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| **Tab 1** | **SB 950** by **Bennett**; (Similar to CS/H 0223) Water and Wastewater Utilities |

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|---|---|---|---|---|---|---|
| 797272 | D | S | RCS | EP, Jones | Delete everything after | 03/23 01:46 PM |

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| **Tab 2** | **SB 236** by **Hays (CO-INTRODUCERS) Detert, Jones**; (Identical to H 0095) State Parks |

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|---|---|---|---|---|---|---|
| 237374 | A | S | RCS | EP, Latvala | btw L.19 - 20: | 03/23 01:47 PM |
| 128914 | A | S | RCS | EP, Detert | btw L.19 - 20: | 03/23 01:47 PM |
| 483202 | A | S | RCS | EP, Oelrich | btw L.19 - 20: | 03/23 01:47 PM |

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| **Tab 3** | **SB 1440** by **Hays**; (Similar to H 0945) Rural Land Development |

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| **Tab 4** | **SB 1634** by **Lynn**; (Similar to H 4021) Water Vending Machines |

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| **Tab 5** | **SB 842** by **Latvala**; (Compare to CS/1ST ENG/H 0143) Tax Credits/Rehabilitation of Contaminated Sites |

**The Florida Senate**

# COMMITTEE MEETING EXPANDED AGENDA

**ENVIRONMENTAL PRESERVATION AND CONSERVATION**
**Senator Dean, Chair**
**Senator Oelrich, Vice Chair**

**MEETING DATE:** Wednesday, March 23, 2011
**TIME:** 1:00 —3:00 p.m.
**PLACE:** *Toni Jennings Committee Room,* 110 Senate Office Building

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

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 1 | **SB 950**<br>Bennett<br>(Similar CS/H 223) | Water and Wastewater Utilities; Provides for recovery through a quarterly surcharge of certain costs relating to water and wastewater system improvement projects. Defines a "non-revenue producing project." Requires utilities to submit surcharge tariffs reflecting the surcharge calculation for recovery of such costs to the Florida Public Service Commission for approval and to provide specified notice of such surcharge tariff filings, etc.<br><br>EP 03/23/2011 Fav/CS<br>CU<br>BC | Fav/CS<br>Yeas 7 Nays 0 |
| 2 | **SB 236**<br>Hays<br>(Identical H 95) | State Parks; Provides for the parents of certain deceased veterans to receive lifetime annual entrance passes to state parks at no charge.<br><br>MS 03/10/2011 Favorable<br>EP 03/23/2011 Fav/CS<br>BC | Fav/CS<br>Yeas 7 Nays 0 |
| 3 | **SB 1440**<br>Hays<br>(Similar H 945) | Rural Land Development; Adds the Fish and Wildlife Conservation Commission and removes the water management districts from the list of governmental entities that must cooperate in providing assistance in the implementation of laws governing land use planning and development and related agency rule. Adds a landowner as a recipient of assistance in designating rural land stewardship areas. Exempts a landowner or local government from a requirement to demonstrate need, etc.<br><br>EP 03/23/2011 Temporarily Postponed<br>CA<br>BC | Temporarily Postponed |

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|---|
| 4 | **SB 1634**<br>Lynn<br>(Similar H 4021, Compare H 5005) | Water Vending Machines; Repeals provisions relating to the regulation of water vending machines and the permitting of water vending machine operators. Deletes provisions for the deposit of operator permitting fees, the enforcement of the state's water vending machine regulations, penalties, and the preemption of county and municipal water vending machine regulations, to conform.<br><br>EP 03/23/2011 Favorable<br>CA<br>CM | Favorable<br>Yeas 7 Nays 0 |
| 5 | **SB 842**<br>Latvala<br>(Identical H 641) | Tax Credits/Rehabilitation of Contaminated Sites; Increases the annual amount of tax credits available for the rehabilitation of contaminated sites. Increases the annual amount of tax credits available for the cleanup of sites contaminated with drycleaning solvents and the cleanup of certain brownfield sites.<br><br>EP 03/23/2011 Favorable<br>BC | Favorable<br>Yeas 7 Nays 0 |

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | CS/SB 950 |
| INTRODUCER: | Committee on Environmental Preservation and Conservation and Senator Bennett |
| SUBJECT: | Water and Wastewater Utilities |
| DATE: | March 24, 2011 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Wiggins | Yeatman | EP | **Fav/CS** |
| 2. | | | CU | |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

The committee substitute (CS) creates a mechanism for regulated water and wastewater utilities to recover, through a surcharge, incurred capital costs for investment in non-revenue producing system improvements. The CS defines eligible projects and the manner in which companies may request cost recovery and how the surcharge should be implemented.

The CS creates section 367.0819 of the Florida Statutes.

## II. Present Situation:

Chapter 367, F.S., establishes the authority of the Public Service Commission (PSC) to establish rates and service of regulated water and wastewater utilities. A regulated water or wastewater utility may only impose and collect rates and charges approved by the PSC[1]. Section 367.081(2)(a), F.S., further specifies that the PSC, "on its own motion or upon request of the utility, may fix rates for the utility that are just, reasonable, compensatory, and not unfairly discriminatory."[2] The section further provides that the PSC consider: the value and quality of the service and the

[1] See s. 367.081, F.S.
[2] See s. 367.081(2)(a)1., F.S.

cost of providing the service, which includes, but is not limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.

Section 367.0822, F.S., authorizes a utility, in a limited proceeding, to come before the PSC for any matter under its jurisdiction including a request to adjust its rates. Within the proceeding, the PSC must identify issues to be considered and can, upon its discretion, expand the scope of the proceeding to other related matters. A limited proceeding cannot be used to adjust rates if the effect of the adjustment would be to change the last authorized rate of return.

Currently, infrastructure improvements have to be incorporated in utility rates via a PSC proceeding under either s. 367.081(2), F.S., or s. 367.0822, F.S. Current law does not permit these infrastructure improvement surcharges without an evidentiary hearing. According to s. 367.081(2), F.S., the portion of unutilized capacity beyond the five-year period cannot be recovered from current customers.

Section 367.091 (6), F.S., provides that an application through a tariff filing to establish, increase, or change a rate or charge, other than through a rate proceeding pursuant to ss. 367.081, or s. 367.101, F.S., must be accompanied by a cost justification. The statute further provides that the PSC may withhold consent to the operation of any or all portions of the new rate schedules by a vote to that effect within 60 days and must give a reason or statement of good cause for withholding its consent. The PSC must make its final decision on the application within eight months after the official date of filing.

The PSC typically approves or denies tariff filings, giving substantially affected persons a point of entry to file a petition and request a hearing to protest any points of contention with the decision. Substantially affected persons, including customers of the utility, may protest the Proposed Agency Action (PAA), potentially triggering a PSC evidentiary proceeding.

In its Report No. 08-63, the Office of Program Policy Analysis & Government Accountability (OPPAGA) addressed the "unique financial challenges" of small water and wastewater utilities regulated by the PSC. The OPPAGA report notes that these small utility systems, because of a lack of economies of scale, frequently face financial challenges in maintaining system reliability, operating in a cost-effective manner, retaining an adequate labor pool, sustaining a stable financial position, and complying with regulatory requirements. The report also notes that these small utility systems may be reluctant to file for rate increases due to the time and expense involved in rate proceedings and the desire to keep rates low in light of the fact that, in contrast to some larger utilities, they have fewer customers over which to spread costs. The report suggests that the long-term financial viability and adequate investment in infrastructure may suffer as a result.[3]

The OPPAGA report identifies some existing regulatory tools used to address these issues, including staff-assisted rate cases for small water and wastewater utilities, a price index that all

[3] *The PSC and Legislature Could Consider Several Options to Enhance Services and Consumer Protection,* Office of Program Analysis & Government Accountability, Report No. 08-63. released November 2008.

water and wastewater utilities may apply to major categories of operating costs without a hearing, and pass-through rate adjustments that all water and wastewater utilities may employ for specific types of costs without a hearing. Still, the report suggests that the PSC should monitor small water and wastewater utilities to ensure adequate investment in infrastructure and, if deemed necessary, should consider adopting additional regulatory tools. As an example of such a tool, the report discusses a capital improvement surcharge mechanism by which a temporary surcharge would be added to rates to enable expeditious recovery of costs for qualifying investments and expenditures.[4]

## III. Effect of Proposed Changes:

**Section 1** creates s. 367.0189(1), F.S., to promote utility investment in non-revenue producing system improvement projects and for the PSC to allow for recovery of incurred capital costs of projects to enhance water quality, fire protection reliability, and long-term system viability through a surcharge. The section defines "nonrevenue producing project" as a project that is not constructed or installed for the purpose of serving a new customer. Further, according to the PSC, an improvement project must be completed before the utility may recover costs for the project through the surcharge.

Section 367.0819(2)(a) F.S., provides that in order for the utility to recover costs from its customers, it must submit a proposed tariff, for commission approval, establishing a formula for calculation of rates. The calculation must include recovery of depreciation and return on investment for each eligible project. The return on investment for each eligible project must be based on the utility's last authorized pre-tax rate of return. The surcharge must be calculated, applied, and recovered in accordance with the utility's last authorized rate structure. Section 367.0819(4)(d) and (5) provides that a utility may not collect on costs more than once when a surcharge has been approved. The surcharge will be reset at zero and any additional proposed costs must be submitted separately. The utility will have to submit another tariff and any required data to meet the established threshold to request any additional cost recovery through surcharges. The surcharge may not exceed 8 percent of the utility's total revenue.

