TAB 3

(Deliver to Senator or Senate Professional Staff conducting the meeting)

10/19/2011

Meeting Date

7006

Bill Number (if applicable)

Topic Premises liability

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title TRUSTEE

Address 1119 NEWTON AVE SOUTH

Phone 727/897-9291

Street

Saint Petersburg

florida

33705

E-mail justice2jesus@yahoo.com

City

State

Zip

Speaking: [] For [x] Against [x] Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [] Yes [x] 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.

For officially noticed committee meetings, pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes. If designated employee: Time: from _____ to _____

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

S-001 (04/19/11)



3

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

19 OCT 2011
Date

SAB 7006
Bill Number

Barcode

Name PAUL JESS

Phone 224-9403

Address 218 S MONROE ST
Street

E-mail

TALLAHASSEE FL 32301
City State Zip

Job Title

Speaking: For Against Information

Appearing at request of Chair

Subject

Representing FLORIDA JUSTICE ASSOCIATION

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

FOR CONSIDERATION By the Committee on Environmental Preservation and Conservation

592-00465B-12

20127006__

1 A bill to be entitled
2 An act relating to premises liability; amending s.
3 375.251, F.S.; providing that an owner or lessee who
4 makes an area available to another person for hunting,
5 fishing, or wildlife viewing is entitled to certain
6 limitations on liability if notice is provided to a
7 person upon entry to the area; providing that an owner
8 of an area who enters into a written agreement with
9 the state for the area to be used for outdoor
10 recreational purposes is entitled to certain
11 limitations on liability; deleting a requirement that
12 the area be leased to the state in order for the
13 limitations on liability to apply; defining the term
14 "area"; making technical and grammatical changes;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 375.251, Florida Statutes, is amended to
20 read:

21 375.251 Limitation on liability of persons making available
22 to public certain areas for recreational purposes without
23 charge.—

24 (1) The purpose of this section ~~act~~ is to encourage persons
25 to make land, water areas, and park areas available to the
26 public ~~land, water areas and park areas~~ for outdoor recreational
27 purposes by limiting their liability to persons using these
28 areas ~~going thereon~~ and to third persons who may be damaged by
29 the acts or omissions of persons using these areas ~~going~~

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30 thereon.

31 (2) (a) An owner or lessee who provides the public with an a
32 ~~park area or other land~~ for outdoor recreational purposes owes
33 no duty of care to keep that ~~park area or land~~ safe for entry or
34 use by others, or to give warning to persons entering or going
35 on that ~~park area or land~~ of any hazardous conditions,
36 structures, or activities on the area ~~thereon~~. An owner or
37 lessee who provides the public with an a ~~park area or other land~~
38 for outdoor recreational purposes ~~shall not by providing that~~
39 ~~park area or land~~:

40 1. Is not ~~be~~ presumed to extend any assurance that the ~~such~~
41 ~~park area or land~~ is safe for any purpose;;

42 2. Does not incur any duty of care toward a person who goes
43 on ~~that park area or land~~;; or

44 3. Is not ~~Become~~ liable or responsible for any injury to
45 persons or property caused by the act or omission of a person
46 who goes on that ~~park area or land~~.

47 (b) Notwithstanding the inclusion of the term "public" in
48 this subsection and subsection (1), an owner or lessee who makes
49 available to any person an area primarily for the purposes of
50 hunting, fishing, or wildlife viewing is entitled to the
51 limitation on liability provided herein so long as the owner or
52 lessee gives notice of this provision to the person upon entry
53 to the area.

54 (c) ~~(b)~~ The Legislature recognizes that an area offered for
55 outdoor recreational purposes may be subject to multiple uses.
56 The limitation of liability extended to an owner or lessee under
57 this subsection applies only if no charge is made for entry to
58 or use of the area for outdoor recreational purposes and no

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59 other revenue is derived from patronage of the area for outdoor
60 recreational purposes. ~~This section shall not apply if there is~~
61 ~~any charge made or usually made for entering or using such park~~
62 ~~area or land, or any part thereof, or if any commercial or other~~
63 ~~activity, whereby profit is derived from the patronage of the~~
64 ~~general public, is conducted on such park area or land, or any~~
65 ~~part thereof.~~

66 (3) (a) An owner of an land or water area who enters into a
67 written agreement concerning the area with ~~leased to~~ the state
68 for outdoor recreational purposes owes no duty of care to keep
69 that ~~land or water~~ area safe for entry or use by others, or to
70 give warning to persons entering or going on that area ~~land or~~
71 ~~water~~ of any hazardous conditions, structures, or activities
72 thereon. An owner who enters into a written agreement concerning
73 the area with ~~leases land or water area to~~ the state for outdoor
74 recreational purposes ~~shall not by giving such lease:~~

75 1. Is not ~~be~~ presumed to extend any assurance that the such
76 ~~land or water~~ area is safe for any purpose;~~;~~

77 2. Does not incur any duty of care toward a person who goes
78 on the ~~leased land or water~~ area that is subject to the
79 agreement;~~;~~ or

80 3. Is not ~~become~~ liable or responsible for any injury to
81 persons or property caused by the act or omission of a person
82 who goes on the ~~leased land or water~~ area that is subject to the
83 agreement.

84 (b) This subsection applies to all persons going on the
85 area that is subject to the agreement, including invitees,
86 licensees, and trespassers. ~~The foregoing applies whether the~~
87 ~~person going on the leased land or water area is an invitee,~~

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20127006__

88 ~~licensee, trespasser, or otherwise.~~

89 (4) This section ~~act~~ does not relieve any person of
90 liability that ~~which~~ would otherwise exist for deliberate,
91 willful, or malicious injury to persons or property. This
92 section does not ~~The provisions hereof shall not be deemed to~~
93 create or increase the liability of any person.

94 (5) As used in this section, the term:

95 (a) "Area" includes land, water, and park areas.

96 (b) "Outdoor recreational purposes" includes ~~as used in~~
97 ~~this act shall include,~~ but is not necessarily be limited to,
98 hunting, fishing, wildlife viewing, swimming, boating, camping,
99 picnicking, hiking, pleasure driving, nature study, water
100 skiing, motorcycling, and visiting historical, archaeological,
101 scenic, or scientific sites.

102 Section 2. This act shall take effect July 1, 2012.

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 Environmental Preservation and Conservation Committee

BILL: SPB 7006

INTRODUCER: For consideration by the Environmental Preservation and Conservation Committee

SUBJECT: Landowner Liability

DATE: October 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill expands the limitation of liability protection for landowners that allow any person to use their land for hunting, fishing, or wildlife viewing as long as the landowner provides notice to the person or persons using the land of their liability limits, and makes no profit or charges a fee for using the land. Additionally, the bill expands the limitation of liability protection for private landowners who enter into written agreements with the State.

The bill amends s. 375.251, of the Florida Statutes.

II. Present Situation:

Private landowners who enter into “lease” agreements with the State to provide outdoor recreational activities on their lands have limited liability protection. For example, private property owners who provide public opportunities for outdoor recreation on their property have, under s. 375.251, F.S., limited liability for incidents occurring on the land as long as the property owner:

- a. does not charge for entry to the property nor conduct commercial or other activity where profit is derived from public patronage on any part of the property; or,
- b. leases the property to the State for outdoor recreational purposes.

If a private property owner qualifies under one of these two categories, he or she owes no duty of care to keep the property safe for people coming on the land or using the land, nor to give warning to anyone entering the property about hazardous conditions, structures, or activities on the land. Furthermore, if one of these two conditions are met, the law provides that the private

landowner is not liable for injury to people on the property caused by the acts or omissions of others on the property.

The law does not relieve the landowner of liability if there is deliberate, willful, or malicious injury to persons or property.

Outdoor recreational purposes include, but are not limited to hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites.

Limitation of Liability Protection for Private Landowners Who Enter Into Written Agreements with the State Providing Outdoor Recreational Activities on Their Lands

If a private landowner enters into an agreement with the State to provide recreational opportunities on his/her land, and the agreement is anything other than a lease then the law does not afford the private landowner these liability protections. As an example, the Florida Fish and Wildlife Conservation Commission (FWC) enters into leases with private landowners for the purpose of facilitating scheduled dove hunts. The only purpose of the lessor/lessee relationship is to avail the private party of the liability protection provided by s. 375.251, F.S. As mentioned above, this arrangement creates obligations and rights that exceed what is necessary to accomplish the specific goal of offering the dove hunts to the public. If the FWC entered into another type of agreement, other than a lease, however, private property owners would lack the benefit of the limitation of liability provided by s. 375.251, F.S.

