HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 7093	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	State Affairs Committee; Agriculture & Natural Resources Subcommittee; Rooney and others	113 **Y's**	2 **N's**
COMPANION BILLS:	CS/SB 1582	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/HB 7093 passed the House on April 23, 2014. The bill was amended by the Senate on May 2, 2014. CS/HB 7093 as amended by the Senate was further amended by the House on May 2, 2014. The Senate concurred in the House amendment and subsequently passed the bill as amended on May 2, 2014. The bill makes several changes to the laws within the Department of Environmental Protection's (DEP's) jurisdiction.

The bill repeals the Preapproval Program within DEP's Petroleum Restoration Program. Thus, DEP will no longer preapprove site rehabilitation work based on templated costs. Instead, the bill requires all site rehabilitation work to be competitively procured pursuant to chapter 287, F.S., or rules adopted by DEP. The bill requires DEP's rules to specify that only vendors who meet the minimum qualifications in current law may submit responses on a competitive solicitation or perform site rehabilitation work. In addition, competitive bidding for site rehabilitation projects is no longer exempt from the requirements of the Consultants' Competitive Negotiation Act. Furthermore, the bill allows an applicant for the Advanced Cleanup program to use a commitment to pay or demonstration of a cost savings to meet the required cost share commitment when bundling 20 or more sites in a single contract.

In addition, the bill expands the activities that qualify for a DEP-issued area-wide permit to include the construction of minor structures. The bill also adds dune restoration and on-grade walkovers for accessibility or use in compliance with the Americans with Disabilities Act to the list of specific activities or structures that are considered minor structures and special classes of activities. Furthermore, the bill authorizes DEP to grant a general permit for dune restoration, swimming pools associated with single-family habitable structures that do not advance the line of existing construction and satisfy all siting and design requirements, and for minor reconstruction for existing coastal armoring structures.

The bill requires DEP to promote the public use of aquatic preserves, authorizes DEP to receive gifts and donations to carry out the purpose of the Florida Aquatic Preserves Act, and authorizes DEP to grant a privilege or concession for the accommodation of visitors to aquatic preserves and their associated state-owned uplands if certain criteria are met. The bill also provides that after May 1, 2014, the Division of Parks and Recreation, within DEP, is prohibited from granting new concession agreements for the accommodation of visitors in a state park that provides beach access and contains less than 7,000 linear feet of shoreline if the type of concession is available within 1,500 feet of the park's boundaries.

Lastly, the bill appropriates $1.5 million from the General Revenue Fund to DEP to be distributed to the Southwest Florida Water Management District to purchase property for the construction of a stormwater retention pond to mitigate flooding in Pasco County.

The bill was approved by the Governor on June 13, 2014, ch. 2014-151, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Petroleum Restoration Program

Current Situation

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

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.[4] The Department of Environmental Protection (Department or DEP) is responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.[5] The SUPER Act authorized the Department to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas, which led to the creation of the Petroleum Restoration Program (Restoration Program). The Restoration Program establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup.

Site Rehabilitation

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.[6] These levels are known as Cleanup Target Levels (CTLs).[7] Once the CTLs for a contaminated site[8] have been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.[9]

State Funding Assistance for Rehabilitation

The average cost to rehabilitate a site is approximately $300,000, but some sites may cost millions of dollars to rehabilitate.[10] Under Florida law, an owner of contaminated land (site owner) is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.[11] Over the years, different eligibility programs have been implemented to provide state financial assistance to certain site owners and responsible parties for site rehabilitation. To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

[1] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 1 (2002).
[2] *Id.*
[3] *Id.*
[4] Chapter 83-310, L.O.F.
[5] Chapter 86-159, L.O.F.
[6] Section 376.3071(5)(b)3., F.S.
[7] *Id.*
[8] A "site" is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries. DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 2 (2012).
[9] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 24 (2002).
[10] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 26 (2002).
[11] Section 376.308, F.S.

TABLE 1: STATE-ASSISTED PETROLEUM CLEANUP ELIGIBILITY PROGRAMS		
PROGRAM NAME	**PROGRAM DATES**	**PROGRAM DESCRIPTION**
Early Detection Incentive Program (EDI) s. 376.3071(9), F.S.	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	• First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) s. 376.3072, F.S.	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	• Required facilities to purchase third party liability insurance to be eligible • Provides varying amountsof state-funded site restoration coverage[12]
Abandoned Tank Restoration Program (ATRP) s. 376.305(6), F.S.	Applications must have been submitted between June 1, 1990, and June 30, 1996[13]	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program s. 376.30715, F.S.	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985
Petroleum Cleanup Participation Program (PCPP) s. 376.3071(13), F.S.	PCPP began on July 1, 1996, and accepted applications until December 31, 1998	• Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs[14] • Originally had a $300,000 cap on the amount of coverage, which was raised to $400,000 beginning July 1, 2008

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[12] The PLRIP initially provided $1M worth of site restoration coverage to eligible sites. In 1994, the state began phasing out the Department's participation in the restoration insurance program by reducing the amount of restoration coverage provided. For discharges reported from January 1, 1994, to December 31, 1996, coverage was limited to $300,000. For discharges reported from January 1, 1997, to December 31, 1998, coverage was limited to $150,000. Section 376.3072(2)(d)2.c.-d., F.S. In 2008, the Legislature raised the coverage for all PLRIP sites as follows: sites with $1M in coverage were raised to $1.2M, sites with $300,000 in coverage were raised to $400,000, and sites with $150,000 in coverage were raised to $300,000. Chapter 2008-127, s. 3, at 6, L.O.F.

