

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

**MEETING DATE:** Wednesday, February 5, 2014

**TIME:** 2:00 —4:00 p.m.

**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Dean, Chair; Senator Abruzzo, Vice Chair; Senators Altman, Bullard, Gardiner, Grimsley, Latvala, Simpson, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 194</b> Agriculture / Latvala (Identical CS/H 47)	Spiny Lobster; Providing penalties for certain violations relating to possession of spiny lobster, etc.  AG     01/13/2014 Fav/CS EP     02/05/2014 Favorable CJ	Favorable Yeas 8 Nays 0
2	<b>SB 586</b> Altman (Similar H 325)	Brownfields; Revising legislative intent with regard to community revitalization in certain areas; revising procedures for designation of brownfield areas by local governments; providing procedures for adoption of a resolution; providing requirements for notice and public hearings; authorizing local governments to use a term other than "brownfield area" when naming such areas; providing an exemption from liability for property damages for entities that execute and implement certain brownfield site rehabilitation agreements, etc.  EP     02/05/2014 Fav/CS CA JU	Fav/CS Yeas 7 Nays 0

Other related meeting documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

---

BILL: CS/SB 586

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Altman

SUBJECT: Brownfields

DATE: February 6, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	Fav/CS
2.			CA	
3.			JU	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 586 clarifies procedures for brownfield designation under the Brownfields Redevelopment Act. The bill provides additional liability protection for individuals responsible for rehabilitating brownfield sites.

**II. Present Situation:**

**The Brownfields Redevelopment Act**

The term “brownfield” came into existence in the 1970s and originally referred to any previously developed property, regardless of any contamination issues. The term, as it is currently used, originated in 1992 during a U.S. Congressional field hearing and is defined by the U.S. Environmental Protection Agency (EPA) as, “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”<sup>1</sup> In 1995, the EPA created the Brownfields Program in order to manage contaminated property through site remediation and redevelopment. The program was designed to provide local communities access to federal funds allocated for

---

<sup>1</sup> Robert A. Jones and William F. Welsh, *Michigan Brownfield Redevelopment Innovation: Two Decades of Success*, (Sept. 2010), available at <http://www.miseagrant.umich.edu/downloads/focus/brownfields/10-201-EMU-Final-Report.pdf> (last visited Jan. 27, 2014).

redevelopment, including environmental assessments and cleanups, environmental health studies, and environmental training programs.<sup>2</sup>

In 1997, the Florida Legislature enacted the Brownfields Redevelopment Act (Act).<sup>3</sup> The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites in order to improve public health and reduce environmental hazards.<sup>4</sup> The Act required the Department of Environmental Protection (DEP) to adopt rules to determine site-specific investigation methods, clean-up methods, and clean-up target levels by incorporating risk based corrective action (RBCA) principles,<sup>5</sup> which it did in 1998.<sup>6</sup> In 2013, in an effort to provide consistency and consolidate the cleanup criteria rules, the DEP repealed Rule 62-785, Florida Administrative Code, and is currently merging the rules with Rule 62-780, Florida Administrative Code.

The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997. A person who successfully completes a brownfield site rehabilitation agreement (BSRA) is relieved from further liability for remediation of the contaminated site or sites to the state and to third parties.<sup>7</sup> The Act also provides protection from liability for contribution to any other party who has or may incur liability for cleanup of the contaminated site.<sup>8</sup> The Act does not limit the right of a third party, other than the state, to pursue an action for damages to property or person. An action may not require rehabilitation in excess of what is outlined in the approved BSRA, or required by the DEP or the local pollution control program.<sup>9</sup>

The Act provides lenders the same liability protections as program participants as long as the lender has not caused or contributed to the contamination of a brownfield site. The lender liability protections are provided to encourage financing of real-property transactions involving brownfield sites.<sup>10</sup>

The Act also created the brownfield redevelopment bonus refund to provide a refund to qualified businesses for new jobs that are created in a brownfield area.<sup>11</sup> The Act identifies specific

---

<sup>2</sup>The Florida Brownfields Association, *Brownfields 101*, available at <http://floridabrownfields.org/associations/11916/files/Brownfields101.pdf> (last visited Jan. 27, 2014).

<sup>3</sup> See ch. 97-277, Laws of Fla.

<sup>4</sup> DEP, *Florida Brownfields Redevelopment Act-1998 Annual Report*, available at [http://www.dep.state.fl.us/waste/quick\\_topics/publications/wc/brownfields/leginfo/1998/98final.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf) (last visited Jan. 27, 2014).

<sup>5</sup> ASTM International defines “risk based corrective action principles” as consistent decision-making processes for assessment and response to chemical releases. See <http://www.astm.org/Standards/E2081.htm> (last visited Jan. 27, 2014).

<sup>6</sup> See Rule 62-785, F.A.C.

<sup>7</sup>*Id.* “Brownfield site rehabilitation agreement (BSRA) means an agreement entered into between the person responsible for brownfield site rehabilitation and the DEP or a delegated local program. The BSRA shall at a minimum establish the time frames, schedules, and milestones for completion of site rehabilitation tasks and submission of technical reports, and other commitments or provisions pursuant to s. 376.80(5), F.S., and [Rule 62-780, F.A.C.]”

<sup>8</sup> Todd S. Davis, *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property*, 525 (2d ed. 2002).

<sup>9</sup> Section 376.82, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 288.107, F.S.

procedures and criteria for the designation of a brownfield area by local governments, counties, and municipalities.<sup>12</sup>

### **Economic Incentives**

In 1998, the Legislature passed SBs 244, 1202, and 1204, providing economic and financial incentives to promote the redevelopment of brownfield areas.<sup>13</sup> SB 1202 created the Brownfield Area Loan Guarantee Program, which authorizes up to five years of state loan guarantees for redevelopment and applies to 50 percent of the primary lender loan.<sup>14</sup> The loan guarantee applies to 75 percent of the lender loan if the brownfield area redevelopment is for “affordable” housing.<sup>15</sup> SB 244 authorized a voluntary cleanup tax credit of up to 35 percent of the costs of voluntary cleanup activity of brownfield areas with a maximum allowable amount of \$250,000 per site per year.<sup>16</sup> SB 1204 authorized the Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund to facilitate the redevelopment of properties that may be more difficult to redevelop due to various liens on the property or complications from bankruptcy. The trust fund was created to help clear prior liens on the property through the negotiation process. The loans would then be repaid by the resale of the brownfield property and other activities that may have enhanced the property’s value.<sup>17</sup> This trust fund was never capitalized or used for its intended purpose and was later repealed.<sup>18</sup>

In 2006, the Legislature passed HB 7131, which substantially increased the economic and financial incentives for redevelopment of brownfield areas and repealed the Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund.<sup>19</sup> The voluntary clean-up tax credit increased from 35 to 50 percent, which may be applied against intangible property tax and corporate income tax for the remediation of the brownfield area with a maximum allowable amount of \$500,000 per year per site. The Brownfield Areas Loan Guarantee Program increased from 10 to 25 percent. The percentage of tax credit that may be received during the final year of cleanup was increased from 10 to 25 percent and the amount was increased from \$50,000 to \$500,000. The total amount of tax credits that may be granted for brownfield cleanup was increased from \$2 million annually to \$5 million annually. The law also provides incentives for cleaning unlicensed or historic solid waste dumpsites and requires Enterprise Florida, Inc., to market brownfields for redevelopment and job growth.<sup>20</sup>

---

<sup>12</sup> See ss. 376.80, 125.66, and 166.041, F.S., respectively.

<sup>13</sup> See chs. 98-198, 98-75, and 98-118, Laws of Fla., respectively.

<sup>14</sup> Section 376.86, F.S.

<sup>15</sup> “Affordable” housing, as defined in s. 420.0004, F.S., means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of median adjusted gross annual income for the households as indicated in ss. 420.0004(9), (11), (12), or (17), F.S.

<sup>16</sup> Section 220.1845, F.S.