FWC would like to provide outdoor recreational activities on privately owned lands that would not require the degree of legal control and complexity of a lease, for example a day-long youth hunt or a weekend fishing derby. In some instances, use or management agreements, contracts for services, or easements would be more appropriate arrangements between the private landowner and the State. When a landowner enters into a lease with the State, he or she gives the State a possessory interest in the property (the intent and right to occupy or exercise control over the piece of property). The other mentioned types of arrangements, however, give less of the private landowners' property rights to the State, and do not give the State a possessory interest in the land. For instance, if a landowner grants the State an easement to property, the State then has a limited right to use the property of the landowner for a specific purpose. The State would only exercise as much control over the property as is necessary to use the easement – a much more limited *nonpossessory* interest in the land. According to the FWC, the State would also benefit from these alternative types of arrangements because the parties would not be subject to landlord/tenant law, creating certain obligations on the part of both the landowner and the State.

Limitation of Liability Protection to Private Landowners Who Allow Any Person to Use Their Land for Hunting, Fishing, or Wildlife Viewing

Under current law, private landowners who make their land available to the public for outdoor recreational activities are also afforded liability protection. This protection does not apply, however, for individuals or groups of individuals. For example, if a landowner allows a troop of boy scouts to come onto his/her property to kayak, but does not want to allow anyone in the

general public to have the same access, he/she may be liable if one of the boy scouts is injured while on the property.

According to the FWC,¹ other southeastern states provide landowner liability protection to landowners who allow people other than the general public to use their land for recreational purposes. Following are some of those States' laws:

Georgia: "Except as specifically recognized by or provided in Code Section 51-3-25, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes." (Section 51-3-22, Georgia Code) (Note: The exception provided in the law is for either willful or malicious failure to warn against a dangerous use, condition, structure, or activity, or where the landowner charges for use of the land, except when the owner has entered into a lease on the land with the state.)

Alabama: "An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry and use by others for hunting, fishing, trapping, camping, water sports, hiking, boating, sight-seeing, caving, climbing, rappelling or other recreational purposes or to give any warning of hazardous conditions, use of structures or activities on such premises to persons entering for the above-stated purposes, except as provided in section 35-15-3." (Section 35-15-1, Code of Alabama) (Note: The exception provided in the law does not limit the liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, hike, cave, climb, rappel or sight-see was granted for commercial enterprise for profit; or for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike or sight-see was granted to third persons as to whom the person granting permission, or the owner, lessee or occupant of the premises owed a duty to keep the premises safe or to warn of danger.)

Louisiana: "An owner, lessee, or occupant of premises owes no duty of care to keep such premises safe for entry or use by others for hunting, fishing, camping, hiking, sightseeing or boating or to give warning of any hazardous conditions, use of, structure or activities on such premises to persons entering for such purposes. If such an owner, lessee or occupant give permission to another to enter the premises for such recreational purposes he does not thereby extend any assurance that the premises are safe for such purposes or constitute the person to whom permission is granted one to whom a duty of care is owed, or assume responsibility for or incur liability for any injury to persons or property caused by any act of person to whom permission is granted. (Louisiana Civil Code section 2791(a)). Louisiana's law further states that "the limitation of liability extended by this Section to the owner, lessee, or occupant of premises shall not be affected by the granting of a lease, right of use, or right of occupancy for any recreational purpose which may limit the use of the premises to persons other than the entire public or by the posting of

¹ Florida Fish and Wildlife Conservation Commission, 2012 Session Legislative Proposal, (Oct. 6, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

the premises so as to limit the use of the premises to persons other than the entire public.” (Louisiana Civil Code section 2791(a)).

South Carolina: “Except as specifically recognized by or provided in s 27-3-60, an owner of land owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained his permission to use it for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to such persons entering for such purposes.” (Section 27-3-20, Code of Laws of South Carolina) (Note: The exception provided in the law is for either grossly negligent, willful, or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, or where the landowner charges for use of the land, except when the owner has entered into a lease on the land with the state.)

III. Effect of Proposed Changes:

Expanding Limitation of Liability Protection to Private Landowners Who Allow Any Person to Use Their Land for Hunting, Fishing, or Wildlife Viewing

This bill would also expand s. 375.251, F.S., to provide limitation of liability protection to any private landowner who makes their land available to *any person* (not just the public generally) for the purpose of hunting, fishing, or wildlife viewing. In order for the landowner to benefit from the limitation of liability in this circumstance, he or she must provide notice to the person or persons using the land of their liability limits, and make no profit nor charge a fee for using the land.

Expanding Limitation of Liability Protection for Private Landowners Who Enter Into Written Agreements with the State Providing Outdoor Recreational Activities on Their Lands

The bill expands s. 375.251, F.S., to allow private property owners to execute a written agreement with State agencies to provide outdoor recreational opportunities. These opportunities could include hunting and fishing and maintain the limitation of liability provided in statute.

The change will enable the State to execute written agreements to expand outdoor recreational opportunities (including those for fishing, wildlife viewing, and off-highway recreational vehicle use) without taking a leasehold interest in the property where the activities are conducted. This may simplify the legal arrangement and provide better protection for the private property owner should a lawsuit arise. It will also be an additional incentive for landowners to open up their lands as it would include all agreements and not just leases.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is the potential for a positive fiscal impact on the private sector in the form of reduced litigation. The impact cannot be quantified.

Private property owners entering into these arrangements will be offered liability protection, as will private property owners who make their land available to any person to use for hunting, fishing, or wildlife viewing, when those persons using the land are made aware of the liability protection afforded the landowner under the statute.

Persons using the land owned by private parties (either when the landowners entered into written agreements with state agencies, or where the landowner provides hunting, fishing, or wildlife viewing opportunities to individuals) may have more recreational opportunities available to them. The public will be limited in the lawsuits they can bring against the landowners making their property available.

C. Government Sector Impact:

Any state agency may be able to enter into more written agreements with private property owners to provide outdoor recreational opportunities to the public under this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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



The Florida Senate

Interim Report 2012-305

September 2011

Committee on Environmental Preservation and Conservation

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 267.076, F.S., CONFIDENTIALITY OF CERTAIN DONOR INFORMATION RELATED TO PUBLICLY OWNED HOUSE MUSEUMS DESIGNATED AS NATIONAL HISTORIC LANDMARKS

Issue Description

The Open Government Sunset Review Act provides for the review of an exemption from open records or meetings requirement five years after enactment. Section 267.076, F.S., provides that information that would identify a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark who desires to remain anonymous is confidential and exempt from s. 119.07(1), F.S. and s. 24 (a) Art. 1 of the State Constitution. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

Of the two facilities that qualify for the exemption, the Marjorie Kinnan Rawlings Historic State Park reported that they have never utilized the exemption and no donor has ever requested anonymity. However, the staff reported that they were unaware of the exemptions. In contrast, the Vizcaya Museum and Gardens reported that one generous donor has requested anonymity for the past four years. Also, many of their donors and prospective donors have requested that their identities not be released. The professional fundraising staff of the Vizcaya Museum and Gardens maintains that without the exemption, the museum may experience difficulty in raising funds. Consequently, it is recommended that the Legislature reenact the public records exemption provided under s. 267.076, F.S.

Background

According to the Florida Department of State, there are only two National Historic Landmarks publicly owned house museums in Florida that are eligible for the exemption. The two houses are the Marjorie Kinnan Rawlings home in Cross Creek (between Gainesville and Ocala) that is owned by the Florida Department of Environmental Protection (DEP) and the Vizcaya Museum and Gardens (often referred to as Vizcaya) that is owned by Miami-Dade County and is located in the north Coconut Grove area of the City of Miami, overlooking Biscayne Bay.¹

After Marjorie Kinnan Rawlings graduated from the University of Wisconsin, she married fellow writer Charles Rawlings and worked as a journalist for a number of years. Marjorie Kinnan Rawlings came to rural Cross Creek in 1928 to find a home and a place to write.² Her best known work is *The Yearling* which earned her the Pulitzer Prize for fiction in 1939. Three of her books, *Cross Creek*, *The Yearling*, and *Gal Young Un'*, were made into movies. Her novels portray her affection for the land, nature, and the people of Cross Creek, Florida, which she called home.

The Marjorie Kinnan Rawlings homestead is located on the property of the Marjorie Kinnan Rawlings Historic State Park in Cross Creek, Florida. In 2006 the park was designated a National Historic Landmark. Visitors to the

¹ Vizcaya Museum and Gardens General Information. www.vizcayamuseum.com/plan-general.asp (last visited July 8, 2011).