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

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

Consent Order (aka "Hardship" or "Indigent") s. 376.3071(7)(c), F.S.	This program began in 1986 and remains open	• Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

As of February 2014, there are approximately 17,300 sites eligible for state funding through one of the above programs. Of these, approximately 7,300 have been rehabilitated and closed, approximately 3,100 are currently undergoing some phase of rehabilitation, and approximately 6,900 await rehabilitation.

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).[15] The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.[16] The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.[17] Each year, approximately $200 million is deposited into the IPTF, and about $125 million is available for site rehabilitation.

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.[18] Sites currently in the Restoration Program range in score from five to 115 points, with a score of 115 representing a substantial threat and a score of five representing a very low threat. Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.[19] The Department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time. The threshold is periodically raised or lowered depending on the Restoration Program's current budget, projected expenditures for the remainder of the fiscal year, and the next fiscal year's anticipated budget.[20] Currently, the threshold is set at 46 points.

Preapproval Program

When enacted in 1986, the SUPER Act gave site owners two options for having their sites rehabilitated through the Restoration Program: site owners could either conduct the rehabilitation themselves and receive reimbursement from the state or have the state conduct the cleanup in priority order.[21] However, the reimbursement program proved to be costly and resulted in a backlog of unpaid claims amounting to $551.5 million.[22]

In 1996, the Legislature made substantial revisions to the Restoration Program as a result of an Attorney General report documenting abuse, inefficiencies, and fraud within the program. This legislation phased out the reimbursement format of funding assistance and created the current Preapproval Program, which requires all state-funded site rehabilitation to be conducted on a preapproved basis.[23] Thus, contractors may only be paid for site rehabilitation tasks if the scope of work was approved in writing by the Department before the work was conducted.[24] The legislation also

[15] Section 376.3071(3)-(4), F.S.
[16] Sections 206.9935(3) and 376.3071(6), F.S.
[17] The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between $100 million and $150 million; 60 cents if the unobligated balance is between $50 million and $100 million; and 80 cents if the unobligated balance is $50 million or less. Section 206.9935(3), F.S.
[18] Chapter 62-771.100, F.A.C.
[19] Chapter 62-771.300, F.A.C.
[20] DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 19-20 (2012).
[21] DEP, GUIDE TO FLORIDA'S PETROLEUM CLEANUP PROGRAM 2 (2002).
[22] DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CONTAMINATION CLEANUP AND DISCHARGE PREVENTION PROGRAMS 17 (2012).
[23] Chapter 96-277, s. 5, L.O.F.
[24] *Id.*

directed the Department to adopt uniform scopes of work with templated labor and equipment costs to establish the type of work and expenditures that are allowed for preapproved site rehabilitation tasks.[25]

The Preapproval Program is not an eligibility program that allows a site to receive state funding for rehabilitation. Rather, it is the process the Department uses to conduct site rehabilitation. All sites in the Preapproval Program must qualify for state rehabilitation funding through one of the eligibility programs previously described in Table 1.

Contractor Selection

Under the Preapproval Program, a site owner or responsible party may select any contractor to conduct the rehabilitation of a site as long as the contractor:

- Meets all certification and license requirements imposed by law;
- Complies with applicable Occupational Safety and Health Administration regulations;
- Maintains workers' compensation insurance for all employees;
- Maintains comprehensive general and automobile liability insurance;
- Maintains professional liability insurance;
- Has submitted a sworn statement on public entity crimes; and
- Has the capacity to perform or supervise the majority of the work at a site.[26]

If a site owner or responsible party does not select a contractor by filling out a Contractor Designation Form (CDF), the Department assigns a state contractor to conduct rehabilitation of the site.[27] A site owner or responsible party may submit a new CDF designating a new contractor at any time, but may not switch contractors more than twice in any 12-month period.[28]

Determining Rehabilitation Costs

There are three existing methods for developing a cost estimate for rehabilitation tasks: 1) fixed-cost templates, 2) time and materials, and 3) performance-based cleanup.

Fixed-Cost Templates

Pursuant to the law, the Department developed fixed costs for many common petroleum rehabilitation expenses.[29] Maximum compensation schedules were established to set fixed prices for commonly used non-labor items, such as lab analyses and equipment rentals.[30] The Department also created fixed cost templates that outline the fixed prices for packaged equipment kits and defined scopes of work.[31] These templated costs are based on fixed rates for labor and the maximum compensation schedules.[32] The fixed template amounts are paid to the contractor regardless of the actual cost of the work as long as the specified item was provided or scope of work was completed.[33] If a contractor wishes to increase the scope of work after a work order has been executed, he or she must provide justification for the extra work.[34] The extra work must be approved by the Department before the contractor commences work.[35] A reduction in the scope of work does not have to be preapproved and is instead handled when an invoice is submitted after completion of the work.[36]

Time and Materials

[25] *Id.*
[26] Section 376.30711(2)(c), F.S.
[27] DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 24 (2012).
[28] *Id.* at 25.
[29] Section 376.3071(2)(e), F.S.
[30] *Id.* at 50.
[31] *Id.*
[32] *Id.* at 69
[33] *Id.* at 52.
[34] *Id.*
[35] *Id.*
[36] *Id.*

Time and materials estimating is used only for scopes of work for which there are no fixed cost templates.[37] This method is commonly used for more complex rehabilitation work, such as remedial action constructions and deep well installations.[38] Under this method, costs for specific scopes of work are determined using the same standardized labor and equipment rates that the Department uses to determine the fixed cost templates.[39]