Section 367.0819(2)(b), F.S., specifies that the company provide notice by mail and publish notice in a widely circulated newspaper to each customer in the affected service area. The CS does not address the timing of the notice to a utility's customers. Traditionally, a customer should be given notice of a change in a rate before that rate is effective to allow enough time to alter usage patterns. It appears to not allow for customer meetings in the utility's service area.

Section 367.0189(2) (c), F.S., requires that the utility affirm the accuracy of any financial data provided that would determine the surcharge rate and any adjustments. Further, the utility must affirm that the surcharge will not cause the utility to exceed the range of its last authorized rate of return on equity. Any person who provides false statements to the PSC is subject to a third degree felony charge. Section 367.0819 (2) (d), F.S., provides that if within 15 months after the utility files its required annual report (outlined in s. 367.121, F.S.), the PSC finds that the surcharge has caused the utility to exceed the authorized rate of return on equity the PSC may

[4] *The PSC and Legislature Could Consider Several Options to Enhance Services and Consumer Protection,* Office of Program Analysis & Government Accountability, Report No. 08-63, released November 2008.

order the utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly.

Section 367.0189(3), F.S., allows the surcharge tariff to be approved automatically within 60 days of filing. According to PSC rules, a substantially affected person has 21 days to protest the approval of a tariff that would then trigger an evidentiary hearing. This section removes the option for a public hearing as long as the utility has met the established filing requirements.

Proposed s. 367.0189(4)(a), F.S., specifies that the surcharge is presented as a separate line item on the customer's bill and must follow the established billing cycle. Section 367.0189(4)(b), F.S., specifies that an established surcharge must be revaluated and adjusted on a quarterly basis to reflect the costs of eligible projects placed into service. The utility must file all supporting data to increase or reduce the surcharge to the PSC and the Office of Public Counsel (OPC). The utility must also affirm the accuracy of the data. The surcharge adjustment takes effect 45 days after the supporting affirmed data is filed with the PSC and OPC. The difference between revenue and costs will be recovered or refunded, as appropriate, by the utility without a hearing. Revenue in excess of system-improvement costs will be refunded with interest to customers pursuant to PSC rule.

Section 367.0189(6)(b), F.S., defines the type of infrastructure improvement projects eligible for recovery through a surcharge as being capital improvement projects. A project is eligible for recovery if it is not included in the test year on which current rates are based. There are occasions when the PSC includes projects in rates set by a rate proceeding under s. 367.081(2), F.S., that fall outside the test year. However, the project items are not eligible for recovery if already included in established rates. The language in s. 367.0189(6)(b), F.S., further states that a project is only eligible if it is used for the production, treatment, transmission, storage, distribution, or provision of potable or recycled water to the public or for the collection, transportation, or disposal of sewage for the public. However, examples of eligible projects listed in the CS include such items as "main relining and rehabilitation," and "fire and flushing hydrant installation and replacement." In addition, the section provides the caveat that eligible projects "are not limited to" those described items. This language is broad and could result in filings that would not be generally considered capital infrastructure improvement projects.[5]

The language specifically designates projects that improve facilities to meet water quality standards set by the U. S. Environmental Protection Agency (EPA) to be eligible for recovery. Due to the implementation of new EPA rules on Numeric Nutrient Criteria Standards, it is reasonable to expect that there will be an increase in the number of infrastructure improvement projects undertaken by affected wastewater utilities. Numeric nutrient criteria compliance costs for affected utilities are expected to be substantial and the increase in costs will result in rate increases.

Section 367.0819(7), F.S., defines water and waste water treatment. Section 367.0819(8), F.S., requires the utility that is granted a surcharge to maintain for public inspection, the project name, description, schedule and cost. The schedule must be posted for public inspection in each utility's office.

[5] *Id.*

Section 367.0189(9), F.S., gives the PSC authority to review the prudence of all of the projects funded by the surcharge during a utility's subsequent rate proceeding. The section also requires that refunds plus interest be paid to the customers in the event that a project is found to be imprudent or if the project was not used and useful in the public service. This process may result in more infrequent rate proceedings and the prudence review may not occur in a timely manner. This may result in full recovery of a project before any review has taken place.

**Section 2** provides that this act shall take effect July 1, 2011.

## 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 CS will encourage investment by water and wastewater utilities in infrastructure projects. Utilities who choose to undergo these capital improvements will incur costs for attorney's fees and consulting fees. If their request is protested, the companies will further incur costs associated with defending the request. The proposed changes might allow some companies to obtain quicker rate relief. These capital improvements may improve the job market for occupations related to executing those improvements. Customers of utilities who opt to use this new mechanism will incur surcharges associated with the water and wastewater improvement projects.

C. Government Sector Impact:

According to the PSC, there will be increased costs and up to two FTE's including the cost of two regulatory analysts.

In general, the CS allows more expedient recovery of infrastructure improvement investments by investor owned water and wastewater utilities if no substantially affected

person formally protests the PSC's decision. Florida law requires the PSC to give substantially affected persons a point of entry to contest tariff decisions. The likelihood for consumer intervention escalates as the costs of the projects increase. It is not clear whether costly PSC proceedings can be avoided since the decision to approve a tariff may be protested, potentially triggering a PSC evidentiary proceeding. There will be staff time devoted to rulemaking, including, drafting forms as well as writing administrative procedures.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

According to the PSC, providing rulemaking authority to the PSC would permit the PSC and the industry to develop rule guidance on the appropriate return on equity and mechanisms for updating the procedures related to the collection of surcharges. Further, this could address some of the issues related to increased workload to the agency.

## VIII. Additional Information:

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

**CS/SB 950 by the Committee on Environmental Preservation and Conservation on March 23, 2010:**

- deletes "quarterly" as a payment schedule option for the surcharge;
- specifies that surcharge is calculated on the pre-tax rate of return;
- details customer notification requirements;
- requires the utilities to affirm financial data provided that would affect the surcharge calculation, including requiring a detailed reconciliation report, and imposes a third degree felony for providing false statements; and
- specifies that if within 15 months after the filing of a utility's annual report the PSC finds that the utility exceeded the authorized rate of return on equity the PSC may order the utility to offer refunds with interest to the customers and adjust the rates accordingly.

B. Amendments:

None.

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LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 03/23/2011 | . | |
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The Committee on Environmental Preservation and Conservation (Jones) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 367.0819, Florida Statutes, is created to read:

367.0819 Recovery of costs for system improvement projects.—

(1)(a) In order to promote utility investment in system improvement projects, the commission shall allow a utility to recover prudently incurred capital costs related to nonrevenue-

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producing projects to enhance water quality, fire protection reliability, and long-term system viability through a surcharge collected pursuant to this section. The costs of existing or new facilities to serve new customers are not recoverable through this surcharge.

(b) For purposes of this section, a the term "nonrevenue-producing project" means a project that is not constructed or installed for the purpose of serving a new customer.

(2) A utility seeking to establish a surcharge pursuant to this section must:

(a) Submit, for commission approval, the proposed surcharge tariff establishing a formula for the calculation of rates reflecting the surcharge, which rates provide for recovery of depreciation and return on investment for each eligible project. The return on investment for each eligible project must be based on the utility's last authorized pretax rate of return. The surcharge must be calculated, applied, and recovered in accordance with the utility's last authorized rate structure. Until the surcharge is reset pursuant to paragraph (4)(d), the total cumulative amount of the surcharge revenue recovered by the utility may not exceed 8 percent of the utility's total revenues, excluding revenues collected through the surcharge, for the preceding calendar year.

(b) Provide notice by mail of the initial surcharge tariff filing to each customer in the affected service areas and publish notice of the surcharge filing in a newspaper of general circulation in the affected service areas.

(c) Before implementing a surcharge under this section, the utility shall file a sworn affirmation as to the accuracy of the

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figures and calculations upon which surcharge or any adjustment thereto is based, stating that the change in rates will not cause the utility to exceed the range of its last authorized rate of return on equity. Whoever makes a false statement in the affirmation required under this paragraph, which statement he or she does not believe to be true in regard to any material matter, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If, within 15 months after the filing of a utility's annual report required by s. 367.121, the commission finds that the utility exceeded the range of its last authorized rate of return on equity after the implementation of the surcharge authorized by this section within the year for which the report was filed, the commission may order the utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly. This provision does require a bond or corporate undertaking in order for the utility to implement the surcharge.

(3) A surcharge tariff submitted by a utility in compliance with the requirements of paragraph (2)(a) is not subject to s. 367.091 and shall be approved as a matter of right without hearing within 60 days after filing the surcharge tariff with the commission.

(4) A surcharge established pursuant to this section shall be:

(a) Presented as a separate line item on the customer's bill and billed in accordance with the billing cycle in the utility's approved tariff. Any changes in the surcharge must be reflected on the first bill the customer receives following the change of the surcharge.

(b) Revaluated, and if necessary adjusted, on a quarterly basis to reflect the costs of eligible projects placed into service. The utility shall file the supporting data to increase or reduce the surcharge with the commission for each revaluation along with a sworn affirmation required by paragraph (2)(c), and shall contemporaneously deliver copies of the supporting data and the sworn affirmation to the Office of Public Counsel. The surcharge adjustment is not be subject to s. 367.091 and shall take effect without hearing 45 days after the supporting data and sworn affirmation are filed with the commission and delivered to the Office of Public Counsel.