<sup>17</sup> See ch. 98-118, Laws of Fla.

<sup>18</sup> The Florida Senate, Comm. On Government Efficiency Appropriations, *Senate Bill CS/SB 1092 Staff Analysis*, (April 4, 2006), available at <http://archive.flsenate.gov/data/session/2006/Senate/bills/analysis/pdf/2006s1092.ge.pdf> (last visited Feb. 4, 2014).

<sup>19</sup> See ch. 2006-291, Laws of Fla.

<sup>20</sup> See ss. 196.012, 196.1995, 199.1055, 220.1845, 288.9015, 376.30781, 376.80, and 376.86, F.S. Sections 376.87 and 376.875, F.S., were repealed.

In 2008, the Legislature passed HB 527 providing additional tax credits for brownfield area developers.<sup>21</sup> The law allows a tax credit for the costs incurred to remove solid waste from a brownfield site. The tax credit applicant may claim 50 percent of the cost of solid waste removal, not to exceed \$500,000. An additional 25 percent of the total site rehabilitation costs, up to \$500,000, may be claimed if a health care facility is constructed on the brownfield site.<sup>22</sup>

The DEP must submit an annual report to the President of the Senate and Speaker of the House by August 1<sup>st</sup> each year. The annual report must include the number, locations and sizes of the brownfield sites that have been remediated or are currently being rehabilitated under the provisions of the Act.<sup>23</sup>

### **Brownfield Designation Procedures**

Currently, a local government that has jurisdiction over a proposed brownfield area is required to notify the DEP of the decision to designate the brownfield area for rehabilitation according to the Act. The notification must include a resolution containing a map of the proposed area and the parcels to be included in the brownfield designation. Municipalities and counties that propose to designate a brownfield area must do so according to the resolution adoption procedures outlined in ss. 166.041 and 125.66, F.S., respectively, and notice the public hearing according to ss. 166.041(3)(c)2. and 125.66(4)(b)2., F.S., respectively.<sup>24</sup>

The Act requires a local government that proposes to designate a brownfield area that is outside of a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project, to notify the DEP of the proposed designation. The notification must include a resolution that contains a map of the proposed area and the parcels to be included in the brownfield designation. The local government is also required to consider if the area warrants development, confirm the area is not too large, determine if the area has the potential for the private sector to participate in the rehabilitation, and determine whether the area has sites that can be used for recreation, cultural or historical preservation.<sup>25</sup>

The Act allows a local government to designate a brownfield area if the person who owns or controls a potential brownfield area is requesting the designation and has agreed to rehabilitate and redevelop the area. The redevelopment must provide an economic benefit to the area and create at least five permanent new jobs. The redevelopment of the proposed area must be consistent with the local comprehensive plan and be able to be permitted. Notice of the proposed designation must be provided to the residents of the area and published in a newspaper of local circulation. The person requesting the designation must also provide reasonable assurance of sufficient financial resources to complete the rehabilitation and redevelopment of the brownfield area and enter into a site rehabilitation agreement with the department or local pollution control program.<sup>26</sup>

---

<sup>21</sup> See ch. 2008-238, Laws of Fla.

<sup>22</sup> Section 376.30781, F.S.

<sup>23</sup> Section 376.85, F.S.

<sup>24</sup> Chapter 97-277, Laws of Fla.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

The Act also requires that if property owners within the proposed designation area requests in writing to the local government to have their properties removed from the designation, then the request must be granted.<sup>27</sup>

As of November 22, 2013, local governments have adopted 352 resolutions to officially designate brownfield areas and 190 BSRAs have been executed. A total of 69 Site Rehabilitation Completion Orders or “No Further Action” orders have been issued since the inception of the program for sites that have been remediated to levels protective of human health and the environment. The remaining sites are in some phase of site assessment or cleanup.<sup>28</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 376.78, F.S., to clarify that the redevelopment of a brownfield area within a community redevelopment area, empowerment zone, closed military base, or designated brownfield pilot project area has a positive impact on these areas. By specifying these areas, the bill prioritizes them over non-specified areas.

**Section 2** amends s. 376.80, F.S., to clarify, reorganize, and revise the procedures for the designation of a brownfield area for the purpose of rehabilitation under the Act.

The bill specifies the following procedures for the designation of a brownfield area:

- A local government with jurisdiction over the brownfield area must adopt a resolution to designate the proposed area.
- The local government must notify the DEP, and, if applicable, the local pollution control program within 30 days of the adoption of the resolution.
- The resolution must continue to include a detailed map of the parcels to be designated or a legal description of the parcels along with a less detailed map.
- Municipalities must adopt the resolution according to s. 166.041, F.S., and the procedures for public hearings must comply with s. 166.041(3)(c)2, F.S.
- Counties must adopt the resolution according to s. 125.66, F.S., and the procedures for the public hearings must comply with s. 125.66(4)(b), F.S.
- Property owners within the proposed brownfield area who make written requests to have their properties removed from the designation before the adoption of the resolution must be granted the request.

The bill specifies that if a designation is proposed by a local government that has jurisdiction over the area and the area is located outside an existing community redevelopment area, or if designation is proposed by a non-governmental entity, then the following public hearing and notification procedures are required:

- At least one of the required public hearings must be conducted as close to the proposed area as possible to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic development, and residents’ considerations.

---

<sup>27</sup> *Id.*

<sup>28</sup> DEP, *Senate Bill 586 Agency Analysis* (Jan. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

- Notice of the public hearing must be published in a newspaper of general circulation, published in ethnic newspapers or community bulletins, posted in the affected area, and announced at a scheduled meeting of the local governing body held prior to the public hearing.
- At the public hearing, the local government must consider whether the proposed brownfield area:
  - Warrants development;
  - Covers an overly large area;
  - Has the potential for the private sector to participate in rehabilitation; and
  - Contains sites that may be used for recreational open space, cultural, or historical preservation purposes.

The bill specifies that if the designation is proposed by a local government that has jurisdiction over the area and the area is located inside an existing community redevelopment area, an enterprise zone, an empowerment zone, a closed military base, or a designated brownfield pilot project, then the public hearing considerations outlined above are not required. However, the local government must comply with the notification and resolution adoption procedures outlined earlier.

The bill specifies that if the designation is proposed by individuals, corporations, partnerships, limited liability corporations, community-based organizations, not-for-profit corporations, or other non-governmental entities, then the following public hearing and notification procedures are required:

- A public hearing must be conducted as close to the proposed area as possible to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments, and local residents' considerations.
- Notice of the public hearing must be published in a newspaper of general circulation, published in an ethnic newspaper or community bulletin, posted in the affected area, and announced at a scheduled meeting of the local governing body held prior to the public hearing.
- The person proposing the designation must also meet the following criteria:
  - The person owns or controls the proposed area;
  - The rehabilitation and redevelopment of the proposed area will be economically beneficial and include the creation of at least five new permanent jobs;
  - The redevelopment is consistent with the local comprehensive plan and is able to be permitted;
  - The person has provided reasonable assurance of sufficient financial resources to complete the rehabilitation and redevelopment of the brownfield area; and
  - The person must enter into a site rehabilitation agreement with the DEP or local pollution control program. The person is entitled to negotiate the terms of the agreement.

The bill specifies that a local government that designates a brownfield area according to these procedures is not required to use the term "brownfield area" within the name of the brownfield area designated by the local government. This is to ensure that the public has proper notice that a brownfield area is being proposed.

**Section 3** amends s. 376.82, F.S., to revise the liability protection for a person who executes and implements a successful BSRA to include liability protection for:

- Claims of any person for property damage;
- Diminished value of real property or improvements;
- Lost or delayed rent, sale, or use of real property or improvements; and
- The stigma to real property or improvements caused by the contamination that was addressed in the BSRA.

The liability protection applies to causes of action occurring on or after July 1, 2014. The bill specifies that the liability protection does not apply to a person who commits fraud in demonstrating site conditions, in completing a site rehabilitation agreement, or who exacerbates contamination of a property subject to a BSRA in violation of applicable laws, which causes property damage.