Performance-Based Cleanup

Contractors who develop cost proposals using the fixed-cost template or time and materials approach are paid as long as the work outlined in the work order is completed, regardless of whether the work actually reduces the site's level of contamination.[40] In contrast, payment for work completed under the performance-based cleanup (PBC) approach is based upon measured progress toward reaching the rehabilitation goal.[41] Under this method, a contractor guarantees complete rehabilitation of a site for a price agreed upon by the Department and the contractor.[42] Contractors are not required to pursue rehabilitation using PBC, but are encouraged to do so for sites having certain factors that make them suitable for PBC.[43]

Subcontractor Selection and Cost

Contractors may hire subcontractors to provide certain services or products for rehabilitation of a site, so long as the subcontractors meet the same requirements listed above for contractors under "Contractor Selection." For services or products that are not covered by the fixed-cost templates or the maximum compensation schedule, prices for subcontractor work must be provided by the contractor in the proposal.[44] If the subcontractor cost is equal to or greater than $2,500, three written quotes are required.[45] The contractor must select the lowest bidder to complete the work unless there is good cause for not giving the work to that bidder, such as prior poor performance.[46] For costs less than $2,500, only one written quote is required.[47] To account for the time and effort required to obtain a subcontractor, a contractor receives a fee, which is included in the total cost of the contract with the Department, that is equal to 10 percent of the subcontractor cost.[48]

Expediting Site Rehabilitation

As described above, eligible contaminated sites typically receive state rehabilitation funding in priority order based on their numeric score. However, there are some programs that allow sites to receive funding for rehabilitation or site closure out of priority score order, as long as the sites are eligible under one of the programs in Table 1. Two of these programs are Preapproved Advanced Cleanup and Low Scored Site Initiative.

Preapproved Advanced Cleanup

Preapproved Advanced Cleanup (PAC) was created in 1996 to allow an eligible site to receive state rehabilitation funding even if the site's priority score does not fall within the threshold currently being funded.[49] The purpose of PAC was to facilitate property transactions or public works projects on contaminated sites.[50] To participate in PAC, a site must be eligible for state rehabilitation funding under

[37] *Id.* at 56.
[38] *Id.* at 57.
[39] *Id.* at 69.
[40] *Id.* at 59.
[41] *Id.*
[42] *Id.*
[43] *Id.* at 60.
[44] *Id.* at 75.
[45] *Id.* at 76.
[46] *Id.* at 78.
[47] *Id.* at 76.
[48] *Id.* at 53.
[49] Section 376.30713(1), F.S.
[50] *Id.*

the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), the Abandoned Tank Restoration Program (ATRP), the Innocent Victim Petroleum Storage System Restoration Program (Innocent Victim), or the Petroleum Cleanup Participation Program (PCPP).[51]

To apply for PAC, a site owner or responsible party must bid a cost share of the total site rehabilitation.[52] The cost share must be at least 25 percent of the total cost of rehabilitation.[53] For PCPP sites, the cost share must be at least 25 percent of the state's share of the rehabilitation, as the site owner or responsible party is already required to pay for 25 percent of the total cost of rehabilitation to be eligible for PCPP.[54] In years when the Department runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.[55] Bids are awarded based solely on the proposed cost-share percentage and not the estimated dollar amount of that share.[56] The Department may enter into PAC contracts for a total of up to $15 million per fiscal year,[57] and no more than $5 million per fiscal year may be preapproved for rehabilitation work at an individual facility.[58]

Low Scored Site Initiative

The Low Scored Site Initiative (LSSI) was created to expedite the assessment and closure of sites that contain minimal contamination and that are not a threat to human health or the environment. To participate in the program, a site owner or responsible party must demonstrate that the following criteria are met:

- Upon assessment, the site retains a priority ranking score of 29 points or less;
- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The remaining contamination resulting from petroleum products does not adversely affect adjacent surface waters;
- The area of groundwater contamination is less than one-quarter acre and is confined to the source property boundary; and
- Soils onsite found between the land surface and two feet below the land surface must meet the soil cleanup target levels (SCTLs) established by the Department unless human exposure is limited by appropriate institutional or engineering controls.[59]

An assessment is conducted to determine whether the above criteria are met.[60] The state pays the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.[61] Funding for LSSI is limited to $10 million per fiscal year, which may only be used to fund site assessments.[62] Each site has a funding cap of $30,000, and each site owner or responsible party is limited to 10 eligible sites per fiscal year.[63] Funds are allocated on a first-come, first-served basis.[64]

[51] For PCPP sites, PAC is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.
[52] Section 376.30713(2)(a), F.S.
[53] *Id.*
[54] Section 376.30713(1)(d)-(2)(a), F.S.
[55] Section 376.30713(2)(a), F.S.; DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 7 (2012).
[56] Section 376.30713(2)(b), F.S.; DEP BUREAU OF PETROLEUM STORAGE SYSTEMS, PETROLEUM CLEANUP PREAPPROVAL PROGRAM STANDARD OPERATING PROCEDURES 7 (2012).
[57] Section 376.30713(4), F.S.
[58] A "facility" includes, but is not limited to, "multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter." Section 376.30713(4), F.S.
[59] Section 376.3071(11)(b)1., F.S.
[60] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 9 (2013).
[61] *Id.* at 3.
[62] Section 376.3071(11)(b)3.c., F.S.
[63] *Id.*
[64] *Id.*