² Marjorie Kinnan Rawlings Historic State Park History and Culture, www.floridastateparks.org/history/parkhistory.cfm?parkid=75 (last visited July 7, 2011).

park may tour the author's farmhouse, the citrus grove, the tenant house and barn, and experience the rural farm life of the 1930's. The Rawlings' cracker farmhouse has original furnishings. Visitors to the Rawlings home may find staff members, dressed in clothes and preparing dishes reflecting the time period. Although you can see the historic home at any time, access inside the house is by guided tour only. Guided tours cost \$3 for adults, \$2 for children 6-12, and admission is free for children under 6.³

Vizcaya was the winter residence of American industrialist James Deering from Christmas 1916 until his death in 1925. Deering was a Vice President of the International Harvester Company, which produced agricultural equipment for a worldwide market. He chose a bay front site in Miami for his tropical winter home because of the temperate winter climate and his appreciation of the native hardwood hammock. In addition, his father, William, had already settled in Coconut Grove and his half brother, Charles Deering, would soon develop an estate at Cutler, in what is now south Miami-Dade County. The latter is now operated as the Deering Estate at Cutler.⁴

At the time of Vizcaya's construction, Miami's population was around 10,000. More than 1,000 workers were employed in the Vizcaya project, including laborers and craftsmen from the Caribbean and Europe. In addition to the house and gardens, the complex included a farm, livestock, and a variety of other service facilities covering 180 acres on both sides of South Miami Avenue.

The house was intended to appear as an Italian estate. It has 34 decorated rooms with 15th through 19th century antique furnishings and art objects. Vizcaya Museum and Gardens is a Miami-Dade County facility that is accredited by the American Association of Museums and distinguished as a United States National Historic Landmark. Vizcaya serves approximately 174,000 local residents and tourists annually. General tours of the Main House and gardens are available by appointment any day of the week.⁵ The admission cost for adults is approximately \$15, children aged 6-12 are \$6 dollars, and children under the age of 5 are admitted free.

Public Records and Meetings

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.⁶ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.⁷ Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,⁸ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

³ The Friends of Marjorie Kinnan Rawlings Farm, Inc. www.marjoriekinnanrawlings.org/parkinfo.php (lasted visited July 7, 2011).

⁴ Vizcaya Museum and Gardens History www.vizcayamuseum.org/learn-history.asp (last visited July 8, 2011).

⁵ Vizcaya Museum and Gardens Introduction www.vizcayamuseum.org/nowus-intro.asp (last visited July 8, 2011).

⁶ Section 1390, 1391 Florida Statutes. (Rev. 1892).

⁷ Article I, s. 24 of the State Constitution.

⁸ Chapter 119, F.S.

Unless specifically exempted, all agency⁹ records are available for public inspection. The term “public record” is broadly defined to mean:

. . .all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.¹⁰

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.¹¹ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.¹²

Article I, s. 24 of the State Constitution also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

Only the Legislature is authorized to create exemptions to open government requirements.¹³ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.¹⁴ A bill enacting an exemption¹⁵ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁶

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁷ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁸

The Open Government Sunset Review Act (the Act)¹⁹ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is

⁹ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

¹⁰ s. 119.011(12), F.S.

¹¹ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

¹² *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

¹³ Art. I, s. 24(c) of the State Constitution.

¹⁴ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁵ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁶ Art. I, s. 24(c) of the State Constitution.

¹⁷ Attorney General Opinion 85-62.

¹⁸ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁹ s. 119.15, F.S.

required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.²⁰

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.²¹ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

... notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Findings and/or Conclusions

The professional staff of the Senate Committee on Environmental Preservation and Conservation (EP or Florida Senate) surveyed the Marjorie Kinnan Rawlings Historic State Park through DEP's legislative staff to determine how often donors had requested anonymity when donating to the park. The survey also requested specifics regarding the amount of donations and if the park had a system in place to provide anonymity to its donors. Based on the completed survey provided to Florida Senate professional staff, since 2007 a park donor has never requested anonymity. However, the survey did reveal that the agency was unaware of the anonymity exemption

²⁰ s. 119.15(6)(b), F.S.

²¹ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

prior to completing the survey. The donations to the park between 2007-2010 totaled approximately \$13,000. In 2011, the park received two donations totaling approximately \$15,000.

Florida Senate professional staff also surveyed the Vizcaya Museum and Gardens. The response to the survey was prepared and submitted by the Vizcayans, Inc., the private support organization for Vizcaya Museum and Gardens. The Vizcayans describe their private support program for the publicly owned and operated museum as robust. The Vizcayans were aware of the anonymity exemption and have made their donors aware of the option. In 2010-2011 Vizcaya received approximately eight donations totaling \$483,941. According to the completed survey, between 2008-2011, one donor has asserted and consistently maintained their request for anonymity. The total amount of donation that this person/entity donated is less than \$100,000. However, it is the Vizcayan's belief that future contributions from this donor may amount to millions of dollars as long as the museum can offer the option of anonymity. Further, according to the survey, many other prospective donors have stated that they are not willing to have their identities released publicly.

The Act requires the Legislature to consider the following:

What specific records or meetings are affected by the exemption?

In both instances, the exemption would apply to any contact information/records that the museum has collected related to the solicitation or collection of donor monies. Further, there is an operational requirement for Vizcaya under the Better Business Bureau (BBB) Wise Giving Alliance Standards for Charity Accountability.²² Compliance with these standards is mandated and required under the terms of the Vizcayans' operating agreement with the Vizcaya Museum and Gardens Trust. The policy states that both new and continuing donors must have an annual option to inform the charity if they do not want their name and address shared. The charity must make the privacy policy available to donors and clearly state what information if any is shared with another organization and the charity must specify the security measures the charity has in place to protect personal information.

Whom does the exemption uniquely affect, as opposed to the general public?

The exemption only affects donors who choose to donate anonymously to the Marjorie Kinnan Rawlings Historic State Park and Vizcaya Museum and Gardens. Although, the Marjorie Kinnan Rawlings Historic State Park staff has not utilized the anonymous donor option the Vizcaya Museum and Gardens has built their fundraising campaign around this exclusive option.

What is the identifiable public purpose or goal of the exemption?

According to Vizcayans, Inc., the exemption from disclosure of information on actual or prospective donors who request anonymity was sought from the Florida Legislature to:

- ensure that Vizcaya professional staff can pursue donations unhampered;
- ensure the museum's ability to comply with donor privacy requirements of the BBB;
- and to ensure that the charitable giving program at Vizcaya could fairly compete with programs for privately owned and operated museums.

According to the Vizcaya Museum and Gardens website, the Deering's heirs attempted to make an attraction of the estate in 1933 but their efforts were unsuccessful due to a major hurricane. Finally, in 1952, Deering's heirs donated the main house and formal gardens to Dade County below market value. Through the Deering donation and the funds raised through Vizcaya's professional fundraising campaigns the public has had the opportunity to tour and enjoy the historical home. Without this partnership that opportunity might not have been possible.

²²BBB Wise Giving Alliance Standards for Charity Accountability. www.bbb.org/us/Charity-Standards (last visited July, 8, 2011).

Can the information contained in the records or discussed in the meetings be readily obtained by alternative means? If so, how?

No, the donor information cannot be obtained through alternative means. The Vizcayans organization was sued in August of 2007, on the provisions of Chapter 119, the Florida's Public Records Act, by a developer who was seeking to construct high-rise condominiums to the southeast of Vizcaya's historic gardens and wished to put pressure on Vizcaya to drop the opposition to the project. The lawsuit sought under the Florida Public Records Act all membership and donor records. Due to the exemption, the organization was able to keep the donor information anonymous. This lawsuit was defended as a Strategic Lawsuit Against Public Participation (SLAPP) suit, in which a corporation, business or developer sues an organization in an attempt to scare it into dropping protests against its actions. Ultimately, the lawsuit was dismissed by the circuit court judge for lack of prosecution by the developer.²³

Is the record or meeting protected by another exemption?

No, the exemption is not protected by another exemption.

Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

No, there are not multiple exemptions for the same type of record or meeting.

Options and/or Recommendations

Based upon the information provided to professional Senate Committee staff, the exemption should be re-enacted by the Florida Legislature. The Vizcaya Museum and Gardens has an active and successful fundraising campaign that has enabled the staff to maintain the house and gardens. Since 2006, the Museum has raised approximately \$4 million and boasts approximately 174,000 visitors annually. The fundraising formula for maintaining this National Landmark has included offering donors the option of anonymity. Further, now that the Marjorie Kinnan Rawlings Historic State Park staff is aware of the exemption, perhaps, if it is reenacted it can be utilized.