**Section 4** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill eliminates the right of a third party to pursue an action for property damages, unless a person commits fraud in demonstrating site conditions, in completing a site rehabilitation agreement, or who exacerbates contamination of a property subject to a BSRA in violation of applicable laws. The elimination of this legal remedy may harm third parties whose properties are damaged. However, individuals, corporations, community-based organizations, and not-for-profit corporations proposing to designate brownfield areas should benefit from this limitation of liability provision. The impacts are too remote to determine at this time.

C. **Government Sector Impact:**

Local governments may incur costs associated with damages to public property that has been impacted by contamination from a brownfield site due to the limitation of liability provisions in the bill.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 376.78, 376.80, and 376.82.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**CS by Environmental Preservation and Conservation on February 5, 2014:**

The committee substitute:

- Resolves the technical deficiency that was present in the bill by requiring the municipalities and counties to adhere to the public hearing procedures outlined in ss. 166.041(3)(c)2. and 125.66(4)(b), F.S., respectively;
- Resolves the technical deficiency that was present in the bill by eliminating the conflicting newspaper publication size requirement; and
- Allows the local government that designates a brownfield area to eliminate the term “brownfield area” within the name of the brownfield area once it has been designated by the local government.

B. **Amendments:**

None.



674670

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/05/2014	.	
	.	
	.	
	.	

---

The Committee on Environmental Preservation and Conservation  
(Altman) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (8) of section 376.78, Florida  
Statutes, is amended to read:

376.78 Legislative intent.—The Legislature finds and  
declares the following:

(8) The existence of brownfields within a community may  
contribute to, or may be a symptom of, overall community



674670

11 decline, including issues of human disease and illness, crime,  
12 educational and employment opportunities, and infrastructure  
13 decay. The environment is an important element of quality of  
14 life in any community, along with economic opportunity,  
15 educational achievement, access to health care, housing quality  
16 and availability, provision of governmental services, and other  
17 socioeconomic factors. Brownfields redevelopment, properly done,  
18 can be a significant element in community revitalization,  
19 especially within community redevelopment areas, enterprise  
20 zones, empowerment zones, closed military bases, or designated  
21 brownfield pilot project areas.

22 Section 2. Subsections (1) and (2) of section 376.80,  
23 Florida Statutes, are amended, and subsection (12) is added to  
24 that section, to read:

25 376.80 Brownfield program administration process.—

26 (1) The following general procedures apply to brownfield  
27 designations:

28 (a) The local government with jurisdiction over a proposed  
29 brownfield area shall designate such area pursuant to this  
30 section.

31 (b) For a brownfield area designation proposed by:

32 1. The jurisdictional local government, the designation  
33 criteria under paragraph (2) (a) apply unless the local  
34 government proposes to designate a brownfield area within a  
35 specified redevelopment area as provided in paragraph (2) (b).

36 2. Any person other than a governmental entity, including,  
37 but not limited to, individuals, corporations, partnerships,  
38 limited liability companies, community-based organizations, or  
39 not-for-profit corporations, the designation criteria under



674670

40 paragraph (2)(c) apply.

41 (c) Except as otherwise provided, the following provisions  
42 apply to all proposed brownfield area designations:

43 1. Notification to the department following adoption.—A  
44 local government with jurisdiction over the brownfield area must  
45 notify the department, and, if applicable, the local pollution  
46 control program under s. 403.182, of its decision to designate a  
47 brownfield area for rehabilitation for the purposes of ss.  
48 376.77-376.86. The notification must include a resolution  
49 adopted<sup>7</sup> by the local government body. The local government  
50 shall notify the department and, if applicable, the local  
51 pollution control program under s. 403.182, of the designation  
52 within 30 days after adoption of the resolution.

53 2. Resolution adoption.—The brownfield area designation  
54 must be carried out by a resolution adopted by the  
55 jurisdictional local government, ~~to~~ which includes ~~is attached~~ a  
56 map adequate to clearly delineate exactly which parcels are to  
57 be included in the brownfield area or alternatively a less-  
58 detailed map accompanied by a detailed legal description of the  
59 brownfield area. For municipalities, the governing body shall  
60 adopt the resolution in accordance with the procedures outlined  
61 in s. 166.041, except that the procedures for the public  
62 hearings on the proposed resolution must be in the form  
63 established in s. 166.041(3)(c)2. For counties, the governing  
64 body shall adopt the resolution in accordance with the  
65 procedures outlined in s. 125.66, except that the procedures for  
66 the public hearings on the proposed resolution must be in the  
67 form established in s. 125.66(4)(b).

68 3. Right to be removed from proposed brownfield area.—If a



674670

69 property owner within the area proposed for designation by the  
70 local government requests in writing to have his or her property  
71 removed from the proposed designation, the local government  
72 shall grant the request. ~~For municipalities, the governing body~~  
73 ~~shall adopt the resolution in accordance with the procedures~~  
74 ~~outlined in s. 166.041, except that the notice for the public~~  
75 ~~hearings on the proposed resolution must be in the form~~  
76 ~~established in s. 166.041(3)(c)2. For counties, the governing~~  
77 ~~body shall adopt the resolution in accordance with the~~  
78 ~~procedures outlined in s. 125.66, except that the notice for the~~  
79 ~~public hearings on the proposed resolution shall be in the form~~  
80 ~~established in s. 125.66(4)(b)2.~~

81 4. Notice and public hearing requirements for designation  
82 of a proposed brownfield area outside a redevelopment area or by  
83 a nongovernmental entity.—Compliance with the following  
84 provisions is required before designation of a proposed  
85 brownfield area under paragraph (2)(a) or paragraph (2)(c):

86 a. At least one of the required public hearings shall be  
87 conducted as close as is reasonably practicable to the area to  
88 be designated to provide an opportunity for public input on the  
89 size of the area, the objectives for rehabilitation, job  
90 opportunities and economic developments anticipated,  
91 neighborhood residents' considerations, and other relevant local  
92 concerns.

93 b. Notice of a public hearing must be made in a newspaper  
94 of general circulation in the area, must be made in ethnic  
95 newspapers or local community bulletins, must be posted in the  
96 affected area, and must be announced at a scheduled meeting of  
97 the local governing body before the actual public hearing.



674670

98           (2) (a) Local government-proposed brownfield area  
99 designation outside specified redevelopment areas.—If a local  
100 government proposes to designate a brownfield area that is  
101 outside a community redevelopment area ~~areas~~, enterprise zone  
102 ~~zones~~, empowerment zone ~~zones~~, closed military base ~~bases~~, or  
103 designated brownfield pilot project area ~~areas~~, the local  
104 government shall provide notice, adopt the resolution, and  
105 conduct ~~the~~ public hearings pursuant to paragraph ~~in accordance~~  
106 ~~with the requirements of subsection (1) (c)~~, ~~except at least one~~  
107 ~~of the required public hearings shall be conducted as close as~~  
108 ~~reasonably practicable to the area to be designated to provide~~  
109 ~~an opportunity for public input on the size of the area, the~~  
110 ~~objectives for rehabilitation, job opportunities and economic~~  
111 ~~developments anticipated, neighborhood residents'~~  
112 ~~considerations, and other relevant local concerns. Notice of the~~  
113 ~~public hearing must be made in a newspaper of general~~  
114 ~~circulation in the area and the notice must be at least 16~~  
115 ~~square inches in size, must be in ethnic newspapers or local~~  
116 ~~community bulletins, must be posted in the affected area, and~~  
117 ~~must be announced at a scheduled meeting of the local governing~~  
118 ~~body before the actual public hearing. At a public hearing to~~  
119 designate the proposed brownfield area ~~In determining the areas~~  
120 ~~to be designated~~, the local government must consider:

- 121           1. Whether the brownfield area warrants economic  
122 development and has a reasonable potential for such activities;
- 123           2. Whether the proposed area to be designated represents a  
124 reasonably focused approach and is not overly large in  
125 geographic coverage;
- 126           3. Whether the area has potential to interest the private



674670

127 sector in participating in rehabilitation; and

128 4. Whether the area contains sites or parts of sites  
129 suitable for limited recreational open space, cultural, or  
130 historical preservation purposes.