Sites not eligible for state rehabilitation funding may still qualify for closure under LSSI if an assessment reveals that the above criteria are met, but the state will not pay for the assessment.[65]

If the assessment shows the above criteria are met, there are three options for site closure:

- If no contamination is detected during the assessment, the Department may issue a site rehabilitation completion order.[66]
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, the Department may issue an LSSI no further action administrative order. This determination acknowledges that the contamination is not a threat to human health or the environment.[67]
- If soil between the land surface and two feet below the land surface exceeds SCTLs, but the above criteria are otherwise met, the Department may issue a site rehabilitation completion order with conditions. This determination requires that institutional and/or engineering controls be put in place to prevent human or environmental exposure to the contamination. The state is not authorized to fund such controls.[68]

If at any time data collected during the assessment indicate that the above criteria for closure will not be met, assessment activities will be terminated.[69] LSSI funding will be discontinued if it is determined at any point that a closure cannot be accomplished within the $30,000 funding limit, unless the site owner or responsible party is willing to contribute funds to the assessment work.[70] A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

Procurement

Chapter 287, F.S., regulates state agency[71] procurement of commodities and services. Without an explicit exemption, the Department is required to comply with this chapter when procuring contracts for petroleum rehabilitation tasks.

Depending on the cost and characteristics of the needed goods or services, agencies may use a variety of procurement methods, including:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.[72]

For contracts for commodities or services in excess of $35,000, agencies must use a competitive solicitation process.[73] Competitive solicitation means "the process of requesting and receiving two or

[65] *Id.* at 1-2.
[66] Section 376.3071(11)(b)2., F.S.
[67] *Id.*
[68] DEP PETROLEUM RESTORATION PROGRAM, PROCEDURAL AND TECHNICAL GUIDANCE FOR THE LOW-SCORED SITE INITIATIVE 3 (2013).
[69] *Id.* at 11.
[70] *Id.*
[71] Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."
[72] Section 287.057, F.S.
[73] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."[74] Certain contractual services and commodities are not subject to competitive solicitation requirements.[75]

In addition, s. 287.0595, F.S., directs the Department to adopt rules governing procurement for pollution response action contracts. The term "response action" includes any activity performed to rehabilitate a petroleum-contaminated site.[76] In the rules, the Department must establish procedures for:

- Determining the qualifications of responsible potential vendors prior to advertisement for and receipt of bids, proposals, or replies for pollution response action contracts, including procedures for the rejection of unqualified vendors;
- Awarding such contracts to the lowest responsible and responsive vendor,[77] as well as procedures to be followed in cases in which the Department declares a valid emergency to exist that would necessitate the waiver of the rules governing the awarding of such contracts to the lowest responsible and responsive vendor;
- Payment of contracts;
- Negotiating contracts, modifying contract documents, and establishing terms and conditions of contracts.[78]

The Consultants' Competitive Negotiation Act

Florida's Consultants' Competitive Negotiation Act (CCNA) specifies the process to follow when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper.[79] The CCNA requires that agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed $325,000; or
- A planning or study activity, when the fee for professional services exceeds $35,000.

The CCNA provides a two-phase selection process.[80] In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the three bidders ranked in order of preference that it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the three most highly qualified bidders, including willingness to meet time and budget requirements; past performance; location; recent, current, and projected firm workloads; volume of work previously awarded to the firm; and whether the firm is certified as a minority business.[81]

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Current law defines the term "compensation" to mean "the amount paid by the agency for professional services," regardless of whether stated as compensation or as other types of rates.[82]

In the second phase, the "competitive negotiation," the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory

[74] Section 287.012(6), F.S.
[75] Section 287.057(3)(f), F.S.
[76] *See* ss. 287.0595(1)(b) and 376.301(39), F.S.
[77] A "responsible vendor" is defined as "a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." Section 287.012(24), F.S. A "responsive vendor" is defined as "a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation." Section 287.012(26), F.S.
[78] Section 287.0595(1), F.S.
[79] Section 287.055, F.S.
[80] Section 287.055(4) and (5), F.S.
[81] *See* s. 287.055(4)(b), F.S.
[82] Section 287.055(2)(d), F.S.

contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

Current law provides that competitive bidding for petroleum site rehabilitation contracts is not subject to the requirements of the CCNA.[83]

Inspector General Review

In 2012, during a review of the Department's divisions, districts, and programs, questions arose concerning the effectiveness and efficiency of the Restoration Program. As a result, Secretary Herschel T. Vinyard, Jr., requested that his Inspector General review the Restoration Program and identify areas needing improvement. In a memo to Secretary Vinyard, the Inspector General identified the current contractor selection process as one such area. Specifically, the Inspector General stated:

> The structure of the current program allows for the site owner/responsible party to designate the remediation contractor for their site. As long as the Department funds costs for work that can be easily manipulated and changed by outside parties, program funds are exposed to risk of waste or elevated costs. If the Department controlled the process of bid solicitation and designation of contractors, the opportunity for contractor manipulation would be greatly reduced.