²³ *Related Group of FL Venture LT vs. Viscayans Inc.* Case No. 07-28238-CA-01.



**Suwannee River
Water Management District
Budget Overview
And
Priorities**

**Senate Environmental
Preservation And
Conservation
Committee**

Senator Charlie Dean, Chair

October 19, 2011



FY 2011-2012 Budget Summary

- ◆ Millage rate 0.4143
- ◆ Tax revenue \$5.4M
- ◆ Budget \$47.4M
- ◆ Decrease \$9.4M
- ◆ Ad valorem 11% of budget
- ◆ Staffing level 63
- ◆ No debt



FY 2011-2012 Budget Summary

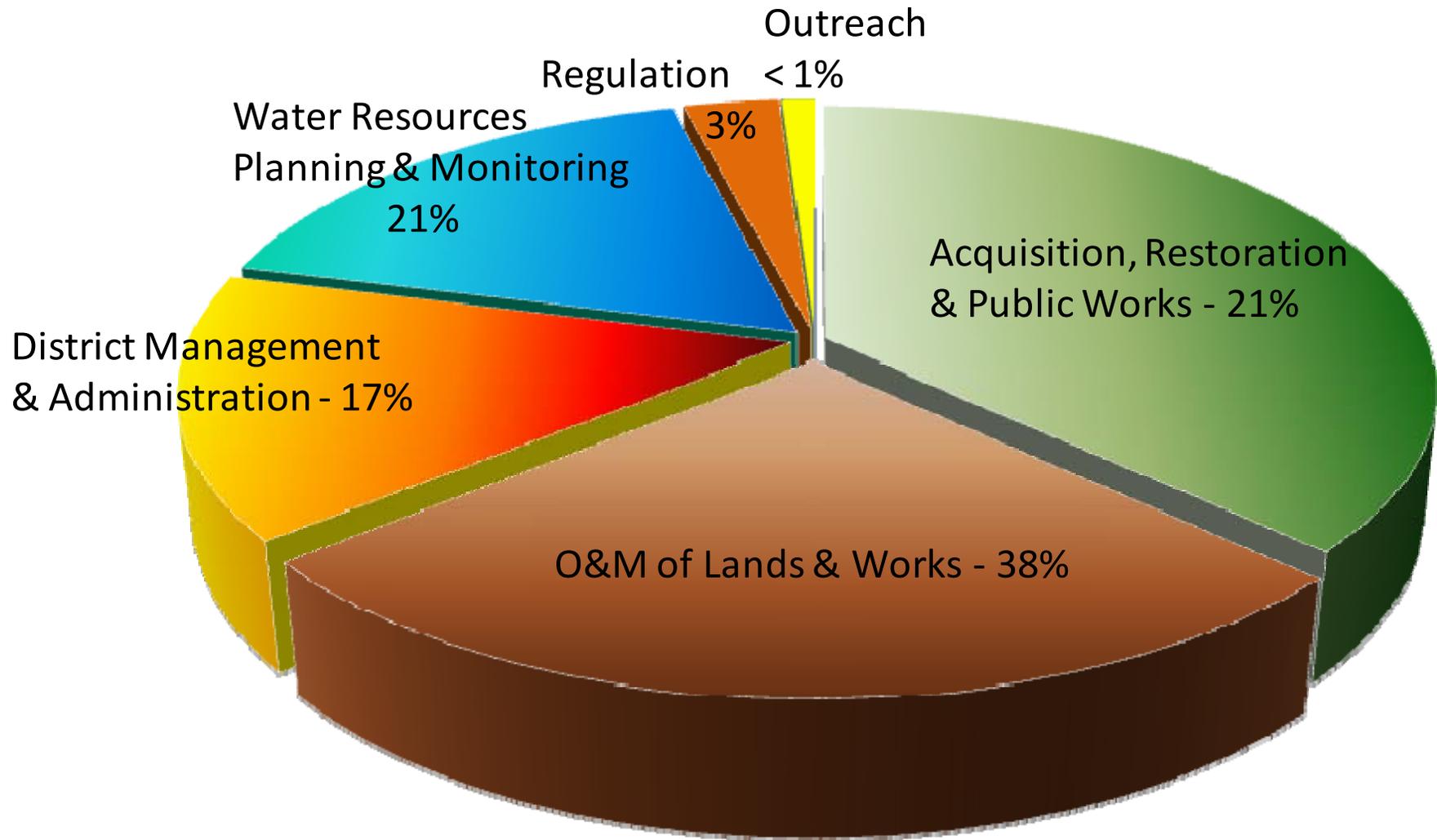
💧 Reductions:

- 💧 Reduced staffing levels
- 💧 Suspended land acquisition program
- 💧 Completed Projects
- 💧 Reduced reserves

💧 New Issues:

- 💧 Automated monitoring equipment
- 💧 Land management contracts
- 💧 Minimum flows and levels
- 💧 Alternative water supply