131 (b) Local government-proposed brownfield area designation  
132 within specified redevelopment areas.—Paragraph (a) does not  
133 apply to a proposed brownfield area if the local government  
134 proposes to designate the brownfield area inside a community  
135 redevelopment area, enterprise zone, empowerment zone, closed  
136 military base, or designated brownfield pilot project area and  
137 the local government complies with paragraph (1) (c).

138 (c) ~~(b)~~ Brownfield area designation proposed by persons  
139 other than a governmental entity.—For designation of a  
140 brownfield area that is proposed by a person other than the  
141 local government, the local government with jurisdiction over  
142 the proposed brownfield area shall provide notice and adopt a  
143 resolution to designate the a brownfield area pursuant to  
144 paragraph (1) (c) if, at the public hearing to adopt the  
145 resolution, the person establishes all of the following ~~under~~  
146 the provisions of this act provided that:

147 1. A person who owns or controls a potential brownfield  
148 site is requesting the designation and has agreed to  
149 rehabilitate and redevelop the brownfield site.†

150 2. The rehabilitation and redevelopment of the proposed  
151 brownfield site will result in economic productivity of the  
152 area, along with the creation of at least 5 new permanent jobs  
153 at the brownfield site that are full-time equivalent positions  
154 not associated with the implementation of the brownfield site  
155 rehabilitation agreement and that are not associated with



674670

156 redevelopment project demolition or construction activities  
157 pursuant to the redevelopment of the proposed brownfield site or  
158 area. However, the job creation requirement does ~~shall~~ not apply  
159 to the rehabilitation and redevelopment of a brownfield site  
160 that will provide affordable housing as defined in s. 420.0004  
161 or the creation of recreational areas, conservation areas, or  
162 parks.†

163 3. The redevelopment of the proposed brownfield site is  
164 consistent with the local comprehensive plan and is a  
165 permittable use under the applicable local land development  
166 regulations.†

167 4. Notice of the proposed rehabilitation of the brownfield  
168 area has been provided to neighbors and nearby residents of the  
169 proposed area to be designated pursuant to paragraph (1)(c), and  
170 the person proposing the area for designation has afforded to  
171 those receiving notice the opportunity for comments and  
172 suggestions about rehabilitation. Notice pursuant to this  
173 subparagraph ~~must be made in a newspaper of general circulation~~  
174 ~~in the area, at least 16 square inches in size, and the notice~~  
175 ~~must be posted in the affected area.† and~~

176 5. The person proposing the area for designation has  
177 provided reasonable assurance that he or she has sufficient  
178 financial resources to implement and complete the rehabilitation  
179 agreement and redevelopment of the brownfield site.

180 (d)-(e) Negotiation of brownfield site rehabilitation  
181 agreement.—The designation of a brownfield area and the  
182 identification of a person responsible for brownfield site  
183 rehabilitation simply entitles the identified person to  
184 negotiate a brownfield site rehabilitation agreement with the



674670

185 department or approved local pollution control program.

186 (12) A local government that designates a brownfield area  
187 pursuant to this section is not required to use the term  
188 "brownfield area" within the name of the brownfield area  
189 designated by the local government.

190 Section 3. Paragraphs (a) and (b) of subsection (2) of  
191 section 376.82, Florida Statutes, are amended to read:

192 376.82 Eligibility criteria and liability protection.—

193 (2) LIABILITY PROTECTION.—

194 (a) Any person, including his or her successors and  
195 assigns, who executes and implements to successful completion a  
196 brownfield site rehabilitation agreement, is ~~shall be~~ relieved  
197 of:

198 1. Further liability for remediation of the contaminated  
199 site or sites to the state and to third parties. ~~and of~~

200 2. Liability in contribution to any other party who has or  
201 may incur cleanup liability for the contaminated site or sites.

202 3. Liability for claims of any person for property damage,  
203 including, but not limited to, diminished value of real property  
204 or improvements; lost or delayed rent, sale, or use of real  
205 property or improvements; or stigma to real property or  
206 improvements caused by contamination addressed by a brownfield  
207 site rehabilitation agreement. Notwithstanding any other  
208 provision of this chapter, this subparagraph applies to causes  
209 of action accruing on or after July 1, 2014. This subparagraph  
210 does not apply to a person who commits fraud in demonstrating  
211 site conditions or completing site rehabilitation of a property  
212 subject to a brownfield site rehabilitation agreement or who  
213 exacerbates contamination of a property subject to a brownfield



674670

214 site rehabilitation agreement in violation of applicable laws,  
215 which causes property damages.

216 (b) This section does not limit ~~shall not be construed as a~~  
217 ~~limitation on~~ the right of a third party other than the state to  
218 pursue an action for damages to persons for bodily harm ~~property~~  
219 ~~or person~~; however, such an action may not compel site  
220 rehabilitation in excess of that required in the approved  
221 brownfield site rehabilitation agreement or otherwise required  
222 by the department or approved local pollution control program.  
223 Section 4. This act shall take effect July 1, 2014.

224  
225 ===== T I T L E A M E N D M E N T =====

226 And the title is amended as follows:

227 Delete everything before the enacting clause  
228 and insert:

229 A bill to be entitled  
230 An act relating to brownfields; amending s. 376.78,  
231 F.S.; revising legislative intent with regard to  
232 community revitalization in certain areas; amending s.  
233 376.80, F.S.; revising procedures for designation of  
234 brownfield areas by local governments; providing  
235 procedures for adoption of a resolution; providing  
236 requirements for notice and public hearings;  
237 authorizing local governments to use a term other than  
238 "brownfield area" when naming such areas; amending s.  
239 376.82, F.S.; providing an exemption from liability  
240 for property damages for entities that execute and  
241 implement certain brownfield site rehabilitation  
242 agreements; providing for applicability; providing an



674670

243           effective date.

244

245

246

247

248

By Senator Altman

16-00222A-14

2014586\_\_

1                   A bill to be entitled  
2       An act relating to brownfields; amending s. 376.78,  
3       F.S.; revising legislative intent with regard to  
4       community revitalization in certain areas; amending s.  
5       376.80, F.S.; revising procedures for designation of  
6       brownfield areas by local governments; providing  
7       procedures for adoption of a resolution; providing  
8       requirements for notice and public hearings;  
9       authorizing local governments to use a term other than  
10      "brownfield area" when naming such areas; amending s.  
11      376.82, F.S.; providing an exemption from liability  
12      for property damages for entities that execute and  
13      implement certain brownfield site rehabilitation  
14      agreements; providing for applicability; providing an  
15      effective date.

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

18  
19       Section 1. Subsection (8) of section 376.78, Florida  
20 Statutes, is amended to read:

21       376.78 Legislative intent.—The Legislature finds and  
22 declares the following:

23       (8) The existence of brownfields within a community may  
24 contribute to, or may be a symptom of, overall community  
25 decline, including issues of human disease and illness, crime,  
26 educational and employment opportunities, and infrastructure  
27 decay. The environment is an important element of quality of  
28 life in any community, along with economic opportunity,  
29 educational achievement, access to health care, housing quality

16-00222A-14

2014586\_\_

30 and availability, provision of governmental services, and other  
31 socioeconomic factors. Brownfields redevelopment, properly done,  
32 can be a significant element in community revitalization,  
33 especially within community redevelopment areas, enterprise  
34 zones, empowerment zones, closed military bases, or designated  
35 brownfield pilot project areas.

36 Section 2. Subsections (1) and (2) of section 376.80,  
37 Florida Statutes, are amended, and subsection (12) is added to  
38 that section, to read:

39 376.80 Brownfield program administration process.—

40 (1) The following general procedures apply to brownfield  
41 designations:

42 (a) The local government with jurisdiction over a proposed  
43 brownfield area shall designate such area pursuant to this  
44 section.