(c) Subject to an annual reconciliation of revenues and costs based on a reconciliation period of 12 months, such period to begin on the date the surcharge tariff is approved as a matter of right pursuant to subsection (3). Within 30 days after the end of each reconciliation period, the utility shall file with the commission, and deliver to the Office of Public Counsel, a reconciliation report that shall compare the actual surcharge revenues received and the actual eligible costs incurred by the utility during the prior period along with the sworn affirmation required by paragraph (2)(c). A reconciliation report filed in accordance with these requirements shall be administratively approved by the commission without hearing within 45 days after filing. The difference between revenue and costs shall be recovered or refunded, as appropriate, by the utility without hearing as an automatic adjustment to the subsequent surcharge calculation. Revenues in excess of system-improvement costs shall be refunded with interest to customers pursuant to the commission’s rule on interest for water and

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wastewater utilities.

(d) Reset at zero as of the effective date of new base rates that provide for prospective recovery of the costs that had previously been recovered under the surcharge. Thereafter, only the costs of new eligible projects that have not previously been included in the base rate of the utility shall be reflected in the surcharge.

(5) Recovery of project costs pursuant to this section does not preclude such costs from being included in base rates in subsequent rate proceedings. However, a project cost recovered in base rates may not be recovered through a surcharge established pursuant to this section.

(6) A project is eligible for recovery of costs through the surcharge if it is:

(a) Completed and placed into service after the test year upon which base rates were last established by the commission for the utility; and

(b) For the construction of nonrevenue-producing improvement projects that are used for the production, treatment, transmission, storage, distribution, or provision of potable or recycled water to the public or for the collection, transportation, or disposal of wastewater for the public. Such projects may include, but are not limited to, water quality improvement projects designed to achieve primary or secondary water standards as determined by the Department of Environmental Protection, the United States Environmental Protection Agency, or any other governmental entity having similar regulatory jurisdiction; wastewater quality improvement projects; main, service line, and valve replacement projects; main relining and

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rehabilitation projects; fire and flushing hydrant installation and replacement projects; main extension to eliminate dead ends; interconnection projects; water, wastewater, and reuse meter installation and replacement projects; wastewater collection, replacement, relining, and rehabilitation projects; and manhole replacement and rehabilitation projects.

(7) Water and wastewater treatment includes production of any sodium solution, excluding sodium hypochlorite, used in conjunction with the treatment process, but does not include the onsite manufacturing of liquid chlorine or bleach.

(8) Upon approval of the surcharge tariff, the utility shall maintain and make available for public inspection during normal business hours at each utility location or on the utility's website a detailed schedule for each completed project, including the plant account number and title, the category of the project, the project name and description, the cost of the project in the month of closing, and the month and year of closing. Notice of the availability of the schedules for public inspection shall be posted in each office of the utility.

(9) The commission may review the prudence of all projects subject to the surcharge in the utility's next base rate proceeding following the commission's initial approval of the surcharge pursuant to subsection (3). Revenues from such surcharges are subject to refund if the commission subsequently determines that the costs of a project were not prudently incurred or that the project is not used and useful in the public service, and any such refund shall be made pursuant to the commission's rule on refunds for water and wastewater utilities.

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Section 2. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to water and wastewater utilities; creating s. 367.0819, F.S.; providing for recovery through a surcharge of certain costs relating to water and wastewater system improvement projects; defining a the term "nonrevenue-producing project"; requiring utilities to submit surcharge tariffs reflecting the surcharge calculation for recovery of such costs to the Florida Public Service Commission for approval and to provide specified notice of such surcharge tariff filings; providing for the automatic approval of the surcharge tariff within a specified period after filing the surcharge tariff with the commission; requiring the utility to file a sworn affirmation as to the accuracy of the figures and calculations; providing for penalties; requiring the utility to submit an annual report regarding the rate of return to the commission; allowing the commission to order the utility to make refunds, with interest, under certain circumstances; requiring the surcharge notice be presented as a separate line item on the customer's bill; specifying a limitation for the surcharge

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amount; providing requirements for billing, reconciliation, and quarterly adjustment of the surcharge; specifying a limitation for recovery of project costs; providing project eligibility criteria; specifying water and wastewater treatment criteria; providing requirements for notice, maintenance, and availability of certain records; authorizing the commission to review specified projects; providing that surcharges are subject to refund under certain conditions; providing an effective date.

**By** Senator Bennett

21-00790B-11 2011950__

A bill to be entitled

An act relating to water and wastewater utilities; creating s. 367.0819, F.S.; providing for recovery through a quarterly surcharge of certain costs relating to water and wastewater system improvement projects; defining a "non-revenue producing project;" requiring utilities to submit surcharge tariffs reflecting the surcharge calculation for recovery of such costs to the Florida Public Service Commission for approval and to provide specified notice of such surcharge tariff filings; providing for the automatic approval of the surcharge tariff within a specified period after filing the surcharge tariff with the commission; requiring the surcharge notice be presented as a separate line item on the customer's bill; specifying a limitation for the surcharge amount; providing requirements for billing, reconciliation, and quarterly adjustment of the surcharge; specifying a limitation for recovery of project costs; providing project eligibility criteria; specifying water and wastewater treatment criteria; providing requirements for notice, maintenance, and availability of certain records; authorizing the commission to review specified projects; providing that surcharges are subject to refund under certain conditions; providing an effective date.

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

Section 1. Section 367.0819, Florida Statutes, is created to read:

367.0819 Recovery of costs for system improvement projects.—

(1)(a) In order to promote utility investment in system improvement projects, the commission shall allow a utility to recover prudently incurred capital costs related to nonrevenue-producing projects to enhance water quality, fire protection reliability, and long-term system viability through a quarterly surcharge collected pursuant to this section. The costs of existing or new facilities to serve new customers are not recoverable through this recovery surcharge.

(b) For purposes of this section, a "non-revenue producing project" means a project that is not constructed or installed for the purpose of serving a new customer.

(2) A utility seeking to establish a surcharge pursuant to this section must:

(a) Submit, for commission approval, the proposed surcharge tariff establishing a formula for the calculation of rates reflecting the surcharge, which rates provide for recovery of depreciation and return on investment for each eligible project. The return on investment for each eligible project must be based on the utility's last authorized rate of return. The surcharge must be calculated, applied, and recovered in accordance with the utility's last authorized rate structure so that the total amount of the surcharge revenue recovered by the utility in any one year does not exceed 8 percent of the utility's total annual water and wastewater service revenues for the previous year.

(b) Provide notice of the initial surcharge tariff filing

to each customer in the affected service area and publish notice of the surcharge filing within the affected service area pursuant to commission rule.

(3) A surcharge tariff submitted by a utility in compliance with the requirements of subsection (2) shall be approved as a matter of right within 60 days after filing the surcharge tariff with the commission.

(4) A surcharge established pursuant to this section shall be:

(a) Presented as a separate line item on the customer's bill. Any changes in the surcharge must be reflected on the first bill the customer receives following the change of the surcharge.

(b) Revaluated on a quarterly basis to reflect the costs of eligible projects placed into service. The utility shall file the supporting data to increase or reduce the surcharge with the commission for each revaluation. The utility shall deliver the supporting data to the Office of Public Counsel at least 10 days before the effective date of the modified surcharge.

(c) Subject to an annual reconciliation of revenues and costs based on a reconciliation period of 12 months ending December 31 of each year. The revenue received from the surcharge for the reconciliation period shall be compared to the eligible costs of the utility for that period. The difference between revenue and costs shall be recovered or refunded, as appropriate, over a 12-month period beginning on April 1 of each year. Revenues in excess of system-improvement costs shall be refunded with interest to customers.

(d) Reset at zero as of the effective date of new base

rates that provide for prospective recovery of the costs that had previously been recovered under the surcharge. Thereafter, only the costs of new eligible projects that have not previously been included in the base rate of the utility shall be reflected in the quarterly surcharge.

(5) Recovery of project costs pursuant to this section does not preclude such costs from being included in the base rate in subsequent rate proceedings. However, a project cost recovered in base rates may not be recovered through a surcharge established pursuant to this section.

(6) A project is eligible for recovery of costs through the surcharge if it is:

(a) Completed and placed into service after the test year upon which base rates were last established by the commission for the utility; and

(b) For the construction of nonrevenue-producing and improvement projects that are used for the production, treatment, transmission, storage, distribution, or provision of potable or recycled water to the public or for the collection, transportation, or disposal of wastewater for the public. Such projects may include, but are not limited to, water quality improvement projects designed to achieve primary or secondary water standards as determined by the Department of Environmental Protection, the United States Environmental Protection Agency, or any other governmental entity having similar regulatory jurisdiction; wastewater quality improvement projects; main, service line, and valve replacement; main relining and rehabilitation; fire and flushing hydrant installation and replacement; main extension to eliminate dead ends;

interconnection projects; water, wastewater, and reuse meter installation and replacement; wastewater collection, replacement, relining, and rehabilitation; and manhole replacement and rehabilitation.

(7) Water and wastewater treatment includes production of any sodium solution, excluding sodium hypochlorite, used in conjunction with the treatment process, but does not include the onsite manufacturing of liquid chlorine or bleach.

(8) Upon approval of the surcharge tariff, the utility shall maintain and make available for public inspection during normal business hours at each utility location or on the utility's website a detailed schedule for each completed project, including the plant account number and title, the category of the project, the project name and description, the cost of the project in the month of closing, and the month and year of closing. Notice of the availability of the schedules for public inspection shall be posted in each office of the utility.