2013 Legislation

For the 2013-14 fiscal year, the Legislature appropriated $125 million to the Restoration Program. Due in part to the concerns raised in the Inspector General's memo, however, that appropriation was limited by Specific Appropriation 1668 of the Fiscal Year 2013-14 General Appropriations Act in Senate Bill 1500 (proviso) and Section 29 of Senate Bill 1502 (implementing bill). The proviso appropriated up to $50 million, available immediately, to the Department to fund payments for preapproved task assignments, contracts, and work orders approved by the Department before June 30, 2013, or to address an imminent environmental threat. The remaining $75 million was placed in reserve until the Department submitted a plan to the Legislative Budget Commission (LBC) detailing how the Department would improve the effectiveness and efficiency of the Restoration Program. The plan was required to include a strategy for developing a competitive procurement process for selecting rehabilitation contractors pursuant to chapter 287, F.S. The implementing bill stipulated that after June 30, 2013, the Department could only enter into contracts that had been competitively procured. In addition, the proviso prohibited the funds in reserve from being released after January 1, 2014, unless the Department had adopted rules to implement the competitive procurement process.

On September 12, 2013, the Department presented its plan to improve the Restoration Program's effectiveness and efficiency to the LBC. In the plan, the Department indicated an intent to:

- Implement competitive procurement procedures by developing a pool of qualified contractors through an invitation to negotiate process consistent with ss. 287.056, 287.057, and 287.0595, F.S.;
- Create performance expectations for the contractors and procedures for evaluating their performance on an ongoing basis; and
- Reduce costs by ending its practice of purchasing rehabilitation equipment.

The LBC approved the plan unanimously.

To further comply with the proviso, the Department initiated rulemaking. On October 4, 2013, the Department filed a Notice of Proposed Rule in the Florida Administrative Register. The rules were filed for adoption with the Secretary of State on December 27, 2013. Some of the rules became effective on

[83] Section 376.30711, F.S.

January 16, 2014, but two of the rules require ratification by the Legislature before they can become effective.[84]

Effect of Proposed Changes

The bill repeals s. 376.30711, F.S., which establishes the Preapproval Program, and relocates certain provisions that continue to be necessary. Thus, the Department will no longer preapprove site rehabilitation work based on templated costs. Instead, the bill requires all site rehabilitation work to be competitively procured pursuant to chapter 287, F.S., or rules adopted by the Department under s. 376.3071, F.S., or s. 287.0595, F.S. Although the Department was already required to competitively bid rehabilitation projects, the bill emphasizes that all work must now be procured through a competitive process. In addition, competitive bidding for site rehabilitation projects is no longer exempt from the requirements of the CCNA.

The bill requires the Department's rules to specify that only vendors who meet the minimum qualifications in current law may submit responses on a competitive solicitation for site rehabilitation work. The rules must also include procedures for the rejection of vendors not meeting the minimum qualifications on the opening of a competitive solicitation, as well as requirements for a vendor to maintain its qualifications in order to enter contracts or perform rehabilitation work.

In addition, the bill repeals s. 376.3071(12), F.S., which establishes the reimbursement program. The reimbursement program has been obsolete since 1996.

Lastly, the bill changes the name of the Preapproved Advanced Cleanup program to the Advanced Cleanup program. It also allows an applicant for the Advanced Cleanup program to use a commitment to pay or demonstration of a cost savings to meet the required cost share commitment when bundling 20 or more sites in a single contract.

Regulation of Coastal Construction

Current Situation

A coastal construction control line (CCCL) is an upland jurisdictional line established on a county-by-county basis by the Department to define the portion of the beach and dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes.[85]

Section 161.053(1)(a), F.S., establishes the state CCCL permitting program. This is the principal program used by the Department to regulate construction activities on Florida's beach-dune system. The purpose of the CCCL permitting program is to preserve and protect beaches from imprudent construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.[86] Unless exempted,[87] applicants must receive a permit from the Department to construct a structure seaward of the CCCL.

Local governments are authorized to adopt their own coastal construction zoning and building codes in lieu of the state permitting program. However, these codes must be approved by the Department as being adequate to preserve and protect the beaches and coastal barrier dunes adjacent to such beaches, which are under the Department's jurisdiction, from imprudent construction that will jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to

[84] The two rules requiring legislative ratification are chapters 62-772.300 and 62-772.400, F.A.C.
[85] Chapter 62B-33.005(1), F.A.C.
[86] Section 161.053(1)(a), F.S.
[87] Generally, structures existing or under construction before the establishment of the CCCL are exempt from the provisions of s. 161.053, F.S. *See* also Chapter 62B-33.004, F.A.C. for other exemptions.

upland structures, endanger adjacent properties, or interfere with public beach access.[88] Additionally, the Department can revoke the authority granted to the local government if the Department determines that the local administration of coastal zoning and building codes is inadequate.

The Department is authorized to grant the following CCCL permits:[89]

- **Administrative Permits** —These permits are required for any coastal construction or activity that is likely to have a material physical effect on the beach-dune system seaward of the CCCL line.[90] Administrative permits are processed in Tallahassee, and once the CCCL application is deemed complete, final agency action (approval or denial) is issued within 90 days. Activities typically authorized by an administrative permit include:
    - Armoring (seawalls, revetments, geotextile tubs);
    - Large multi-family, commercial, and recreational projects (condominiums, beachfront resorts, shopping centers, restaurants, and park improvements);
    - Single-family projects (new homes, pools, additions, and remodeling);
    - Non-habitable major structures (construction of gazebos, large decks, spas, pools); and
    - Minor structures and activities (minor projects that cannot be approved via field permits and require permit manager review).
- **General Permits** —These permits offer a streamlined application and approval process for minor activities or structures that will not interfere with the natural functioning of the beach-dune system or sea turtles or their nesting sites. Examples include dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other non-habitable structures. A general permit may be issued for single-family homes that do not advance the "line of construction" or are located landward of an established General Permit Line (the line that defines the seaward limit where general permits can be issued). General permits cannot be used for home additions or multifamily habitable structures. A general permit requires the applicant to meet strict setbacks and dune protection rules and must be submitted as a complete application**.** Final agency action is issued within 30 days of the application submittal.[91]
- **Field Permits—**These permits are for certain minor structures and activities that have minor impacts and are typically issued by Department field inspectors. However, permit managers in Tallahassee may also issue field permits.
- **After-the-Fact Permits—**These are administrative permits that authorize work that has already been completed. These are often subject to enforcement actions by the Department and are necessary to assure that the projects have been constructed in compliance with state law.
- **Emergency Permits—**As promulgated in chapter 62B-33.014, F.A.C., emergency permit procedures are used to alleviate conditions resulting from a shoreline emergency.