45 (b) For a brownfield area designation proposed by:

46 1. The jurisdictional local government, the designation  
47 criteria under paragraph (2) (a) apply unless the local  
48 government proposes to designate a brownfield area within a  
49 specified redevelopment area as provided in paragraph (2) (b).

50 2. Any person other than a governmental entity, including,  
51 but not limited to, individuals, corporations, partnerships,  
52 limited liability companies, community-based organizations, or  
53 not-for-profit corporations, the designation criteria under  
54 paragraph (2) (c) apply.

55 (c) Except as otherwise provided, the following provisions  
56 apply to all proposed brownfield area designations:

57 1. Notification to the department following adoption.—A  
58 local government with jurisdiction over the brownfield area must

16-00222A-14

2014586\_\_

59 notify the department, and, if applicable, the local pollution  
60 control program under s. 403.182, of its decision to designate a  
61 brownfield area for rehabilitation for the purposes of ss.  
62 376.77-376.86. The notification must include a resolution  
63 adopted, by the local government body. The local government  
64 shall notify the department and, if applicable, the local  
65 pollution control program under s. 403.182, of the designation  
66 within 30 days after adoption of the resolution.

67 2. Resolution adoption.—The brownfield area designation  
68 must be carried out by a resolution adopted by the  
69 jurisdictional local government, to which includes is attached a  
70 map adequate to clearly delineate exactly which parcels are to  
71 be included in the brownfield area or alternatively a less-  
72 detailed map accompanied by a detailed legal description of the  
73 brownfield area. For municipalities, the governing body shall  
74 adopt the resolution in accordance with the procedures outlined  
75 in s. 166.041, except that the notice for the public hearings on  
76 the proposed resolution must be in the form established in s.  
77 166.041(3)(c)2. For counties, the governing body shall adopt the  
78 resolution in accordance with the procedures outlined in s.  
79 125.66, except that the notice for the public hearings on the  
80 proposed resolution must be in the form established in s.  
81 125.66(4)(b).

82 3. Right to be removed from proposed brownfield area.—If a  
83 property owner within the area proposed for designation by the  
84 local government requests in writing to have his or her property  
85 removed from the proposed designation, the local government  
86 shall grant the request. For municipalities, the governing body  
87 shall adopt the resolution in accordance with the procedures

16-00222A-14

2014586\_\_

88 ~~outlined in s. 166.041, except that the notice for the public~~  
89 ~~hearings on the proposed resolution must be in the form~~  
90 ~~established in s. 166.041(3)(c)2. For counties, the governing~~  
91 ~~body shall adopt the resolution in accordance with the~~  
92 ~~procedures outlined in s. 125.66, except that the notice for the~~  
93 ~~public hearings on the proposed resolution shall be in the form~~  
94 ~~established in s. 125.66(4)(b)2.~~

95 4. Notice and public hearing requirements for designation  
96 of a proposed brownfield area outside a redevelopment area or by  
97 a nongovernmental entity. Compliance with the following  
98 provisions is required before designation of a proposed  
99 brownfield area under paragraph (2)(a) or paragraph (2)(c):

100 a. At least one of the required public hearings shall be  
101 conducted as close as is reasonably practicable to the area to  
102 be designated to provide an opportunity for public input on the  
103 size of the area, the objectives for rehabilitation, job  
104 opportunities and economic developments anticipated,  
105 neighborhood residents' considerations, and other relevant local  
106 concerns.

107 b. Notice of the public hearing must be made in a newspaper  
108 of general circulation in the area, and the notice must be at  
109 least 16 square inches in size, must be published in ethnic  
110 newspapers or local community bulletins, must be posted in the  
111 affected area, and must be announced at a scheduled meeting of  
112 the local governing body before the actual public hearing.

113 (2)(a) Local government-proposed brownfield area  
114 designation outside specified redevelopment areas.—If a local  
115 government proposes to designate a brownfield area that is  
116 outside a community redevelopment area areas, enterprise zone

16-00222A-14

2014586\_\_

117 ~~zones, empowerment zone zones, closed military base bases, or~~  
118 ~~designated brownfield pilot project area areas, the local~~  
119 ~~government shall provide notice, adopt the resolution, and~~  
120 ~~conduct the public hearings pursuant to paragraph in accordance~~  
121 ~~with the requirements of subsection (1) (c), except at least one~~  
122 ~~of the required public hearings shall be conducted as close as~~  
123 ~~reasonably practicable to the area to be designated to provide~~  
124 ~~an opportunity for public input on the size of the area, the~~  
125 ~~objectives for rehabilitation, job opportunities and economic~~  
126 ~~developments anticipated, neighborhood residents'~~  
127 ~~considerations, and other relevant local concerns. Notice of the~~  
128 ~~public hearing must be made in a newspaper of general~~  
129 ~~circulation in the area and the notice must be at least 16~~  
130 ~~square inches in size, must be in ethnic newspapers or local~~  
131 ~~community bulletins, must be posted in the affected area, and~~  
132 ~~must be announced at a scheduled meeting of the local governing~~  
133 ~~body before the actual public hearing. At a public hearing to~~  
134 ~~designate the proposed brownfield area In determining the areas~~  
135 ~~to be designated, the local government must consider:~~

- 136 1. Whether the brownfield area warrants economic  
137 development and has a reasonable potential for such activities;  
138 2. Whether the proposed area to be designated represents a  
139 reasonably focused approach and is not overly large in  
140 geographic coverage;  
141 3. Whether the area has potential to interest the private  
142 sector in participating in rehabilitation; and  
143 4. Whether the area contains sites or parts of sites  
144 suitable for limited recreational open space, cultural, or  
145 historical preservation purposes.

16-00222A-14

2014586\_\_

146 (b) Local government-proposed brownfield area designation  
147 within specified redevelopment areas.—Paragraph (a) does not  
148 apply to a proposed brownfield area if the local government  
149 proposes to designate the brownfield area inside a community  
150 redevelopment area, enterprise zone, empowerment zone, closed  
151 military base, or designated brownfield pilot project area and  
152 the local government complies with paragraph (1)(c).

153 (c) ~~(b)~~ Brownfield area designation proposed by persons  
154 other than a governmental entity.—For designation of a  
155 brownfield area that is proposed by a person other than the  
156 local government, the ~~A~~ local government with jurisdiction over  
157 the proposed brownfield area shall provide notice and adopt a  
158 resolution to designate the ~~a~~ brownfield area pursuant to  
159 paragraph (1)(c) if, at the public hearing to adopt the  
160 resolution, the person establishes all of the following ~~under~~  
161 the provisions of this act provided that:

162 1. A person who owns or controls a potential brownfield  
163 site is requesting the designation and has agreed to  
164 rehabilitate and redevelop the brownfield site. ~~†~~

165 2. The rehabilitation and redevelopment of the proposed  
166 brownfield site will result in economic productivity of the  
167 area, along with the creation of at least 5 new permanent jobs  
168 at the brownfield site that are full-time equivalent positions  
169 not associated with the implementation of the brownfield site  
170 rehabilitation agreement and that are not associated with  
171 redevelopment project demolition or construction activities  
172 pursuant to the redevelopment of the proposed brownfield site or  
173 area. However, the job creation requirement does ~~shall~~ not apply  
174 to the rehabilitation and redevelopment of a brownfield site

16-00222A-14

2014586\_\_

175 that will provide affordable housing as defined in s. 420.0004  
176 or the creation of recreational areas, conservation areas, or  
177 parks.~~†~~

178 3. The redevelopment of the proposed brownfield site is  
179 consistent with the local comprehensive plan and is a  
180 permissible use under the applicable local land development  
181 regulations.~~†~~

182 4. Notice of the proposed rehabilitation of the brownfield  
183 area has been provided to neighbors and nearby residents of the  
184 proposed area to be designated pursuant to paragraph (1)(c), and  
185 the person proposing the area for designation has afforded to  
186 those receiving notice the opportunity for comments and  
187 suggestions about rehabilitation. Notice pursuant to this  
188 subparagraph must be made in a newspaper of general circulation  
189 in the area, at least 16 square inches in size, and the notice  
190 must be posted in the affected area.~~†~~~~and~~

191 5. The person proposing the area for designation has  
192 provided reasonable assurance that he or she has sufficient  
193 financial resources to implement and complete the rehabilitation  
194 agreement and redevelopment of the brownfield site.