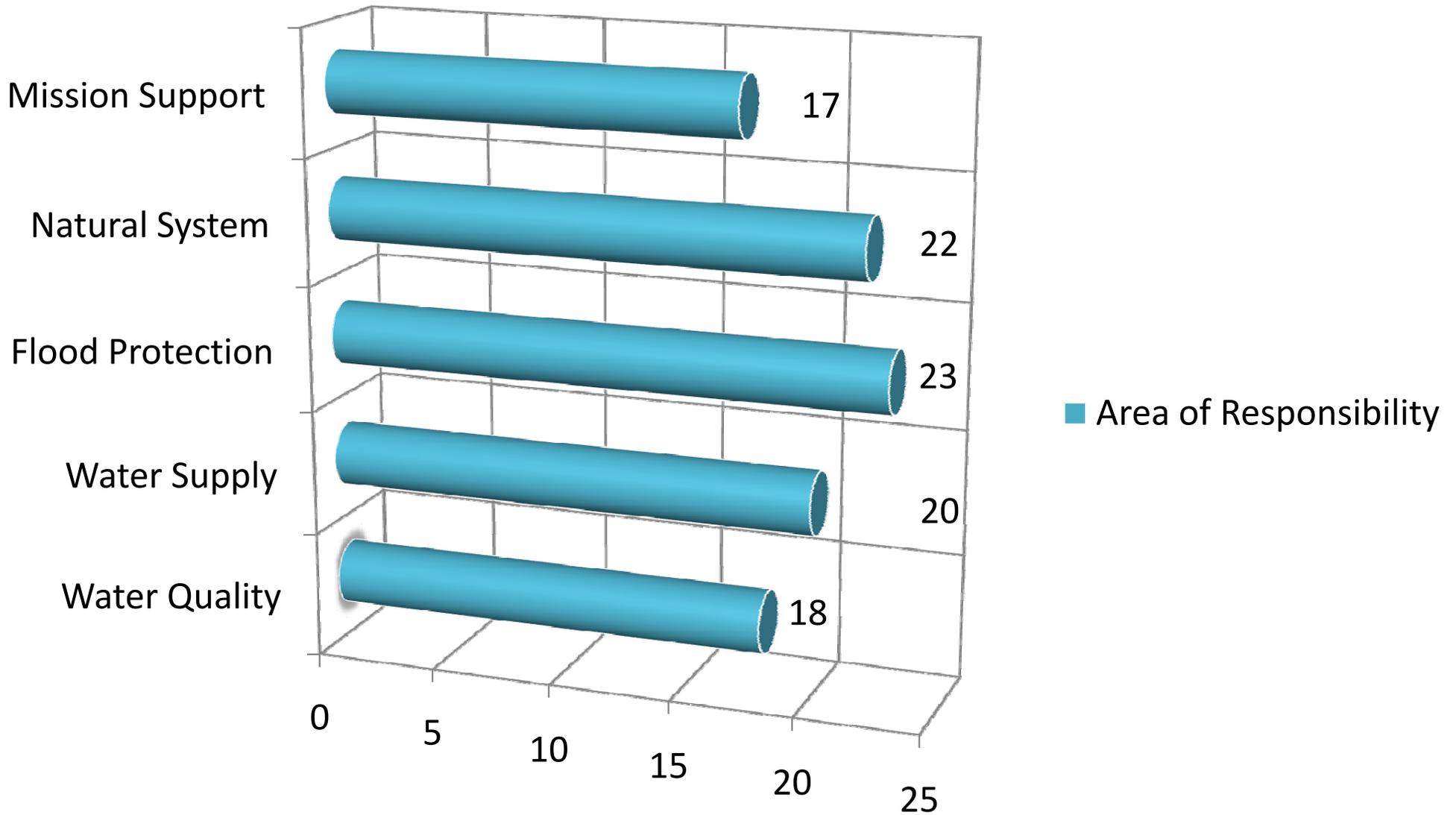
FY 2011-2012 Program Budget



FY 2011-2012

Area of Responsibility

Budget Percentage





District Priorities

💧 Springs Protection

- ~ Monitoring & Data Collection
- ~ Minimum Flows and Levels

💧 Water Supply

- ~ Regional Water Supply Plans
- ~ Alternative Water Supplies

💧 Conservation

- ~ Suwannee River Partnership
- ~ The Ichetucknee Partnership
- ~ Retrofits

💧 Surplus Lands

Program Challenges

💧 Funding

- ~ Minimum Flows and Levels
- ~ Alternative Water Sources
- ~ Land Management

💧 EPA Nutrient Standards

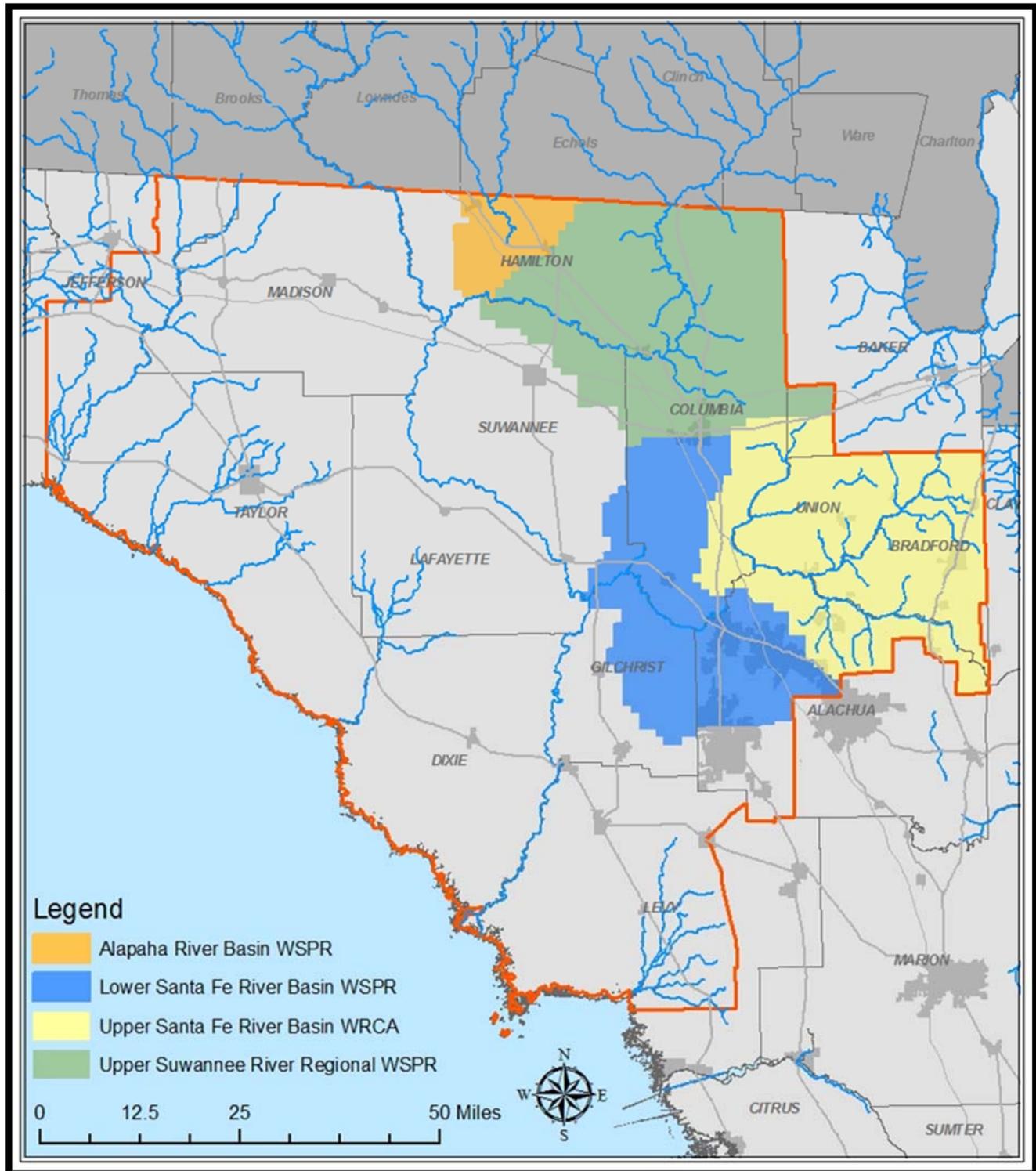
💧 Interstate Coordination

💧 Springs

💧 Water Supply



Regional Water Supply Planning Areas





FY 2010-2011 Accomplishments

- 💧 Water Conservation Program
- 💧 Monticello Reuse Project
- 💧 Surplus Lands Program
- 💧 Andrews Tract
- 💧 Suwannee River Partnership
- 💧 Water Supply Assessment

Questions?





THE FLORIDA SENATE
APPEARANCE RECORD

TAB 5

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

October 19, 2011

Meeting Date

Bill Number (if applicable)

Topic Suwannee River Water Management District Budget Presentation

Amendment Barcode (if applicable)

Name Steve Minnis

Job Title Governmental Affairs Director

Address 9225 CR 49

Phone 386.362.1001

Street

Live Oak

Florida

32060

E-mail sam@srwmd.org

City

State

Zip

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

For officially noticed committee meetings, pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee:

Time: from _____ to _____

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

S-001 (08/24/11)

Statewide Environmental Resource Permit

*Senate Environmental Preservation
and Conservation Committee
October 19, 2011*

Jeff Littlejohn, P.E.
Deputy Secretary for Regulatory Programs
Florida Department of Environmental Protection