In addition to these permits, the Department is authorized to grant area-wide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general jurisdiction if these activities, due to the type, size, or temporary nature of the activity, will not cause measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites.[92] Current law specifies that such activities include, but are not limited to:

- Road repairs (not including new construction);
- Utility repairs and replacements;
- Beach cleaning; and
- Emergency response.

[88] Section 161.053(3), F.S.
[89] DEP's "Chapter 4-The CCCL Program and Covered Activities." This information is on file with Agriculture & Natural Resources Subcommittee staff.
[90] Chapter 62B-33, F.A.C., outlines the specific permitting, application, and approval processes.
[91] Section 161.053(18), F.S., as promulgated in Chapter 62B-34, F.A.C.
[92] Section 161.053(17), F.S.

Effect of Proposed Changes

The bill expands the activities that qualify for a Department-issued area-wide permit to include the construction of minor structures. The term "minor structure" is not defined in the bill or the Florida Statutes for purposes of CCCLs. However, the Department's rules define a "structure" as the composite result of putting together or building related components in an ordered scheme,[93] and defines a "minor structure" as a structure designed to:

- Be expendable,
- Minimize resistance to forces associated with high frequency storms,
- Break away when subjected to such forces, and
- Have a minor impact on the beach and dune system.[94]

The bill also adds to the list of specific activities or structures that are considered minor structures and special classes of activities to include dune restoration and on-grade walkovers for accessibility or use in compliance with the Americans with Disabilities Act.

The bill requires the Department to adopt rules to establish criteria and guidelines for area-wide permit applicants.

The bill also requires the Department to consult with the Florida Fish and Wildlife Conservation Commission on each proposed area-wide permit.

In addition, the bill authorizes the Department to grant a general permit for dune restoration, swimming pools associated with single-family habitable structures that do not advance the line of existing construction and satisfy all siting and design requirements, and for minor reconstruction for existing coastal armoring structures.

The bill also requires the Department to adopt rules to establish criteria and guidelines for general permit applicants.

Aquatic Preserves

Current Situation

The Florida Constitution provides that lands under navigable waters, including beaches below the mean high water line, are held by the state, by virtue of its sovereignty, in trust for all the people, and sale of these lands may be authorized by law, but only when in the public interest. Private use of portions of sovereign submerged lands can also be authorized by law, but only when not contrary to the public interest.

In 1975, Florida enacted the Aquatic Preserve Act[95] with the intent that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.[96] The Florida Statutes define an aquatic preserve as an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition.[97]

The Department's Office of Coastal and Aquatic Managed Areas oversees the management of Florida's 41 aquatic preserves, three National Estuarine Research Reserves, National Marine

[93] Chapter 62B-33.002(60), F.A.C.
[94] Chapters 62B-33.002(60)(b) and 62B-33.002(60), F.A.C
[95] Sections 258.35 through 258.46, F.S.
[96] Section 258.036, F.S.
[97] Section 258.37(1), F.S.

Sanctuary and the Coral Reef Conservation Program. These protected areas encompass approximately 2.2 million acres.[98]

Section 258.41, F.S., authorizes the Board of Trustees of the Internal Improvement Trust Fund (BOT) to establish areas to be included in the aquatic preserve system, subject to confirmation by the Legislature, and provides that an aquatic preserve cannot be withdrawn from the state aquatic preserve system except by an act of the Legislature.

The Legislature has also designated by law certain areas to be included in the aquatic preserve system. These include the following:

- Cockroach Bay Aquatic Preserve.
- Gasparilla Sound-Charlotte Harbor Aquatic Preserve.
- Lemon Bay Aquatic Preserve.
- Terra Ceia Aquatic Preserve.
- Guana River Marsh Aquatic Preserve.
- Big Bend Seagrasses Aquatic Preserve.
- Boca Ciega Bay Aquatic Preserve.
- Biscayne Bay Aquatic Preserve.
- Oklawaha River Aquatic Preserve.