195 (d)(e) Negotiation of brownfield site rehabilitation  
196 agreement.—The designation of a brownfield area and the  
197 identification of a person responsible for brownfield site  
198 rehabilitation simply entitles the identified person to  
199 negotiate a brownfield site rehabilitation agreement with the  
200 department or approved local pollution control program.

201 (12) A local government that designates a brownfield area  
202 pursuant to this section is not required to use the term  
203 "brownfield area" within the name of the brownfield area

16-00222A-14

2014586\_\_

204 proposed for designation by the local government.

205 Section 3. Paragraphs (a) and (b) of subsection (2) of  
206 section 376.82, Florida Statutes, are amended to read:

207 376.82 Eligibility criteria and liability protection.—

208 (2) LIABILITY PROTECTION.—

209 (a) Any person, including his or her successors and  
210 assigns, who executes and implements to successful completion a  
211 brownfield site rehabilitation agreement, is ~~shall be~~ relieved  
212 of:

213 1. Further liability for remediation of the contaminated  
214 site or sites to the state and to third parties. ~~and of~~

215 2. Liability in contribution to any other party who has or  
216 may incur cleanup liability for the contaminated site or sites.

217 3. Liability for claims of any person for property damage,  
218 including, but not limited to, diminished value of real property  
219 or improvements; lost or delayed rent, sale, or use of real  
220 property or improvements; or stigma to real property or  
221 improvements caused by contamination addressed by a brownfield  
222 site rehabilitation agreement. Notwithstanding any other  
223 provision of this chapter, this subparagraph applies to causes  
224 of action accruing on or after July 1, 2014. This subparagraph  
225 does not apply to a person who commits fraud in demonstrating  
226 site conditions or completing site rehabilitation of a property  
227 subject to a brownfield site rehabilitation agreement or who  
228 exacerbates contamination of a property subject to a brownfield  
229 site rehabilitation agreement in violation of applicable laws,  
230 which causes property damages.

231 (b) This section does not limit ~~shall not be construed as a~~  
232 ~~limitation on~~ the right of a third party other than the state to

16-00222A-14

2014586\_\_

233 pursue an action for damages to persons for bodily harm ~~property~~  
234 ~~or person~~; however, such an action may not compel site  
235 rehabilitation in excess of that required in the approved  
236 brownfield site rehabilitation agreement or otherwise required  
237 by the department or approved local pollution control program.

238 Section 4. This act shall take effect July 1, 2014.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

---

BILL: CS/SB 194

INTRODUCER: Agriculture Committee and Senator Latvala

SUBJECT: Spiny Lobster

DATE: February 4, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Halley</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Favorable</u>
3.	_____	_____	<u>CJ</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 194 prohibits the possession of spiny lobster during the closed season or, while on the water, being in possession of spiny lobster tails that have been separated from the body. Any exception would be granted by Fish and Wildlife Conservation Commission (FWC) rules. The bill provides penalties for violations of this act.

**II. Present Situation:**

The spiny lobster fishery is one of the most valuable fisheries in Florida. For the past five years, the dockside value of this fishery has totaled \$133.6 million. Trap theft, illegal sales, and poaching of spiny lobster results in a direct loss to legitimate commercial fishermen.

One hundred percent of the spiny lobster that is commercially harvested in the United States comes from Florida. Florida's commercial spiny lobster fishery is concentrated in South Florida, with approximately 90 percent of lobster harvested in the Florida Keys.

The spiny lobster fishery is jointly managed in federal waters by the Gulf of Mexico and the South Atlantic Fishery Management Councils. Most spiny lobster harvest, however, occurs in state waters, which are managed by the FWC. Regulations that have been implemented to ensure the long-term sustainability of the spiny lobster fishery include minimum size limits, closed seasons/areas, gear restrictions, and a trap limitation and permitting program.

In order to commercially harvest spiny lobster in Florida, a person must possess:

- a valid Saltwater Products License (SPL), which is Florida’s commercial fishing license,
- a restricted species (RS) endorsement, and
- either a commercial spiny lobster endorsement (a “C” endorsement) or a commercial divers permit (called a “CD” endorsement).<sup>1</sup>

Florida offers three types of SPLs depending on the needs of the fisherman. An “Individual SPL” authorizes a person to engage in commercial fishing activities from the shore or a vessel. This SPL is not tied to any one vessel and is issued in the individual’s name. A “Crew SPL” is also issued in an individual’s name and it authorizes the named individual to engage in commercial fishing activities from the shore or a vessel. It also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities under the license holder’s SPL. The final type of SPL is a “Vessel SPL.” This license is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. This license differs from the two previous SPLs because it is not issued in an individual’s name, but is rather tied to a specific vessel.<sup>2</sup>

The costs of various SPLs are listed in the following table.

<b>Saltwater Products Licenses</b>	<b>Cost</b>
Individual Resident	\$50.00
Individual Nonresident	\$200.00
Individual Alien	\$300.00
Crew Resident	\$150.00
Crew Nonresident	\$600.00
Crew Alien	\$900.00
Vessel Resident	\$100.00
Vessel Nonresident	\$400.00
Vessel Alien	\$600.00 <sup>3</sup>

A free RS is also required to commercially harvest spiny lobster, which the FWC lists as a restricted species. In order to acquire an RS, SPL holders must show that their annual income from landings during one of the three years prior to applying for the RS was either \$5,000 or 25 percent of the fisherman’s annual income. Reported income must be attributed to landings and

<sup>1</sup> FWC, *Commercial Regulations for Spiny Lobster (Crawfish)*, <http://myfwc.com/fishing/saltwater/commercial/spiny-lobster/> (last visited Feb. 4, 2014).

<sup>2</sup> FWC, *Commercial Saltwater Fishing New Applicants*, <http://myfwc.com/license/saltwater/commercial-fishing/new-applicants/#spl> (last visited Feb. 4, 2014).

<sup>3</sup> FWC, *Commercial Saltwater products License Fees*, <http://myfwc.com/license/saltwater/commercial-fishing/csl-fees/> (last visited Feb. 4, 2014).

sales of saltwater products to a Florida wholesale dealer, under the SPL, unless the commercial fisherman qualifies under a different provision or exception.<sup>4</sup>

The C endorsement allows fishermen to harvest lobsters with traps or bully nets. The use of traps requires FWC-issued trap certificates and current year trap tags, permanently affixed to each trap. There are no daily bag limits under the C endorsement, however, a daily vessel limit of 250 spiny lobsters applies when lobsters are harvested using bully nets. The C endorsement costs \$125 if the SPL holder has trap certificates. The C endorsement costs \$100 if the SPL holder is only fishing with bully nets.

A CD endorsement is required to commercially harvest lobster by diving, and can only be issued on a single vessel SPL. Harvesting lobster is limited to 250 lobster per day, per vessel in Broward, Dade, Monroe, Collier, and Lee Counties and adjoining federal waters with a CD endorsement. A CD endorsement may not be issued if the SPL holder has trap certificates. Rules concerning CD endorsements preclude any new CD endorsements from being issued. They are now only being renewed under specific circumstances.<sup>5</sup> The CD endorsement costs \$100.

Below are the numbers of commercial fishermen possessing a valid SPL, RS, and lobster endorsement in the past five years.