Purpose of the ERP Program

To Protect Water Resources

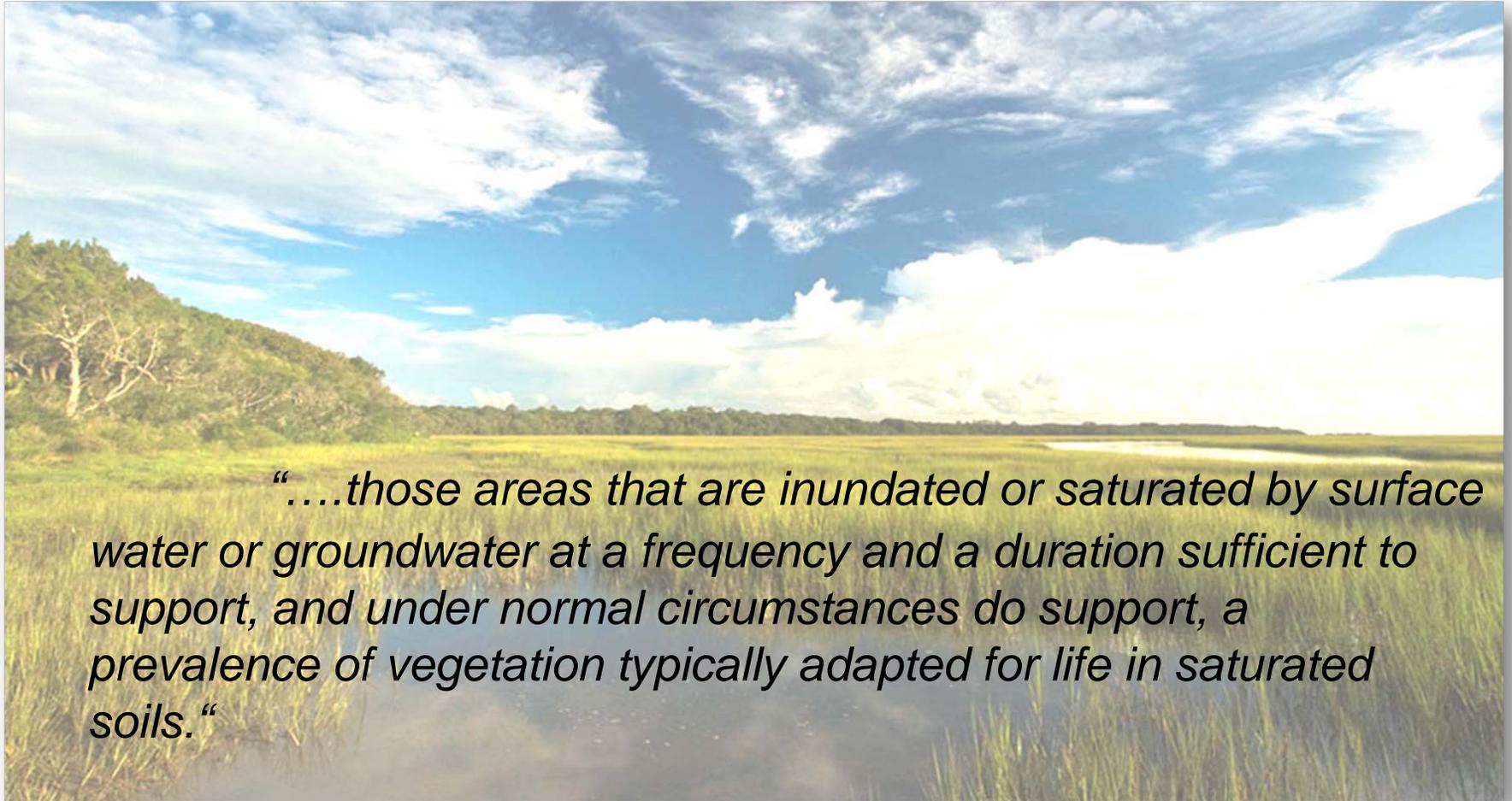


Water Quality

Environmental Functions

Water Quantity

What is a Wetland?



“....those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils.”

History of Wetland Protection in Florida

Wetland Resource Permit Program

Management and Storage of Surface Waters
Permit Program

Sovereignty Submerged Lands Authorizations



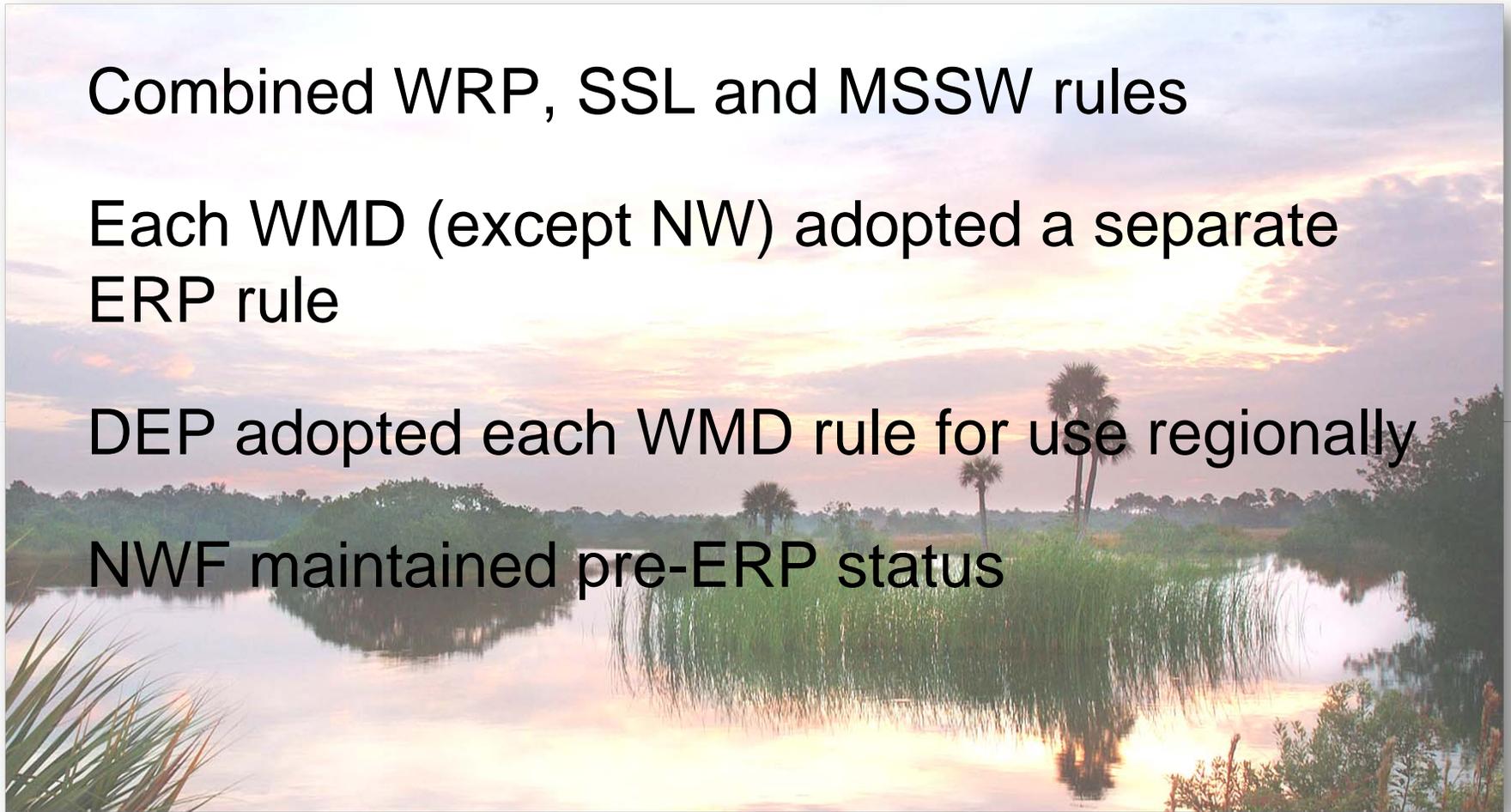
Florida's ERP Program

Combined WRP, SSL and MSSW rules

Each WMD (except NW) adopted a separate ERP rule

DEP adopted each WMD rule for use regionally

NWF maintained pre-ERP status



Northwest Florida ERP

Transition began in 2006

Phase I in October 2007

Phase II in November 2010



ERP Division of Responsibility

DEP and each WMD have Operating Agreements

ERP Processed by DEP or a WMD, **but not both**

Activity Dependent



What do the ERP Rules Do?

Define regulated activities

Permit thresholds and types

Criteria for issuance

Permit processing requirements



Types of ERP Authorizations



Types of ERP Authorizations

Exemptions

Noticed General Permits

Standard General and Individual Permits



Problem: Existing ERP Rules

Five versions in use

DEP and WMDs not on same version

Process improvement difficult



Solution: Statewide ERP Rule

One rule means improved consistency:

- Criteria and standards for issuance
- Permitting thresholds and types
- Application and reporting forms
- Procedural review and noticing requirements