(9) The commission may review the prudence of all projects subject to the surcharge in the utility's subsequent rate proceeding. Revenues from such surcharges are subject to refund if the commission subsequently determines that the costs of a project were not prudently incurred or that the project is not used and useful in the public service.

Section 2. This act shall take effect July 1, 2011.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | CS/SB 236 |
| INTRODUCER: | Committee on Environmental Preservation and Conservation and Senator Hays |
| SUBJECT: | State Parks |
| DATE: | March 24, 2011 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Yune | Carter | MS | **Favorable** |
| 2. | Toman | Yeatman | EP | **Fav/CS** |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

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

| | | |
|---|---|---|
| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

The committee substitute (CS) adds the surviving spouse and parents of law enforcement officers or firefighters who have died in the line of duty to those eligible for gratis lifetime annual entrance passes to state parks. The CS also designates the marina at Grand Lagoon within St. Andrews State Park as the "Jack Mashburn Marina" and directs the Department of Environmental Protection (DEP) to erect appropriate signs and markers to reflect the new designation. Finally, the CS exempts state parks with free-roaming animal populations from the livestock owner liability provisions of s. 588.15, F.S.

The bill substantially amends section 258.0145(3) of the Florida Statutes.

## II. Present Situation:

### Annual Entrance Passes to State Parks

The Department of Environmental Protection's Division of Recreation and Parks (Division) offers for sale two types of Florida State Parks Annual Entrance Passes - the Family Annual

Entrance Pass for $120.00 and the Individual Annual Entrance Pass for $60.00. Since July 1, 2010, the Division has offered three discounts on annual entrance passes.

The first is to active duty members and honorably discharged veterans of the United States Armed Forces, National Guard, or reserve components thereof receive a 25 percent discount on annual entrance passes.

The second is to honorably discharged veterans who have service-connected disabilities receive lifetime family annual entrance passes at no charge.

The third and last discount the division offers on annual entrance passes is to surviving spouses of deceased members of the United States Armed Forces, National Guard, or reserve components thereof who have fallen in combat receive lifetime family annual entrance passes at no charge.

The division currently offers a discount of one-half off of the daily admission fee to Florida National Guard active members, spouses and minor children.

Other discounts presently offered by the division are one-half off of the daily admission fee for Florida residents participating in the Food Stamp program; and one-half off of the base camping fee for Florida residents who are 65 years and older or who are 100% disabled.

**D. D. "Jack" Mashburn and the Grand Lagoon at St. Andrews State Park**

D. D. "Jack" Mashburn was born in Youngstown, Florida in 1928 and is still politically active in his community, serving on multiple boards and commissions. He was instrumental in the funding of Bay High Stadium (now Tommy Oliver Stadium) and assisted in the original establishment of Panama City Beach, Long Beach and Edgewater Beach. Mashburn served in the Florida House of Representatives during the 1953 Legislative Session, representing Bay County. During his tenure as Representative, he passed several important bills benefitting Bay County. One of his longest lasting efforts was spearheading the creation of St. Andrews State Park.

The marina at Grand Lagoon, commonly referred to as the "boat basin," is located within St. Andrews State Park. Established in 1954 on a former military reservation, the park features 1,260 acres and over one-and-a-half miles of beaches. Visitors can enjoy bicycling, campground rental, nature trails, picnicking and wildlife viewing. Additionally, two fishing piers, a jetty and a boat ramp provide boating access to the water for water sports and ample fishing opportunities for anglers.

**Livestock Owner Liability and the Paynes Prairie Preserve State Park**

Section 588.13, F.S., provides definitions for the classification of livestock including the following:

> (1) "Livestock" shall include all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals.
> (2) "Owner" shall include any person, association, firm, or corporation, natural or artificial, owning or having custody of or in charge of livestock.

> (3) Livestock "running at large" or "straying" shall mean any livestock found or being on any public land, or land belonging to a person other than the owner of the livestock, without the landowner's permission, and posing a threat to public safety.
> (4) "Public roads" as used herein shall mean those roads within the state which are, or may be, maintained by the state, a political subdivision of the state, or a municipality, including the full width of the right-of-way, except those maintained, and expressly exempted from provisions of this chapter, by ordinance of the county or municipality having jurisdiction.

Section 588.15, F.S., addresses owner liability of livestock that stray upon Florida's public roads. Specifically, the statute conveys that:

> Every owner of livestock who intentionally, willfully, carelessly, or negligently suffers or permits such livestock to run at large upon or stray upon the public roads of this state shall be liable in damages for all injury and property damage sustained by any person by reason thereof.

In March 2011, DEP published a Livestock Management Plan for the Payne's Prairie Preserve State Park in Alachua County. In the plan, DEP clarifies that American bison are members of the family Bovidae and are therefore classified as livestock rather than wildlife in Florida. The management plan further states that the:

> . . . classification of cattle, horses, and bison as livestock generates a level of responsibility for the [Florida Park Service] in the case of personal injury or property damage due to escape that does not exist for animals classified as wildlife.

## III. Effect of Proposed Changes:

**Section 1** amends s. 258.0145(3), F.S., to expand the current military state park fee discounts for surviving spouses to include parents of deceased members of the United States Armed Forces, National Guard, or any of their reserve components who have fallen in combat to receive lifetime family annual entrance passes at no charge as long as the proper documentation,[1] a DD 1300, is provided along with proof of parenthood. Section 1 also adds the surviving spouse and parents of a law enforcement officer, as defined in s. 943.10(1), F.S., or a firefighter, as defined in s. 633.30(1), F.S., who has died in the line of duty to receive lifetime family annual entrance passes at no charge.

**Section 2** designates the "boat basin" on Grand Lagoon at St. Andrews State Park in Bay County as the "Jack Mashburn Marina." It also directs DEP to erect suitable markers for the designation.

**Section 3** exempts property within the state park system which has free-roaming animal populations from the provisions of s. 588.15, F.S. related to livestock owner liability.

**Section 4** provides an effective date of July 1, 2011.

[1] A Department of Defense Form 1300 is a report of casualty form.

## 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:

Parents of deceased members of the United States Armed Forces, National Guard, or reserve components as well as parents and spouses of deceased members of law enforcement officers and firefighters will benefit from the waived entrance fees. Persons who may be injured or receive property damage as a result of livestock straying from state park property onto public roads will be unable to seek redress from the state park system.

C. Government Sector Impact:

During fiscal year 2009/2010, Annual Entrance Pass sales accounted for $1,758,157.95 in revenues.

The department estimates that there will be a potential reduction in state revenue of up to $94,000 as a result of the additional persons who qualify for free lifetime annual entrance passes. However, the department states that the publicity and goodwill earned by the state is expected to offset the loss in revenues and result in increased visitation, thereby generating additional economic benefit for local communities and the state.

For the most part, there would be no fiscal impact on local governments. However, according to the department's website, some counties impose a surcharge in addition to the division's entrance fee. If the surcharges were waived, this may represent a potential reduction in revenue for the counties that impose the surcharge.

The DEP estimates the fiscal impact to be approximately $1,500 to change and erect signage to reflect the "Jack Mashburn Marina" designation at St. Andrews State Park.

Staff contacted at the DEP were unaware of any instances of stray animals from state parks causing injury or property damage due to escape. Given the infrequency of such events, the fiscal impact is indeterminate.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Additional Information:

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

**CS/SB 236 by the Environmental Preservation and Conservation Committee on March 23, 2011:**

- adds the surviving spouse and parents of a law enforcement officer or a firefighter who has died in the line of duty to those eligible for gratis lifetime annual entrance passes to state parks.
- provides that the marina commonly referred to as the 'boat basin' on Grand Lagoon at St. Andrews State Park in Bay is designated as "Jack Mashburn Marina."
- directs the Department of Environmental Protection to erect suitable markers designating "Jack Mashburn Marina."
- stipulates that property within the state park system that has free-roaming animal populations is exempt from the provision of s. 588.15, F.S., which addresses livestock owner liability.

B. Amendments:

None.

237374

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 03/23/2011 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with directory and title amendments)**

Between lines 19 and 20
insert:

(4) The surviving spouse and parents of a law enforcement officer, as defined in s. 943.10(1), or a firefighter, as defined in s. 633.30(1), who has died in the line of duty shall receive lifetime family annual entrance passes at no charge.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete line 10

237374

and insert:

Statutes, is amended, and subsection (4) is added to that section, to read:

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

And the title is amended as follows:

Delete line 4

and insert:

veterans and the spouse and parents of law enforcement officers and firefighters who die in the line of duty to receive annual entrance passes to

128914

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 03/23/2011 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with title amendment)**

Between lines 19 and 20

insert:

Section 2. Jack Mashburn Marina designated; Department of Environmental Protection to erect suitable markers.—

(1) The marina commonly referred to as the "boat basin" on Grand Lagoon at St. Andrews State Park in Bay County is designated as "Jack Mashburn Marina."

(2) The Department of Environmental Protection is directed to erect suitable markers designating Jack Mashburn Marina as described in subsection (1).

128914

13
14 ================ T I T L E A M E N D M E N T ================
15 And the title is amended as follows:
16 Delete line 5
17 and insert:
18
19 state parks at no charge; designating Jack Mashburn
20 Marina in Bay County; directing the Department of
21 Environmental Protection to erect suitable markers;
22 providing an effective date.