- FY 2008-2009 – 1,472
- FY 2009-2010 – 1,388
- FY 2010-2011 – 1,412
- FY 2011-2012 – 1,465
- FY 2012-2013 – 1,510

The commercial spiny lobster season runs August 6<sup>th</sup> through March 31<sup>st</sup>. Typically, a large proportion of landings occur in the first several months of the season followed by a steady decline the rest of the season. For example, in October many fishermen shift to harvesting stone crab, which contributes to decreased effort in the spiny lobster commercial fishery. This tends to happen for other species as the end of the commercial season for those species approaches.

In Florida waters, recreational harvesters may take lobsters during the 2-day “sport season,” which occurs each year on the last consecutive Wednesday and Thursday of July, and during the commercial spiny lobster season. During the 2-day sport season, up to 12 lobsters per harvester, per day may be taken except in Monroe County, where harvesters may only take six lobsters per day. Recreational harvesters are not permitted to use traps to harvest spiny lobsters. In addition to a recreational saltwater fishing license, a spiny lobster permit (also called a lobster stamp) is required to recreationally harvest lobster in all state waters. The costs of recreational saltwater fishing licenses, as well as the spiny lobster permit are in the following table:

<b>Resident Recreational Saltwater Fishing Licenses</b>	<b>Cost</b>
Annual Saltwater Fishing	\$17.00
Youth Saltwater Fishing	\$17.00

<sup>4</sup> FWC, *Qualifying for the Restricted Species Endorsement*, <http://myfwc.com/license/saltwater/commercial-fishing/qualifying-for-rs/> (last visited Feb. 4, 2014).

<sup>5</sup> See Rule 68b-24.0055, F.A.C.

5-Year Saltwater Fishing	\$79.00
Saltwater/Freshwater Fishing Combo	\$32.50
Saltwater/Freshwater/Hunting Combo	\$48.00
Saltwater Shoreline	Free
Gold Sportsman	\$100.00
Youth Gold Sportsman	\$100.00
5-Year Gold Sportsman	\$494.00
Military Gold Sportsman	\$20.00

<b>Non-Resident Saltwater Fishing Licenses</b>	<b>Cost</b>
Nonresident Annual Saltwater Fishing	\$47.00
Nonresident 3-Day Saltwater Fishing	\$17.00
Nonresident 7-Day Saltwater Fishing	\$30.00

<b>Spiny Lobster Permits</b>	<b>Cost</b>
Annual Spiny Lobster Permit	\$5.00
5-Year Spiny Lobster Permit (residents only)	\$25.00 <sup>6</sup>

During the past five fiscal years, approximately 140,000 to 150,000 recreational spiny lobster permits were sold annually.<sup>7</sup>

Sections 775.082 and 775.083, F.S., provide for penalties and fines for misdemeanors and felonies in Florida. Relevant penalties and fines are detailed in the following chart:

<b>Degree of Offense</b>	<b>Punishment</b>	<b>Fine</b>
2 <sup>nd</sup> Degree Misdemeanor	Imprisonment for up to 60 days.	Fine of up to \$500.
1 <sup>st</sup> Degree Misdemeanor	Imprisonment for up to one year.	Fine of up to \$1,000.
3 <sup>rd</sup> Degree Felony	Imprisonment for up to five years.	Fine of up to \$5,000.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 379.407, F.S., to prohibit the possession of spiny lobster during the closed season or, while on the water, being in possession of spiny lobster tails that have been separated from the body. The bill classifies such violations as major violations. The bill authorizes possession of such spiny lobster if allowed by FWC rule. The bill provides the following penalties for violations of this act:

- **First violation** – Second degree misdemeanor. If the violation involves 25 or more lobster, the violation is a first degree misdemeanor.
- **Second violation** – First degree misdemeanor and the possibility of license suspension for up to 90 days.

<sup>6</sup> FWC, *Recreational Saltwater licenses & Permits*, <http://myfwc.com/license/recreational/saltwater-fishing/> (last visited Feb. 4, 2014).

<sup>7</sup> FWC, *Senate Bill 194 Agency Analysis* (December 19, 2013) (on file with the Senate Agriculture Committee).

- **Third violation** – First degree misdemeanor with a six-month mandatory minimum prison term. The violator may be assessed a civil penalty of up to \$2,500 and the possibility of license suspension for up to six months.
- **Third violation within one year of second violation** – Third degree felony with a one-year mandatory minimum prison term. The violator is also assessed a civil penalty of \$5,000 and has all license privileges permanently revoked.
- **Fourth violation** – Third degree felony with a one-year mandatory minimum prison term. The violator is assessed a civil penalty of \$5,000 and has all license privileges permanently revoked.

**Section 2** amends s. 379.401, F.S., to conform a cross-reference.

**Section 3** provides that this act shall take effect July 1, 2014.

#### **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:

Violators of the provisions of this bill will be subject to significant additional penalties, fines, and imprisonment.

C. Government Sector Impact:

Indeterminate. There may be an initial increase in fines assessed due to the provisions of this act. There may also be an increase in incarceration costs for additional penalties in the bill mandating imprisonment.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 379.407 and 379.401.

**IX. Additional Information:**

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

**CS by Agriculture on January 13, 2014:**

The committee substitute:

- Deletes provisions pertaining to stone crab regulation;
- Classifies violations of the provisions of the bill as major violations; and
- Provides penalties for specified violations relating to possession of spiny lobster.

- B. **Amendments:**

None.

By the Committee on Agriculture; and Senator Latvala

575-01048-14

2014194c1

1                   A bill to be entitled  
2       An act relating to spiny lobster; amending s. 379.407,  
3       F.S.; providing penalties for certain violations  
4       relating to possession of spiny lobster; amending s.  
5       379.401, F.S.; conforming a cross-reference; providing  
6       an effective date.

7  
8   Be It Enacted by the Legislature of the State of Florida:

9  
10       Section 1. Subsections (5) through (8) of section 379.407,  
11       Florida Statutes, are renumbered as subsections (6) through (9),  
12       respectively, and a new subsection (5) is added to that section,  
13       to read:

14       379.407 Administration; rules, publications, records;  
15       penalties; injunctions.—

16       (5) PENALTIES FOR POSSESSION OF SPINY LOBSTER; CLOSED  
17       SEASON AND WRUNG TAILS.—It is a major violation under this  
18       section for any person, firm, or corporation to be in possession  
19       of spiny lobster during the closed season or, while on the  
20       water, to be in possession of spiny lobster tails that have been  
21       wrung or separated from the body, unless such possession is  
22       allowed by commission rule. Any person, firm, or corporation  
23       that violates this subsection is subject to penalties as  
24       follows:

25       (a) A first violation is a misdemeanor of the second  
26       degree, punishable as provided in s. 775.082 or s. 775.083. If  
27       the violation involves 25 or more lobster, the violation is a  
28       misdemeanor of the first degree, punishable as provided in s.  
29       775.082 or s. 775.083.

575-01048-14

2014194c1

30 (b) A second violation is a misdemeanor of the first  
31 degree, punishable as provided in s. 775.082 or s. 775.083, and  
32 such person is subject to a suspension of all license privileges  
33 under this chapter for a period not to exceed 90 days.

34 (c) A third violation is a misdemeanor of the first degree,  
35 punishable as provided in s. 775.082 or s. 775.083, with a  
36 mandatory minimum term of imprisonment of 6 months, and such  
37 person may be assessed a civil penalty of up to \$2,500 and is  
38 subject to a suspension of all license privileges under this  
39 chapter for a period not to exceed 6 months.

40 (d) A third violation within 1 year after a second  
41 violation is a felony of the third degree, punishable as  
42 provided in s. 775.082 or s. 775.083, with a mandatory minimum  
43 term of imprisonment of 1 year, and such person shall be  
44 assessed a civil penalty of \$5,000 and all license privileges  
45 under this chapter shall be permanently revoked.

46 (e) A fourth or subsequent violation is a felony of the  
47 third degree, punishable as provided in s. 775.082 or s.  
48 775.083, with a mandatory minimum term of imprisonment of 1  
49 year, and such person shall be assessed a civil penalty of  
50 \$5,000 and all license privileges under this chapter shall be  
51 permanently revoked.