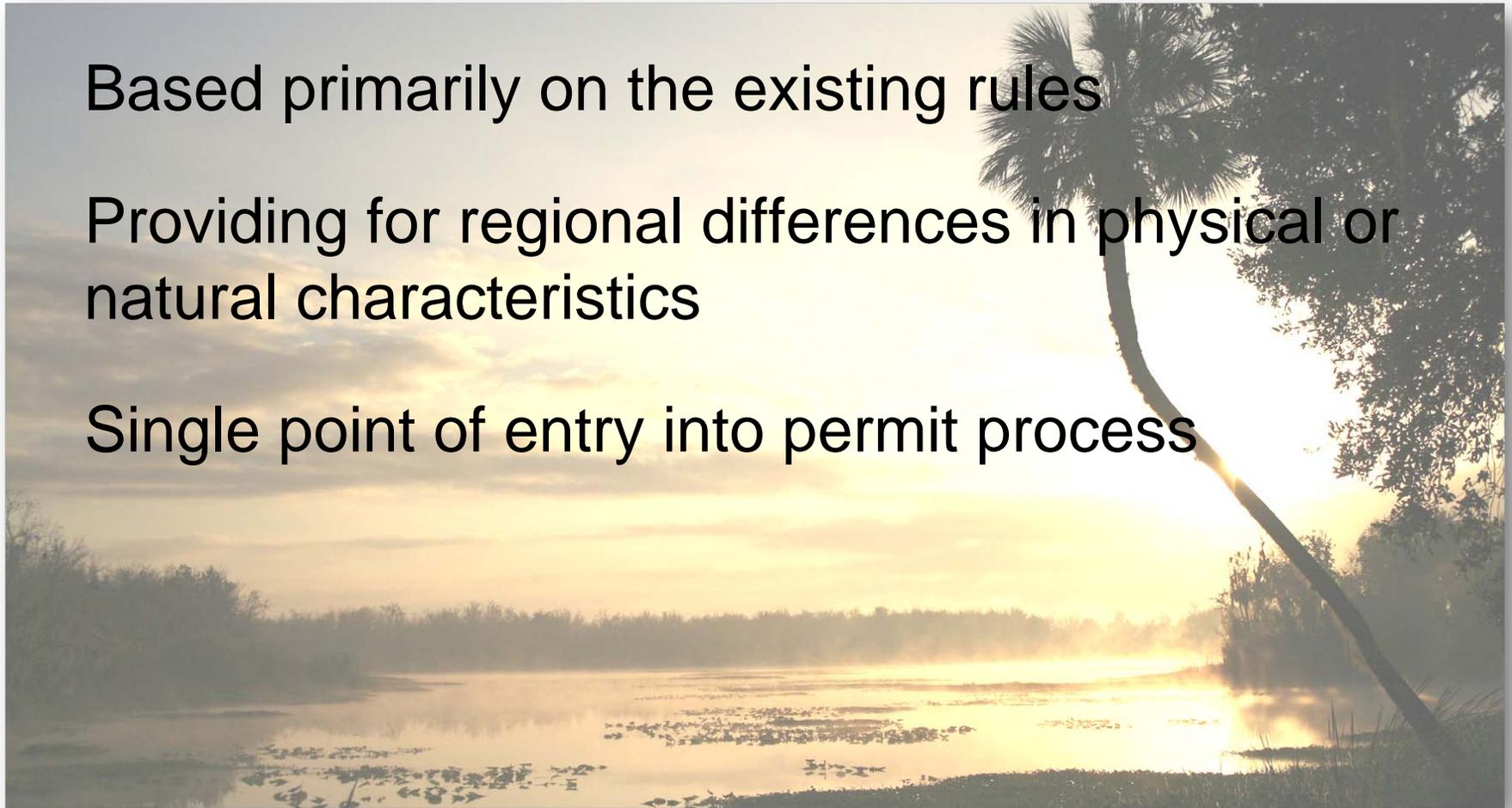


Solution: Statewide ERP Rule

Based primarily on the existing rules

Providing for regional differences in physical or natural characteristics

Single point of entry into permit process



Questions?

Jeff Littlejohn, P.E.
Deputy Secretary for Regulatory Programs
Florida Department of Environmental Protection
(850) 245-2036

Jeff.Littlejohn@dep.state.fl.us



THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)



Date _____

Bill Number _____

Barcode _____

Name Jeff Littlejohn

Phone (850) 245-2140

Address 3900 Commonwealth

E-mail _____

Street

Tallahassee FL 32399

City

State

Zip

Job Title Deputy Secretary

Speaking: For Against Information

Appearing at request of Chair

Subject Environmental Resource Permitting

Representing DEP

Lobbyist registered with Legislature: Yes

No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.



TAB 6

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

Date

Bill Number

Barcode

Name JE BOUZASSA

Phone 386-353-917

Address 801 LEWIS DR

E-mail _____

Street

DAYTONA BEACH

Job Title _____

City

State

Zip

Speaking: For Against Information Appearing at request of Chair

Subject ERP

Representing _____

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

✓

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

④

(Submit to Committee Chair or Administrative Assistant)

10-19-2011

Date

Bill Number

Barcode

Name Colleen M. Castille

Phone 850-222-1959

Address 200 West College Avenue #311B

E-mail

Street

Tallahassee

FL

32301

Zip

Job Title

City

State

CCastille@TheFiorentinoGroup.com

Speaking: For Against Information

Appearing at request of Chair

Subject Streamlined ERP

Representing Self

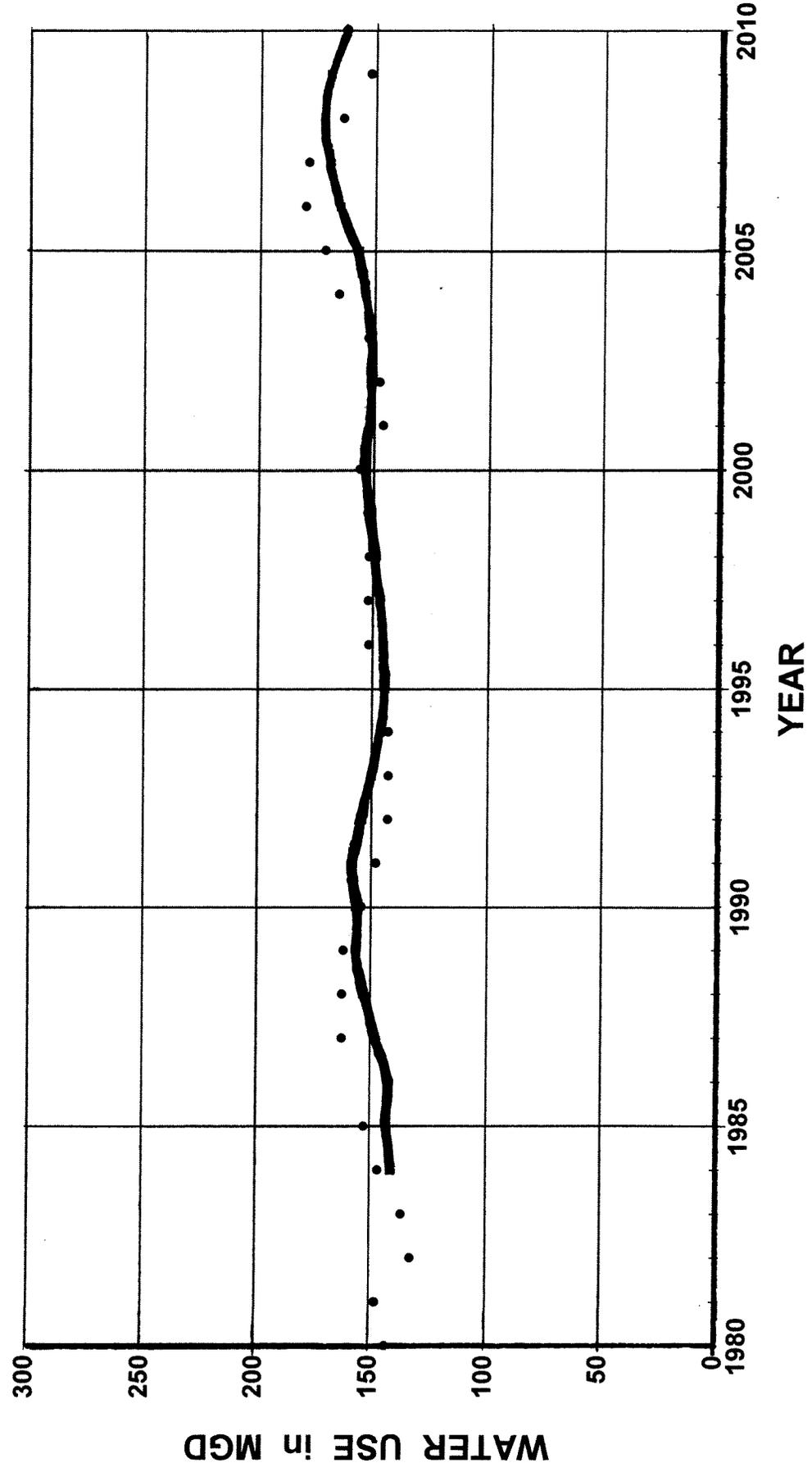
Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