483202

LEGISLATIVE ACTION

| Senate | . | House |
|---|---|---|
| Comm: RCS | . | |
| 03/23/2011 | . | |
| | . | |
| | . | |
| | . | |

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

**Senate Amendment (with title amendment)**

Between lines 19 and 20
insert:
Section 2. Any property within the state park system that has free-roaming animal populations is exempt from the provisions of s. 588.15, Florida Statutes.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 5
and insert:

483202

state parks at no charge; exempting parks within the state park system that have free-roaming animal populations from the liability provisions in s. 588.15, F.S.; providing an effective date.

**By** Senator Hays

20-00315-11 2011236__

A bill to be entitled

An act relating to state parks; amending s. 258.0145, F.S.; providing for the parents of certain deceased veterans to receive lifetime annual entrance passes to state parks at no charge; providing an effective date.

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

Section 1. Subsection (3) of section 258.0145, Florida Statutes, is amended to read:

258.0145 Military state park fee discounts.—The Division of Recreation and Parks shall provide the following discounts on park fees to persons who present written documentation satisfactory to the division which evidences their eligibility for the discounts:

(3) Surviving spouses and parents of deceased members of the United States Armed Forces, National Guard, or reserve components thereof who have fallen in combat shall receive lifetime family annual entrance passes at no charge.

Section 2. This act shall take effect July 1, 2011.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 1440 |
| INTRODUCER: | Senator Hays |
| SUBJECT: | Rural Land Development |
| DATE: | March 21, 2011 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Uchino | Yeatman | EP | **Pre-meeting** |
| 2. | | | CA | |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

The bill makes multiple substantive changes to the implementation of the Rural Land Stewardship Area (RLSA) Program. Generally, the bill attempts to streamline the RLSA designation process by giving local governments more control and removing much of the Department of Community Affairs' (DCA) existing oversight and coordination functions. These functions are transferred to the Department of Agriculture and Consumer Affairs (DACS), which becomes the lead coordinating agency. The bill requires local governments who designate RLSAs to establish a rural land stewardship overlay zoning district to better determine the amount of stewardship credits that may be transferred. Finally, the bill specifies that landowners may be compensated for conducting certain activities on their properties when those activities benefit the public.

This bill substantially amends s. 163.3177, Florida Statutes, and repeals Rules 9J-5.026 and 9J-11.023, Florida Administrative Code.

## II. Present Situation:

### Growth Management

Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[1] also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to

[1] *See* Chapter 163, Part II, F.S.

adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."[2] Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. The RLSA program is part of the comprehensive planning process.

**Rural Land Stewardship Area Program**

The Legislature originally enacted the RLSA Program as a pilot program in 2001.[3] The RLSA program provides incentives for conserving agriculture and environmentally sensitive lands.[4] The primary goals of the program have been the "restoration and maintenance of the economic value of rural land; control of urban sprawl; identification and protection of ecosystems, habitats and natural resources; promotion of rural economic activity; maintenance of the viability of Florida's agriculture economy; and protection of the character of the rural areas of Florida."[5] The program allows land owners to transfer stewardship credits from sending areas to receiving areas. Sending areas have high resource values in their existing states, while receiving areas are deemed more suitable for development. Sending areas are protected from future development through the use of stewardship easements that run with the land in perpetuity. [6] The statute was amended in 2002, 2004, 2005 and 2006.[7] It is no longer considered a pilot program and several local governments have explored using RLSAs to augment their comprehensive plans. Collier, Highlands, Osceola and St. Lucie Counties have all expressed interest in developing RLSAs. As of today, only Collier and St. Lucie have RLSA programs. Since Collier's program predates the creation of the RLSA program, only St. Lucie's RLSA is statutorily approved.[8]

The DCA administers the program for the state. Due to several statutory changes, including the RLSA program shedding its "pilot" status, the DCA initiated rule making in June 2007. The rules, RLSA Rule 9J-5.026 and 9J-11.023, were challenged twice. Despite the first challenge being dismissed in an administrative law hearing, the DCA revised the rules to address some of the petitioners' concerns. The petitioners filed a second challenge, which was also denied,[9] after discussions with the DCA regarding additional rule modifications ceased. The rule became effective on October 18, 2009.[10]

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[2] Section 163.3177(5), F.S.
[3] Section 163.3177(11)(d), F.S. See also Chapter 2001-279, Laws of Fla.
[4] Florida Dep't of Community Affairs, *Rural Land Stewardship Program 2007 Annual Report* (Dec. 2007), available at http://www.dca.state.fl.us/fdcp/dcp/RuralLandStewardship/Files/RLSA2007ReportLegislature.pdf (last visited 03/21/2011).
[5] Section 163.3177(11)(d)2, F.S.
[6] *See supra* note 4, at 1-2.
[7] See *supra* note 4, at 3.
[8] Florida Dep't of Community Affairs, *Rural Land Stewardship Area Program 2009 Annual Report* (Dec. 2009), available at http://www.dca.state.fl.us/fdcp/dcp/RuralLandStewardship/Files/RLSA2009AnnualReport.pdf (last visited 03/21/2011).
[9] *Florida Chamber of Commerce v. Department of Community Affairs*, Case No. 09-3488RP (Fla. DOAH 2009).
[10] *See supra* note 9, at 3

**Population Projections – Needs Assessment**

The needs assessment is a part of the land use planning process that provides a mechanism for local governments to determine the appropriate supply of land uses necessary to accommodate anticipated demand. The "need" issue is one of the factors to be considered in any urban sprawl analysis.[11] To determine need, the reviewer analyzes: the categories of land use and their densities or intensities of use, the estimated gross acreage needed by category, and a description of the methodology used.[12] This methodology is then submitted to the DCA for review with the proposed comprehensive plan amendment. When reviewing this methodology, the DCA reviews both the numerical population and policy factors. Currently, a local government may use several different projections, including one that it creates.[13]

## III. Effect of Proposed Changes:

The bill makes multiple substantive changes to the implementation of the Rural Land Stewardship Area (RLSA) Program. Generally, the bill attempts to streamline the RLSA designation process by giving local governments more control and removing much of the DCA's existing oversight functions and potentially eliminates the needs assessment requirement. While oversight and coordination functions are transferred to the DACS, comprehensive plan amendments designating RLSAs must still go through the DCA's normal s. 163.3184, F.S., process. The bill repeals Rules 9J-5.026 and 9J-11.023, F.A.C., which the DCA uses to regulate the RLSA program. It specifies that the provisions of the bill shall be implemented pursuant to law and rule making is not authorized. The bill requires local governments who designate RLSAs to establish a rural land stewardship overlay zoning district to better determine the amount of stewardship credits that may be transferred. It strikes "transferable rural land use credits" in favor of "stewardship credits." Finally, the bill specifies that landowners may be compensated for conducting certain activities on their properties when those activities benefit the public.

**Section 1** amends s. 163.3177, F.S. Specifically, this section:

- Specifies that the DCA and water management districts (WMDs) may no longer provide assistance to land owners and local governments in implementation of land use planning and development; however, it adds the Florida Fish and Wildlife Conservation Commission (FWC) to the list of agencies that are required to give such assistance;
- Transfers coordinating and oversight functions to the DACS;
- Exempts landowners and local governments from having to demonstrate need;
- Authorizes the landowner to petition the local government to designate future land use categories and removes the DCA from this process;
- Adds economic development as a planning goal of the RLSA program;
- Removes the Department of Environmental Protection (DEP) and the WMDs as governmental entities that assist in mapping environmental areas worthy of protection;[14]
- Requires listed agencies to provide "technical" assistance to local governments, as needed;

[11] Rule 9J-5.006(5)(g)1, F.A.C.
[12] Rule 9J-5.006(2)(c), F.A.C.
[13] *Id.*
[14] See the "Technical Deficiencies" section of the bill analysis.

- Removes the DCA from provisions that expand its role as a resource agency for smaller rural governments that do not have the staff or resources to create a RLSA;
- Removes the requirement that the DCA encourage local government participation in development of RLSAs;
- Expands legislative intent to promote economic activity in rural areas. Existing language promotes *rural economic* activity (emphasis added);
- Expands legislative intent to protect private property rights in rural areas;
- Removes the requirement that local governments notify the DCA of their intent to designate RLSAs;
- Changes "urban growth boundaries" to "urban service boundaries" to make it consistent with the definition provided in s. 163.3164(29), F.S.;
- Allows for more than one comprehensive plan amendment if the RLSA is in more than one jurisdiction;
- Removes the requirement that receiving areas are connected to the rest of the RLSA through rural design and rural road corridors;
- Removes the requirement to develop adequate workforce housing, including low, very low and moderate income housing, within the receiving area;
- Removes the "control of sprawl" as a bright-line goal for RLSAs, though control of sprawl is cross-referenced in Rule 9J-5.006(5)(l) in this sub-paragraph;
- Provides that only local governments may designate receiving areas, and the DCA has no authority to review the designation;
- Strikes "developer" and adds "applicant" as the party who is responsible to coordinate with state agencies if listed species occur in the receiving area;
- Specifies that potential impacts and protective measures of the receiving area must be evaluated together with the substantial benefits and protective measures taken from outside the receiving area;
- Requires local governments that adopt RLSAs to establish an overlay zoning district for the area;
- Removes consideration of the "25-year or greater projected population" when transferring stewardship credits in favor of using projections based on available data. When taken together with the needs assessment language on lines 74-76, it may eliminate the requirement for local governments to justify the buildup of receiving areas within RLSAs.
- Clarifies that stewardship credits may only be credited from sending areas and only be used in receiving areas;
- Clarifies that permitted uses and intensity are part of the underlying character of land within an RLSA;
- Allows permitted uses and intensity to continue exist on a sending area after transfer of density to a receiving area. Density assigned to the sending area ceases to exist once it has been transferred to the receiving area;
- Provides for an increase in density or intensity of the receiving area without a comprehensive plan amendment;
- Specifies that a change in either density or intensity must be accomplished by a development order;
- Adds the FWC to the list of governmental entities that sending area landowners should enter into agreements with to achieve conservation objectives;

- Provides compensation for landowners who provide public benefits by effective land management;
- Removes the requirement that the DCA provide annual reports to the Legislature on implementation of RLSAs;
- Provides additional legislative intent; and
- Directs that the provisions be implemented pursuant to law and prohibits rule making.