52 Section 2. Paragraph (a) of subsection (2) of section  
53 379.401, Florida Statutes, is amended to read:

54 379.401 Penalties and violations; civil penalties for  
55 noncriminal infractions; criminal penalties; suspension and  
56 forfeiture of licenses and permits.—

57 (2) (a) LEVEL TWO VIOLATIONS.—A person commits a Level Two  
58 violation if he or she violates any of the following provisions:

575-01048-14

2014194c1

59           1. Rules or orders of the commission relating to seasons or  
60 time periods for the taking of wildlife, freshwater fish, or  
61 saltwater fish.

62           2. Rules or orders of the commission establishing bag,  
63 possession, or size limits or restricting methods of taking  
64 wildlife, freshwater fish, or saltwater fish.

65           3. Rules or orders of the commission prohibiting access or  
66 otherwise relating to access to wildlife management areas or  
67 other areas managed by the commission.

68           4. Rules or orders of the commission relating to the  
69 feeding of wildlife, freshwater fish, or saltwater fish.

70           5. Rules or orders of the commission relating to landing  
71 requirements for freshwater fish or saltwater fish.

72           6. Rules or orders of the commission relating to restricted  
73 hunting areas, critical wildlife areas, or bird sanctuaries.

74           7. Rules or orders of the commission relating to tagging  
75 requirements for wildlife and fur-bearing animals.

76           8. Rules or orders of the commission relating to the use of  
77 dogs for the taking of wildlife.

78           9. Rules or orders of the commission which are not  
79 otherwise classified.

80           10. Rules or orders of the commission prohibiting the  
81 unlawful use of finfish traps.

82           11. All prohibitions in this chapter which are not  
83 otherwise classified.

84           12. Section 379.33, prohibiting the violation of or  
85 noncompliance with commission rules.

86           13. Section 379.407(7) ~~379.407(6)~~, prohibiting the sale,  
87 purchase, harvest, or attempted harvest of any saltwater product

575-01048-14

2014194c1

88 with intent to sell.

89 14. Section 379.2421, prohibiting the obstruction of  
90 waterways with net gear.

91 15. Section 379.413, prohibiting the unlawful taking of  
92 bonefish.

93 16. Section 379.365(2)(a) and (b), prohibiting the  
94 possession or use of stone crab traps without trap tags and  
95 theft of trap contents or gear.

96 17. Section 379.366(4)(b), prohibiting the theft of blue  
97 crab trap contents or trap gear.

98 18. Section 379.3671(2)(c), prohibiting the possession or  
99 use of spiny lobster traps without trap tags or certificates and  
100 theft of trap contents or trap gear.

101 19. Section 379.357, prohibiting the possession of tarpon  
102 without purchasing a tarpon tag.

103 20. Rules or orders of the commission prohibiting the  
104 feeding or enticement of alligators or crocodiles.

105 21. Section 379.105, prohibiting the intentional harassment  
106 of hunters, fishers, or trappers.

107 Section 3. This act shall take effect July 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR CHARLES S. DEAN, SR.**  
5th District

**COMMITTEES:**  
Environmental Preservation and  
Conservation, *Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Criminal Justice  
Gaming  
Military Affairs, Space, and Domestic Security

January 31, 2014

Pepper Uchino, Staff Director  
325 Knott Building  
404 South Monroe St.  
Tallahassee, FL 32399-1100

Dear Pepper,

The purpose of this letter is to inform you I will not be attending the scheduled Environmental Preservation and Conservation Committee scheduled for February 5, 2014. Due to unforeseen circumstances, I will not be able to attend.

Should you have any questions concerning this matter, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean  
State Senator District 5

cc: Chris Clark, President's Office

**REPLY TO:**

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date \_\_\_\_\_

Topic SPINY LOBSTER Bill Number 5B 194 (if applicable)

Name LARRY SANSON Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title \_\_\_\_\_ Phone \_\_\_\_\_

Address PO Box 200 City Cocoa State FL Zip 32923 E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing ORGANIZED FISHERMEN OF FL

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

2-5-14

Meeting Date

Topic SPINNEY LOBSTER Bill Number \_\_\_\_\_ (if applicable)

Name J. SPRAAT Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Lobbyist

Address \_\_\_\_\_ Phone \_\_\_\_\_

\_\_\_\_\_ Street \_\_\_\_\_

\_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FIA. Aquaculture Assoc.

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

2-5-14

Meeting Date

Topic Spiney Lobster Bill Number SB 6194  
(if applicable)

Name Amy Datz Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Environment mental Caucus Phone 850 322-7599

Address 1130 Crestview Ave E-mail Amaliedatz@mac  
Street City State Zip

Speaking:  For  Against  Information  
Representing Environ mental Caucus

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting/Date Feb. 5 2014

Topic Spiny Lobster Bill Number CS/SB 194 (if applicable)

Name Jack Daugherty Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Lt. Colonel, Division of Law Enforcement

Address 620 S. Maridion Street Phone 850-488-5600

Tallahassee, FL City State Zip 32399

Speaking:  For  Against  Information

Representing Fish & Wildlife Conservation Commission

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/5/14  
Meeting Date

Topic Brown Fields Bill Number 586 (if applicable)  
Name David Cullen Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title \_\_\_\_\_  
Address 1674 University Bay #208 Phone 941.323.2404

Sarasota FL 34243  
City State Zip  
E-mail cullen@csd@aol.com

Speaking:  For  Against  Information  
Representing Sierra Club Florida  
Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.5.14

Meeting Date

Brownfields

Topic

586

Bill Number

Sarah Busk

Name

Amendment Barcode

Job Title

215 S. Marine #602

Address

222 8900

Phone

TFLH

Street

32301

City

State

Zip

Sjb@cardenaspartners.com

E-mail

Speaking:

For

Against

Information

Representing

Associated Industries of FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/5/14 Meeting Date

Topic BROWNFIELDS Bill Number S3586 (if applicable)

Name JOE ULLO Amendment Barcode (if applicable)

Job Title FLA BROWNFIELDS ASSOCIATION BOARD MEMBER

Address Street Phone 850-

City State Zip E-mail

Speaking: For Against Information WAVE TIME IN SUPPORT

Representing FLA BROWNFIELDS ASS'N

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

# CourtSmart Tag Report

**Room:** EL 110

**Case:**

**Caption:** Environmental Preservation and Conservation Committee

**Type:**

**Judge:**

**Started:** 2/5/2014 2:01:19 PM

**Ends:** 2/5/2014 2:20:25 PM **Length:** 00:19:07

<b>2:01:21 PM</b>	Call to order
<b>2:02:15 PM</b>	Tab 1 CS/SB 194 Senator Latvala
<b>2:04:08 PM</b>	Senator Simpson
<b>2:04:49 PM</b>	Senator Soto
<b>2:05:30 PM</b>	Florida Fish Wildlife Commission
<b>2:06:27 PM</b>	Speaker Jerry Sansom representing Organized Fishermen of Florida
<b>2:07:20 PM</b>	Senator Latvala
<b>2:07:39 PM</b>	Roll call on SB 194
<b>2:07:49 PM</b>	Bill reported favorably
<b>2:07:52 PM</b>	Tab 2 SB 586 Senator Altman
<b>2:08:54 PM</b>	Amendment 1 Barcode 674670
<b>2:09:16 PM</b>	Senator Soto
<b>2:09:45 PM</b>	Senator Latvala
<b>2:11:25 PM</b>	Senator Altman
<b>2:13:28 PM</b>	Speaker David Cullen representing Sierra Club Florida
<b>2:16:04 PM</b>	Amendment adopted
<b>2:16:15 PM</b>	Senator Soto
<b>2:18:46 PM</b>	Senator Simpson
<b>2:19:45 PM</b>	Roll call on SB 586
<b>2:20:01 PM</b>	Bill reported favorably
<b>2:20:17 PM</b>	Adjournment