DUVAL TOTAL WATER USE

1980 -- 2010

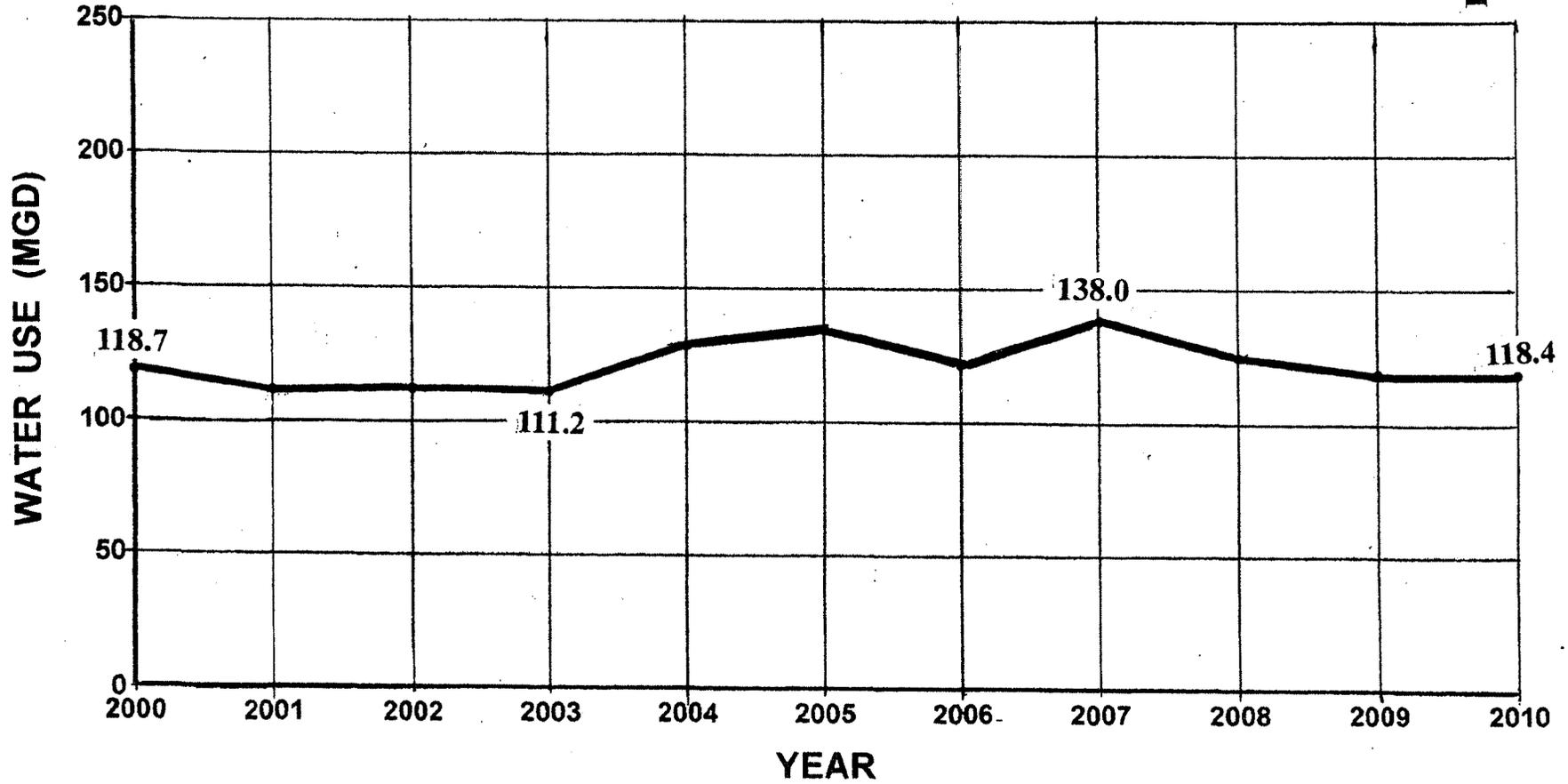


DUVAL WATER USE

2000 -- 2010

Public Supply
Population
778,879

Public Supply
Population
864,263 (+11%)



CourtSmart Tag Report

Room: EL 110

Case:

Caption: Environmental Protection and Conservation Committee Committee

Type:

Judge:

Started: 10/19/2011 12:34:11 PM

Ends: 10/19/2011 2:11:03 PM

Length: 01:36:53

12:34:13 PM Pledge
12:34:58 PM Chairs comments
12:35:14 PM CS/SB 182 by Sen Garcia
12:35:48 PM Senator Garcia explaining bill
12:36:16 PM Brian Pitts, Justice 2 Jesus
12:39:17 PM David Cullen, Sierra Club Florida
12:41:05 PM Tom MacVicar, Miami Dade Limestone Association
12:42:12 PM Senator Detert with question
12:43:12 PM Senator Garcia responding
12:43:48 PM Senator Detert with follow-up question
12:44:08 PM Sen, Garcia responding
12:44:29 PM Senator Sobel with questions
12:44:58 PM Senator Garcia close on bill
12:45:15 PM Roll call on CS/SB 182
12:45:27 PM CS/SB 182 passed
12:45:39 PM CS/SB 182 passed
12:45:41 PM SPB 7004 Fish and Wildlife Conservation
12:46:02 PM Senator Dean Explaining Bill
12:46:24 PM Senator Latvala with question
12:46:44 PM Lane Stephens, waives in support
12:47:09 PM Lane Stephens, waives in support
12:47:11 PM SeN. Olerich moves committee bill SPB 7004 without objection
12:47:30 PM SPB 7006 Premises Liability
12:47:43 PM Senator Dean explaining bill
12:48:32 PM Senator Latvala with question
12:48:51 PM Jackie Fauls, Game and Fish Commission
12:52:46 PM Senator Latvala with another question
12:53:04 PM Jackie Fauls responding
12:53:26 PM Senator Latvala with question
12:53:44 PM Jackie Fauls responding to question
12:54:31 PM Senator Oelrich with questions
12:55:58 PM Jackie Fauls responding
12:56:13 PM Senator Rich with question
12:56:38 PM Jackie Fauls responding to Sen. Rich's question
12:57:20 PM Senator Rich for followup question
12:58:03 PM Jackie Fauls responding to question
12:58:36 PM Senator Sobel with question re: Liability
12:59:33 PM Jackie Fauls responding
12:59:59 PM General Counsel for FWC
1:00:37 PM Senator Sobel with follow up
1:01:02 PM General Counsel responding
1:01:18 PM Senator Detert with question
1:02:17 PM Jackie Fauls responding
1:02:31 PM General COnsel responding to Senator Detert's question
1:02:51 PM Senator Detert with question and comment
1:03:03 PM Senator Oelrich with comment and discussion
1:04:42 PM Senator Dean with comments
1:05:14 PM Lane Stephens waives in support
1:05:29 PM Paul Jess, Florida Justice Association
1:07:54 PM Senator Dean with comments
1:09:01 PM Brian Pitts, Justice 2 Jesus
1:12:51 PM Senator Dean

1:12:54 PM Senator Latvala moved to submit as Committee Bill
1:13:10 PM Mandatory Review 2012-305, Open Government Sunset Review
1:13:44 PM Cristina Wiggins, presenting Mandatory Review
1:14:08 PM Cristina Wiggins, presenting Mandatory Review
1:14:28 PM Senator Latvala with question
1:14:36 PM Senator Oelrich with question
1:14:56 PM Senator Dean with comments
1:15:08 PM Senator Oelrich moves to direct staff to prepare bill for next meeting
1:15:24 PM Suwannee River District Budget Presentation
1:15:40 PM Steve Minnis, Governmental Affairs Director
1:27:06 PM Senator Oelrich with questions
1:27:59 PM Steve Minnis, SRWMS responding
1:29:15 PM Senator Oelrich with questions
1:30:33 PM Senator Dean with question
1:30:44 PM Steve Minnis, SRWMD
1:31:54 PM Senator Oelrich asking questions and comments
1:32:27 PM Steve Minnis, SWRMD responding
1:32:47 PM Senator Oelrich commenting and questions
1:33:25 PM Senator Dean with comments and direction
1:34:04 PM Steve Minnis
1:34:36 PM Senator Dean comments
1:35:02 PM Tab 6 - DEP Statewide Environmental Resource Permit
1:35:19 PM Jeff Littlejohn, Deputy Secretary, DEP
1:50:23 PM Senator Dean with a question of Mr. Littlejohn
1:51:18 PM Senator Dean clarifying question
1:52:27 PM Jeff Littlejohn, Deputy Secretary responding to Sen. Dean's comments
1:54:41 PM Senator Dean asking question
1:55:42 PM Senator Latvala with question
1:57:20 PM Jeff Littlejohn responding
1:57:52 PM Senator Latvala with comments
2:00:02 PM Senator Dean with comments
2:01:35 PM Joe Bourassa speaking
2:04:57 PM Collen Castel speaking
2:06:33 PM Senator Oelrich with comment
2:07:06 PM Senator Dean with comments
2:07:22 PM Senator Dean with comments
2:07:48 PM Senator Rich for comments re: SPB's
2:08:34 PM Senate Bill is concerned with SPB 7006
2:08:51 PM Senator Oelrich with comments
2:09:31 PM Senator Sobel with comments re: SPB 7006
2:10:02 PM Senator Jones re: septic tank status
2:10:24 PM Senator Dean responding to Sen. Jones question re septic tanks
2:10:45 PM Senator Latvala moves to rise
2:10:53 PM Adjourn