**Section 2** repeals Rules 9J-5.026 and 9J-11.023, F.A.C. The DCA adopted these rules in October 2009. They regulate RLSAs and the designation procedures.

**Section 3** provides an effective date of July 1, 2011.

## 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 provides landowners additional flexibility to explore options with the RLSA program. Implementation of the program has not yielded the results that had been anticipated by the private sector. If the changes provide adequate incentives and program clarifications, significant economic activity may occur with development of RLSAs as the economy picks up.

C. Government Sector Impact:

The DCA's oversight responsibility is eliminated from many of the areas over which it currently has authority. The fiscal impact of its reduced responsibility cannot be determined. The WMDs and, potentially, the DEP have reduced assistance requirements and should also see reduced costs, which cannot be determined. The FWC is added to the list of state agencies that will be impacted by this bill. Its responsibilities will likely be met with existing staff and resources. Finally, local governments will have to take on

additional oversight capacity that may be offset by streamlining the RLSA designation process. They will have more authority and control at the local level. Local governments may also see long-term benefits in increasing tax revenues in receiving areas. The combined effect to local governments is unknown.

## VI. Technical Deficiencies:

On lines 69-71, the DEP is required to assist landowners and local governments, but the WMDs are stricken from the process. On lines 90-91, both the DEP and WMDs are stricken from rendering mapping assistance. It appears that this is an inconsistency with the earlier requirement for the DEP to render assistance. However, the later DEP reference may have been deleted because it is redundant. Clarification may be needed at a later committee stop.

On line 212, the word "amount" is used in reference to a receiving area. The intent is probably to refer to the size or acreage of the receiving area and not the generic term "amount."

## VII. Related Issues:

None.

## VIII. Additional Information:

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

None.

B. Amendments:

None.

**By** Senator Hays

20-01079-11 20111440__

A bill to be entitled

An act relating to rural land development; amending s. 163.3177, F.S.; adding the Fish and Wildlife Conservation Commission and removing the water management districts from the list of governmental entities that must cooperate in providing assistance in the implementation of laws governing land use planning and development and related agency rule; adding a landowner as a recipient of assistance in designating rural land stewardship areas; exempting a landowner or local government from a requirement to demonstrate need; authorizing a landowner to petition a local government for certain land designations; adding economic development as a planning goal; removing the Department of Environmental Protection and water management districts as agencies providing assistance with mapping environmental areas worthy of protection; requiring the provision of technical assistance as needed to a local government in the implementation of rural land stewardship; removing a provision that expands the role of the Department of Community Affairs as a resource agency; removing a provision requiring the department to encourage participation of certain types of local governments; including the protection of private property rights for rural areas as a broad principle of rural sustainability; removing the notification requirement by the local government to the department of intent to designate a rural land stewardship area; modifying the

criteria for designating a rural land stewardship area; removing consideration of certain criteria relating to a functional mix of land uses; removing as a review consideration the control of sprawl; providing for the designation of a receiving area and removing requirement for prior review by the Department of Community Affairs for designation of a receiving area; providing that the applicant rather than the developer is required to coordinate listed species protection; modifying the considerations that are balanced in designating a receiving area; providing for the establishment of a rural land stewardship overlay zoning district; providing for stewardship credits rather than transferable rural land use credits to be created following the designation of stewardship receiving areas; modifying the criteria that affect underlying permitted uses, density, or intensity of land uses; providing for an increase in density or intensity of use; providing for compensation to landowners who implement specified land management activities of public benefit; removing a reporting requirement; providing legislative findings that the act be implemented pursuant to law rather than rule; repealing certain rules of the Florida Administrative Code; providing an effective date.

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

Section 1. Paragraph (d) of subsection (11) of section 163.3177, Florida Statutes, is amended, present paragraphs (e) through (h) of that subsection are redesignated as paragraphs (f) through (i), respectively, and a new paragraph (e) is added to that subsection, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(11)

(d)1. The ~~department, in cooperation with the~~ Department of Agriculture and Consumer Services, in cooperation with the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, ~~water management districts,~~ and regional planning councils, shall provide assistance to landowners and local governments in the implementation of this paragraph and rule 9J-5.006(5)(l), Florida Administrative Code, if a landowner and a local government are not required to demonstrate need based on population growth or on any other basis. Implementation of those provisions shall include a process by which a landowner ~~the department~~ may petition a ~~authorize~~ local government ~~governments~~ to designate all or portions of lands classified in the future land use element as predominantly agricultural, rural, open, open-rural, or a substantively equivalent land use, as a rural land stewardship area within which planning and economic incentives are applied to encourage economic development through the implementation of innovative and flexible planning and development strategies and creative land use planning techniques, including those contained in this section ~~herein~~ and in rule 9J-5.006(5)(l), Florida Administrative Code. Assistance may include, but is not limited

to:

a. Assistance with mapping environmental areas worthy of protection and ~~from the Department of Environmental Protection and water management districts~~ in creating the geographic information systems land cover database and aerial photogrammetry needed to prepare for a rural land stewardship area;

b. Support for local government implementation of rural land stewardship concepts by providing information and technical assistance to local governments as needed; and ~~regarding~~

c. Making available land acquisition programs that may be used by the local government or landowners to leverage the protection of greater acreage and maximize the effectiveness of rural land stewardship areas.~~; and~~

~~c. Expansion of the role of the Department of Community Affairs as a resource agency to facilitate establishment of rural land stewardship areas in smaller rural counties that do not have the staff or planning budgets to create a rural land stewardship area.~~

2. ~~The department shall encourage participation by local governments of different sizes and rural characteristics in establishing and implementing rural land stewardship areas.~~ It is the intent of the Legislature that rural land stewardship areas be used to further the following broad principles of rural sustainability: restoration and maintenance of the economic value of rural land; control of urban sprawl; identification and protection of ecosystems, habitats, and natural resources; promotion of ~~rural~~ economic activity within rural areas; maintenance of the viability of Florida's agricultural economy;

and protection of private property rights in ~~the character of~~ rural areas of Florida. Rural land stewardship areas may be multicounty in order to encourage coordinated regional stewardship planning.

~~3. A local government, in conjunction with a regional planning council, a stakeholder organization of private land owners, or another local government, shall notify the department in writing of its intent to designate a rural land stewardship area. The written notification shall describe the basis for the designation, including the extent to which the rural land stewardship area enhances rural land values, controls urban sprawl, provides necessary open space for agriculture and protection of the natural environment, promotes rural economic activity, and maintains rural character and the economic viability of agriculture.~~

3.~~4.~~ A rural land stewardship area may not ~~shall~~ be ~~not~~ less than 10,000 acres, ~~and~~ shall be located outside ~~of~~ municipalities and established urban service areas or planned future urban service areas ~~growth boundaries~~, and shall be designated by plan amendment, or more than one plan amendment if the rural land stewardship area encompasses more than one county. The plan amendment designating a rural land stewardship area is ~~shall be~~ subject to review by the Department of Community Affairs pursuant to s. 163.3184 and shall provide for the following:

a. Criteria for the designation of receiving areas within rural land stewardship areas in which innovative planning and development strategies may be applied. Criteria shall at a minimum provide for the following: adequacy of suitable land to

accommodate development so as to avoid conflict with environmentally sensitive areas, resources, and habitats; compatibility between and transition from higher density uses to lower intensity rural uses; and the establishment of receiving area service boundaries that ~~which~~ provide for a transition from ~~separation between~~ receiving areas and other land uses within the rural land stewardship area through limitations on the extension of services~~; and connection of receiving areas with the rest of the rural land stewardship area using rural design and rural road corridors~~.

b. Goals, objectives, and policies setting forth the innovative planning and development strategies to be applied within rural land stewardship areas pursuant to the provisions of this section.

c. A process for the implementation of innovative planning and development strategies within the rural land stewardship area, including those described in this subsection and rule 9J-5.006(5)(l), Florida Administrative Code, which provide for a functional mix of land uses~~, including adequate available workforce housing, including low, very-low and moderate income housing for the development anticipated in the receiving area and which are applied~~ through the adoption by the local government of zoning and land development regulations applicable to the rural land stewardship area.

d. A process that ~~which~~ encourages visioning pursuant to s. 163.3167(11) to ensure that innovative planning and development strategies comply with the provisions of this section.

e. The ~~control of sprawl through the~~ use of applicable innovative strategies and creative land use techniques

consistent with the provisions of this subsection and rule 9J-5.006(5)(l), Florida Administrative Code.