The state restricts certain activities such as the construction of utility cables and pipes and spoil disposal in aquatic preserves to conserve their unique biological, aesthetic and scientific value.[99] Section 258.42, F.S., directs the BOT to maintain aquatic preserves subject to the following requirements:

- No further sale, lease, or transfer of sovereignty submerged lands shall be approved or consummated by the BOT except when such sale, lease, or transfer is in the public interest.[100]
- The BOT cannot approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.[101]
- No further dredging or filling of submerged lands may be approved by the BOT except for certain activities that must be authorized pursuant to a permit.[102]

Furthermore, structures may not be erected within the aquatic preserve, except:

- Private residential docks may be approved for reasonable ingress or egress of riparian owners. Slips at private residential single-family docks that contain boat lifts or davits that do not float in the water when loaded may not, in whole or in part, be enclosed by walls, but may be roofed if the roof does not overhang more than one foot beyond the footprint of the lift and the boat stored at the lift. These roofs are not included in the square-footage calculation of a terminal platform.[103]
- Private residential multislip docks may be approved if located within a reasonable distance of a publicly maintained navigation channel, or a natural channel of adequate depth and width to allow operation of the watercraft for which the docking facility is designed without the craft having an adverse impact on marine resources. The distance must be determined in

[98] DEP website on Aquatic Preserves, available at http://www.dep.state.fl.us/coastal/programs/aquatic.htm
[99] Chapter 18-20.004, F.A.C.
[100] Section 258.42(1)(a), F.S.
[101] Section 258.42(2), F.S.
[102] Section 258.42(3)(a), F.S.
[103] Section 258.42(3)(e), F.S.

accordance with criteria established by the trustees by rule, based on the depth of the water, nature and condition of bottom, and presence of manatees.[104]

- Commercial docking facilities shown to be consistent with the use or management criteria of the preserve may be approved if the facilities are located within a reasonable distance of a publicly maintained navigation channel, or a natural channel of adequate depth and width to allow operation of the watercraft for which the docking facility is designed without the craft having an adverse impact on marine resources. The distance must be determined in accordance with criteria established by the trustees by rule, based on the depth of the water, nature and condition of bottom, and presence of manatees.[105]
- Structures for shore protection, including restoration of seawalls at their previous location or upland of, or within 18 inches waterward of their previous location, approved navigational aids, or public utility crossings may be approved.[106]

Section 258.43, F.S., grants the BOT with rulemaking authority to implement the provisions of the Florida Aquatic Preserves Act. The Department's rules[107] provide that only minimal or maintenance dredging is permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally. Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. However, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the BOT. Docking facilities and even structures for shore protection are restricted as to size and location.

In determining whether to approve or deny any request for activities on sovereign submerged lands in aquatic preserves, BOT will evaluate each on a case-by-case basis and utilize a balancing test to determine whether the social, economic, and/or environmental benefits clearly exceed the costs.[108] BOT may authorize a lease, easement, or consent for the following activities:

- A public navigation project;
- Maintenance of an existing navigational channel;
- Installation or maintenance approved navigational aids;
- Creation or maintenance of a commercial/industrial dock, pier or a marina;
- Creation or maintenance of private docking facilities for reasonable ingress and egress of riparian owners;
- Minimum dredging for navigation channels attendant to docking facilities;
- Creation or maintenance of a shore protection structure, except that restoration of a seawall or riprap at its previous location, upland of its previous location, or within one foot waterward of its previous location is exempted from any requirement to make application for consent of use;
- Installation or maintenance of oil and gas transportation facilities;
- Creation, maintenance, replacement or expansion of facilities required for the provision of public utilities; and
- Other activities that are a public necessity or that are necessary to enhance the quality or utility of the aquatic preserve.[109]

For the activities listed above, the activity must be designed so that the structure or structures to be built in, on, or over sovereign submerged lands are limited to structures necessary to conduct water dependent activities. Other uses of the aquatic preserve, or human activity within the aquatic preserve, although not originally contemplated, may be approved by BOT, but only subsequent to a formal finding

[104] *Id*.
[105] *Id*.
[106] *Id*.
[107] Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria. However, every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code.
[108] Chapter 18-20.004(1((a) and (2), F.A.C.
[109] Chapter 18-20.004(1)(e), F.A.C.

of compatibility with the provisions of ch. 258, F.S. or ch. 18-20, F.A.C.[110] Furthermore, all proposed activities in aquatic preserves having management plans adopted by the BOT must demonstrate that such activities are consistent with the management plan.[111]

Effect of Proposed Changes

The bill requires the Department to promote the public use of aquatic preserves, and authorizes the Department to receive gifts and donations to carry out the purpose of the Florida Aquatic Preserve Act.[112] Moneys received by the Department in trust, or by gift, devise, appropriation, or otherwise must be deposited into the Land Acquisition Trust Fund and appropriated to the Department for the administration, development, improvement, promotion, and maintenance of aquatic preserves and their associated uplands for any future acquisition or development of aquatic preserves and their associated uplands.

The bill authorizes the Department to grant a privilege[113] or concession for the accommodation of visitors to aquatic preserves and their associated state-owned uplands if the privilege or concession:

- Does not deny or interfere with the public's access to the lands; and
- Is compatible with the aquatic preserve's management plan as approved by the Acquisition and Restoration Council.

A concession must be granted based on business plans, qualifications, approach, and specified expectations or criteria. A privilege or concession may not be assigned or transferred by the grantee without the consent of the Department.

Once a proposed privilege or concession has been submitted to the Department, the Department must post a description of the proposed privilege or concession on its website, including a description of the activity to occur, the time of year the activity would take place, and the location of the activity. Once the description of the proposed privilege or concession is posted on the Department's website and at least 60 days prior to the execution of the privilege or concession agreement, the Department must provide an opportunity for public comment.