4.~~5.~~ A receiving area may ~~shall~~ be designated only pursuant to procedures adopted in the local government's land development regulations ~~by the adoption of a land development regulation~~. ~~Prior to the designation of a receiving area, the local government shall provide the Department of Community Affairs a period of 30 days in which to review a proposed receiving area for consistency with the rural land stewardship area plan amendment and to provide comments to the local government.~~ At the time of the designation of a stewardship receiving area, a listed species survey shall ~~will~~ be performed. If listed species occur on the receiving area site, the applicant ~~developer~~ shall coordinate with each appropriate local, state, or federal agency to determine if adequate provisions have been made to protect those species in accordance with applicable regulations. In determining the adequacy of provisions for the protection of listed species and their habitats, the rural land stewardship area shall be considered as a whole, and the potential impacts and protective measures taken within ~~to~~ areas to be developed as receiving areas shall be considered together with the substantial ~~environmental~~ benefits derived from lands set aside and protective measures taken outside the designated receiving ~~of~~ areas ~~protected as sending areas in fulfilling this criteria~~.

5.~~6.~~ Upon the adoption of a plan amendment creating a rural land stewardship area, the local government shall, by ordinance, establish a rural land stewardship overlay zoning district that provides the methodology for the creation, conveyance, and use of transferable rural land use credits, otherwise referred to as

stewardship credits, the application of which does ~~shall~~ not constitute a right to develop land, nor increase density of land, except as provided by this section. The total amount of stewardship ~~transferable rural land use~~ credits within the rural land stewardship area must enable the realization of the long-term vision and goals for the ~~25-year or greater projected population of the~~ rural land stewardship area, which may take into consideration the anticipated effect of the proposed receiving areas. The estimated amount of the receiving area shall be determined by using projections based on available data and the development potential that is represented by the stewardship credits created within the rural land stewardship area.

6. Stewardship ~~Transferable rural land use~~ credits are subject to the following limitations:

a. Stewardship ~~Transferable rural land use~~ credits may ~~only~~ exist only within a rural land stewardship area.

b. Stewardship ~~Transferable rural land use~~ credits may ~~only~~ be credited only from lands designated as stewardship sending areas and may be used only on lands designated as stewardship receiving areas and ~~then~~ solely for the purpose of implementing innovative planning and development strategies and creative land use planning techniques adopted by the local government pursuant to this section.

c. Stewardship ~~Transferable rural land use~~ credits assigned to a parcel of land within a rural land stewardship area shall cease to exist if the parcel of land is removed from the rural land stewardship area by plan amendment.

d. Neither the creation of the rural land stewardship area

by plan amendment nor the adoption of the rural land stewardship zoning overlay district ~~assignment of transferable rural land use credits~~ by the local government shall ~~operate to~~ displace the underlying permitted uses, density, or intensity of land uses assigned to a parcel of land within the rural land stewardship area which existed before the adoption of the plan amendment or zoning overlay district; however, once stewardship ~~if transferable rural land use~~ credits are transferred from a designated sending area ~~parcel~~ for use within a designated receiving area, the underlying density assigned to the designated sending area ~~parcel of land~~ shall cease to exist.

e. The underlying permitted uses, density, or intensity on each parcel of land located within a rural land stewardship area may ~~shall~~ not be increased or decreased by the local government, except as a result of the conveyance or use of stewardship ~~transferable rural land use~~ credits, as long as the parcel remains within the rural land stewardship area.

f. Stewardship ~~Transferable rural land use~~ credits shall cease to exist on a parcel of land where the underlying density assigned to the parcel of land is utilized.

g. An increase in the density or intensity of use on a parcel of land located within a designated receiving area may occur only through the assignment or use of stewardship ~~transferable rural land use~~ credits and does ~~shall~~ not require a plan amendment.

h. A change in the density or intensity of land use on parcels located within receiving areas shall be specified in a development order that ~~which~~ reflects the total number of stewardship ~~transferable rural land use~~ credits assigned to the

parcel of land and the infrastructure and support services necessary to provide for a functional mix of land uses corresponding to the plan of development.

i. Land within a rural land stewardship area may be removed from the rural land stewardship area through a plan amendment.

j. Stewardship ~~Transferable rural land use~~ credits may be assigned at different ratios of credits per acre according to the natural resource or other beneficial use characteristics of the land and according to the land use remaining following the transfer of credits, with the highest number of credits per acre assigned to the most environmentally valuable land or, in locations where the retention of open space and agricultural land is a priority, to such lands.

k. The use or conveyance of stewardship ~~transferable rural land use~~ credits must be recorded in the public records of the county in which the property is located as a covenant or restrictive easement running with the land in favor of the county and ~~either~~ the Department of Environmental Protection, the Department of Agriculture and Consumer Services, a water management district, or a recognized statewide land trust.

7. Owners of land within rural land stewardship sending areas should be provided incentives to enter into rural land stewardship agreements, pursuant to existing law and rules adopted thereto, with state agencies, water management districts, the Fish and Wildlife Conservation Commission, and local governments to achieve mutually agreed upon conservation objectives. Such incentives may include, but are not ~~be~~ limited to, the following:

a. Opportunity to accumulate transferable mitigation

credits for use or sale.

b. Extended permit agreements.

c. Opportunities for recreational leases and ecotourism.

d. Compensation for the achievement of specified land management activities of public benefit, including, but not limited to: facility siting and corridors, recreational leases, water conservation and storage, water reuse, wastewater recycling, water supply and water resource development, nutrient removal, environmental restoration and mitigation, public recreation, listed species protection and recovery, wildlife corridor management and enhancement, and activities relating to the reduction of greenhouse gas emissions. ~~Payment for specified land management services on publicly owned land, or property under covenant or restricted easement in favor of a public entity.~~

e. Option agreements for sale to public entities or private land conservation entities, in ~~either~~ fee or easement, upon achievement of specified conservation objectives.

~~8. The department shall report to the Legislature on an annual basis on the results of implementation of rural land stewardship areas authorized by the department, including successes and failures in achieving the intent of the Legislature as expressed in this paragraph.~~

(e) The Legislature finds that the provisions of paragraph (d) constitute an overlay of land use options that provide economic and regulatory incentives for landowners outside established and planned urban service areas to conserve and manage vast areas of land for the benefit of Florida's residents and the natural environment while maintaining and enhancing the

asset value of their landholdings. It is the intent of the Legislature that the provisions of paragraph (d) be implemented pursuant to law. Rulemaking authority is not authorized to implement paragraph (d).

Section 2. Rules 9J-5.026 and 9J-11.023, Florida Administrative Code, are repealed, and the Department of State is directed to remove these rules from the Florida Administrative Code.

Section 3. This act shall take effect July 1, 2011.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

| | |
|---|---|
| BILL: | SB 1634 |
| INTRODUCER: | Senator Lynn |
| SUBJECT: | Water Vending Machines |
| DATE: | March 21, 2011 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Wiggins | Yeatman | EP | **Favorable** |
| 2. | | | CA | |
| 3. | | | CM | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

The bill repeals the regulation of water vending machines and the permitting of vending machine operators. It deletes provisions for the deposit of fees, enforcement of the state's water vending machine regulations, penalties, and the preemption of county and municipal water vending regulations. Thus, counties and municipalities may pursue local regulatory ordinances unique to local jurisdictions.

The bill repeals s. 500.459, and amends s. 500.511, of the Florida Statutes.

## II. Present Situation:

The Department of Agriculture and Consumer Services (DACS), inspects and collects samples for all water vending machines in Florida. For Fiscal Year 2009-2010, DACS:

- permitted approximately 2,800 water vending firms at a cost of $35 per permit;
- inspected 309 water vending machines; and
  collected 673 vended water samples for testing of which 14 tested positive for coliforms (a known indicator organism) which detects contaminants capable of causing severe illness and/or death if consumed. The permitting and inspection processes were developed to provide a reasonable level of assurance to the general public that products offered through this venue meet acceptable standards, are routinely tested and inspected, and ensure products are safe for human consumption.

The legislative intent of s. 500.459, F.S., was to protect public health through licensing of and establishing standards for water vending machines in Florida. DACS is statutorily responsible for the permitting and regulation of Florida's water vending machines.

## III. Effect of Proposed Changes:

**Section 1** repeals s. 500.459, F.S., relating to the regulation of water vending machines. According to DACS, de-regulation of water vending machines may compromise the wholesomeness of water products offered for sale to the general public creating a significant public health risk. The absence of permitting, inspection, and sample collection activities, will not ensure adherence to industry-acceptable operating standards designed to prevent contamination of water products offered to the general public through vending machines. Additionally, the introduction of other water-borne pathogens may likely increase and could result in more frequent outbreaks of sickness and/or deaths of Floridians.

**Section 2** amends s. 500.511, F.S., to remove the provisions relating to fees, enforcement and preemption of regulation of water vending machines to the state. DACS has stated that if adopted, regulation will no longer be preempted to the state and it will allow city and county jurisdictions to pursue local ordinances requiring permitting with fees, inspections and regulations unique to each local jurisdiction.

**Section 3** creates an effective date of July 1, 2011.

## 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:

Industries associated with providing inspections may see an increase in business if the city in which the business resides decides to institute new compliance requirements.

C. Government Sector Impact:

The fee for a Water Vending Operating Permit is $35 per machine. There is also a $10 epidemiology surcharge per operator collected for the Florida Department of Health (DOH). The bill is anticipated to have a negative fiscal impact on state trust funds from

the reduction in fees associated with permitting and operating water vending machines. DACS estimates this reduction to be $95,000 per fiscal year based on the $35 fee paid to DACS for each water vending machine.

Additionally, the DACS reports that there are 106 "firm operators" that are issued a permit. Therefore, based on a $10 surcharge currently collected by DACS and transferred to DOH from each operator, this bill would have a negative fiscal impact on DOH trust funds of $1,060.