Florida State Parks

Current Situation

The Department's Division of Recreation and Parks (division) manages Florida's 161 state parks and 10 state trails that encompass approximately 800,000 acres and 100 miles of sandy white beaches. Florida's state parks provide valuable resources based recreational activities including fishing, diving, swimming, camping, and hiking. During Fiscal Year 2012-2013, more than 25 million people visited the state parks, providing over $55 million in state revenue.[114]

Section 258.007(3), F.S., provides the division authority to grant privileges, leases, concessions, and permits for the use of state parks for the accommodation of visitors. Currently the division has entered into 86 concession agreements that generate approximately $31.4 million in gross revenue, of which approximately $4 million is paid to the state. Concession operations provide services such as merchandise sales, passenger ferry services, boat and land tours, food and beverage services,

[110] Chapter 18-20.004(1)(f) and (l), F.A.C.
[111] Chapter 18-20.004(3), F.A.C.
[112] Part II of Ch. 258, F.S.
[113] A privilege is not defined in statute or rule. According to DEP's definition, a privilege is not a regulatory function. It is granting a request for public use of the natural resource that is in concert with the Acquisition and Restoration Council-approved management plan, but is a use which occurs only with special permission.
[114] Florida Park Service, Florida State Parks, *About Florida State Parks and Trails*, http://www.floridastateparks.org/resources/aboutus.cfm (last visited Apr. 23, 2014).

recreational equipment rentals, pier operations, campground operations, and recreational skills instruction.[115]

Effect of Proposed Changes

After May 1, 2014, the bill prohibits the division from granting new concession agreements for the accommodation of visitors in a state park that provides beach access and contains less than 7,000 linear feet of shoreline if the type of concession is available within 1,500 feet of the park's boundaries. This provision does not apply to concession agreements for accommodations offered at a park on or before May 1, 2014.

Appropriation for Stormwater Retention Pond

The bill also appropriates $1.5 million from the General Revenue Fund to the Department to be distributed to the Southwest Florida Water Management District to purchase property for the construction of a stormwater retention pond to mitigate flooding in Pasco County. The agreement may not preclude shared use of the land for open space and passive recreation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments Section.

2. Expenditures:

   See Fiscal Comments Section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill has a potentially positive fiscal impact on local governments seeking general or area-wide permits for minor structures that would otherwise require an administrative permit. See Fiscal Comments for discussion of permit fees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on private parties who wish to provide goods or services, such as providing food or boat rentals, to visitors in aquatic preserves.

The bill has a potentially positive fiscal impact on private parties seeking general or area-wide permits for minor structures that would otherwise require an administrative permit. See Fiscal Comments for discussion of permit fees.

D. FISCAL COMMENTS:

[115] DEP, *Bureau of Operational Services, Concession Operations*, http://www.dep.state.fl.us/Parks/bos/vsp/default.htm (last visited Apr. 23, 2014).

The bill has a potentially negative fiscal impact on the Permit Fee Trust Fund as a result of the expansion of activities that qualify for Department-issued area-wide and general permits. The Department issues approximately 500 administrative permits per year. According to the Department, the fee for an administrative permit varies from $300 for a dune walkover to $1,000 for a swimming pool. The fee for a general permit varies from $300 for a minor structure to $500 for a major structure. A Department-issued area-wide permit is $500. The Department anticipates a negative fiscal impact of $66,800 to the Permit Fee Trust Fund per year for permits that currently qualify for administrative permits or general permits and that will qualify for general permits or Department-issued area-wide permits under the bill (see chart below).

Permitted Activity Type	**Number of Permits Anticipated, single-year *(based on CY 2013 data)***	**Number of anticipated permits eligible for GPs under proposed bill language**	**Fee Reduction Per Permit**	**TOTAL Anticipated Annual Fee Reduction for Activity Type**
Swimming pools associated with single-family dwellings	169	84 (50%)	$700	$58,800
Coastal armoring repairs	14	14 (100%)	$200	$2,800
Dune walkovers/dune restoration	26	26 (100%)	$200	$5,200
ANNUAL ANTICIPATED TOTAL FEE REDUCTION (Permit Fee TF)				**$66,800**

The cost for the rule requirements regarding area-wide and general permit modifications can be absorbed by the agency.

EXAMPLE OF ACTIVITY TYPES & POTENTIAL REVENUES				
Year	Activity	Contractor Gross Revenue	% Compensation to State	State Revenue
Year 1	Guided Tour-PILOT	$5,000	0	0
Year 2	Guided Tour	$33,350	15%	$5,000
	Guided Kayak – PILOT	$5,000	0	0
Year 3	Guided Tour	$33,350	15%	$5,000
	Guided Kayak	$100,000	15%	$15,000
	All Inclusive Camping	$300,000	10%	$30,000

Total First 3 Years				$55,000

Issuing a privilege or concession for the accommodation of visitors could have an indeterminate positive fiscal impact to the Land Acquisition Trust Fund. According to the Department, revenue in the pilot year will be limited by organizational needs. While the amount of potential revenue is unknown, the Department has provided an estimate for the first three years of the program.

The bill also authorizes the Department to receive certain gifts or donations, which are to be deposited into the Land Acquisition Trust Fund for the administration, development, improvement, promotion, and maintenance of aquatic preserves and their associated uplands and for any future acquisition or development of aquatic preserves and their associated uplands. The amounts of gifts or donations the Department might receive for these purposes are indeterminate.

The bill requires the Department to promote aquatic preserves and their associated uplands, which the Department estimates will cost $250,000 per year. The proposed Fiscal Year 2014-15 House General Appropriations Act includes $250,000 in recurring funds from the Land Acquisition Trust Fund for a marketing initiative for Florida's aquatic managed areas and coastal uplands.

Lastly, the bill appropriates $1.5 million from the General Revenue Fund to the Department to be distributed to the Southwest Florida Water Management District to purchase property for the construction of a stormwater retention pond to mitigate flooding in Pasco County.