A positive fiscal impact on state funds is anticipated to occur from the reduction in costs associated with processing permit applications. DACS reports that this reduction would approach $64,700 per year. The bulleted list below reflects the number of applications processed by DACS last year.

For Fiscal Year 2009-2010 DACS:

- permitted approximately 2,800 water vending firms at a cost of $35 per permit;
- permitted 309 inspection of water vending machines; and
- collected 673 water samples for testing.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Additional Information:

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

None.

B. Amendments:

None.

**By** Senator Lynn

7-01474A-11 20111634__

A bill to be entitled

An act relating to water vending machines; repealing s. 500.459, F.S., relating to the regulation of water vending machines and the permitting of water vending machine operators; amending s. 500.511, F.S.; deleting provisions for the deposit of operator permitting fees, the enforcement of the state's water vending machine regulations, penalties, and the preemption of county and municipal water vending machine regulations, to conform; providing an effective date.

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

Section 1. Section 500.459, Florida Statutes, is repealed.

Section 2. Section 500.511, Florida Statutes, is amended to read:

500.511 Bottled water plants; packed ice plants; ~~Fees; enforcement;~~ preemption.—

~~(1) FEES.—All fees collected under s. 500.459 shall be deposited into the General Inspection Trust Fund and shall be accounted for separately and used for the sole purpose of administering the provisions of such section.~~

~~(2) ENFORCEMENT AND PENALTIES.—In addition to the provisions contained in s. 500.459, the department may enforce s. 500.459 in the manner provided in s. 500.121. Any person who violates a provision of s. 500.459 or any rule adopted under such section shall be punished as provided in such section. However, criminal penalties may not be imposed against any person who violates a rule.~~

~~(3) PREEMPTION OF AUTHORITY TO REGULATE.~~ Regulation of bottled water plants~~, water vending machines, water vending machine operators,~~ and packaged ice plants is preempted by the state. No county or municipality may adopt or enforce any ordinance that regulates the licensure or operation of bottled water plants~~, water vending machines,~~ or packaged ice plants, unless it is determined that unique conditions exist within the county which require the county to regulate such entities in order to protect the public health. This section ~~subsection~~ does not prohibit a county or municipality from requiring a business tax pursuant to chapter 205.

Section 3. This act shall take effect July 1, 2011.

**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 842

INTRODUCER: Senator Latvala

SUBJECT: Tax Credits/Rehabilitation of Contaminated Sites

DATE: March 21, 2011 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Wiggins | Yeatman | EP | **Favorable** |
| 2. | | | BC | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

The Voluntary Cleanup Tax Credit Program (VCTC) was created to conduct voluntary cleanup of certain dry-cleaning solvent contaminated sites and brownfield sites in designated brownfield areas. The VCTC can apply toward corporate income taxes. The amount of the credit is 50 percent of the cost of voluntary cleanup activities integral to site rehabilitation, up to $500,000 per site. If the credit is not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. The total amount of the tax credit that may be granted each year under the program is $2 million. The Florida Department of Environmental Protection (DEP) is responsible for allocating the credits. The bill increases the cap on the total amount of tax credits that DEP can issue from $2 million to $4 million annually.

The bill amends ss. 220.1845 and 376.30781 of the Florida Statutes.

## II. Present Situation:

Brownfield sites are 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.[1] The Brownfields Tax Incentives was passed by Congress as part of the Taxpayer Relief Act of 1997, and codified through Section 198(a) of the Internal Revenue Code. The incentive allows a taxpayer to fully deduct the costs associated of environmental cleanups in the year the costs were incurred rather than spreading them over a period of years. DEP receives its funding for its state response program (SRP) from the Environmental Protection Agency (EPA).

[1] Florida Department of Environmental Protection Summary of State Brownfields and Voluntary Response Programs.

A portion of these funds are used to fund site-specific assessments and limited cleanup of source areas for eligible applicants. Sites that receive these services are also encouraged to participant in the state Brownfields redevelopment Program.

In 1998, the Legislature provided DEP the direction and authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites.

The Legislature created a tax credit in the amount of 35% of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- 1) a site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program (DSCP);
- 2) a dry-cleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the dry-cleaning facility; or
- 3) a brownfield site in a designated brownfield area.

At that time, an eligible tax credit applicant could receive up to $250,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits (i.e. ensure that their neighbor cannot sue them for personal injury or diminished property value), the VCTC statute also provided a completion incentive in the form of an additional 10% supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order (SRCO) from DEP. This additional supplemental credit was 10% of the total cost of cleanup over the life of the project, with a $50,000 cap. Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by the DEP is $2 million annually. In the event that approved tax credit applications exceed the $2 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. When the VCTC program was created, these tax credits could be applied toward corporate income tax or intangible personal property tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.[2]

In 2006, amendments were made to VCTC provisions in s. 220.1845, F.S., (Corporate Income Tax) and s. 376.30781, F.S., (Pollutant Discharge Prevention and Removal) to allow costs incurred prior to the brownfield area designation to be claimed, as long as the brownfield area designation is made in the same calendar year as when the first VCTC costs are claimed. Additional amendments were adopted to increase the amount and percentage of costs of voluntary cleanup activity that is integral to site rehabilitation from 35% to 50% and from $250,000 to $500,000; to increase the percentage and value of the completion incentive tax credit from 10% to 25% and from $50,000 to $500,000; to allow a one-time application for an additional 25% of the total site rehabilitation costs, up to $500,000, for brownfield sites at which the land use is restricted to affordable housing; to allow an eligible applicant to submit a one-

[2] Department of Environmental Protection, *Senate Bill 842 Fiscal Analysis* (February 22, 2011)(on file with the Senate Committee on Environmental Preservation and Conservation).

time application claiming 50% of the costs, up to $500,000, for removal, transportation and disposal of solid waste at a brownfield site; and to amend subsection (9) of section 376.30781, F.S., to extend the review and certificate issuance period from March 1 to March 31. The 2006 legislature also repealed s199.1055, F.S., the Intangible Personal Property Tax provision. Therefore, the VCTC can now only be applied against Florida corporate income tax. [3]

In 2008,the Legislature clarified the eligibility requirements and procedures for claiming the solid waste VCTC; to extend the review and certificate issuance period from March 31 to May 1; to allow a one-time application for an additional 25% of the total site rehabilitation costs, up to $500,000, for brownfield sites at which the redevelopment results in a health care facility or health care provider; and changed the deadline for submittal of tax credit applications to January 31 of the year following the year the costs were incurred and paid.[4]

In 2009, the Legislature extended the time period for payment of site rehabilitation costs up until the applicant submitted their application but prior to January 31 of the year following the calendar year for which costs are being claimed.[5]

The tax credit program continues to be a strong incentive for voluntary cleanup of contaminated sites in Florida. The annual authorization for VCTC is $2 million. Beginning in 2006, the requests for tax credits have met or exceeded that authorization. Section 376.30781, F.S., states that eligible tax credits will be awarded as each authorization becomes available. All tax credit authorizations have been exhausted to date and tax credit awards for costs incurred as far in the past as calendar year 2008 are still pending. The current backlog of approved, unawarded tax credits is $7,379,777. [6]

According to DEP, VCTC applications for 2010 costs were due on January 31, 2011. DEP received 52 applications requesting $5,647,779.96 in tax credits. The applications are being reviewed for eligibility.

## III. Effect of Proposed Changes:

**Section 1** amends s. 220.1845, F.S., to increase the total amount of tax credits which may be granted annually from $2 million to $4 million.

**Section 2** amends s. 376.30781, F. S., to increase the total amount of tax credits that DEP may allocate annually from $2 million to $4 million.

**Section 3** provides an effective date of July 1, 2011.

[3] Department of Environmental Protections, *Senate Bill 842 Fiscal Analysis* (February 22, 2011)(on file with the Senate Committee on Environmental Preservation and Conservations).
[4] *Id*.
[5] *Id*.
[6] *Id*.

## 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 increase in the total annual authorization amount will allow some businesses to receive their tax credit certificates sooner and may spark further site rehabilitation and redevelopment activity. The state may experience job creation and redevelopment of brownfield and eligible dry-cleaning sites.

C. Government Sector Impact:

According to DEP, for FY 2010-2011, of the $2,000,000 available, $530,810 was approved for payment as of February 15, 2011. An additional $5,116,969 in tax credits has also been requested.

DEP will be required to amend existing rules detailing the tax credit application process. There will be minimal fiscal impacts associated with the cost of rulemaking related to publishing rule drafts and conducting public workshops for rule development.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Additional Information:

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

None.

B. Amendments:

None.

**By** Senator Latvala

16-00723-11 2011842__

A bill to be entitled

An act relating to tax credits for the rehabilitation of contaminated sites; amending s. 220.1845, F.S.; increasing the annual amount of tax credits available for the rehabilitation of contaminated sites; amending s. 376.30781, F.S.; increasing the annual amount of tax credits available for the cleanup of sites contaminated with drycleaning solvents and the cleanup of certain brownfield sites; providing an effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 220.1845, Florida Statutes, is amended to read:

220.1845 Contaminated site rehabilitation tax credit.—

(2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(f) The total amount of the tax credits which may be granted under this section is $4 ~~$2~~ million annually.

Section 2. Subsections (4), (5), and (11) of section 376.30781, Florida Statutes, are amended to read:

376.30781 Tax credits for rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority; revocation authority.—

(4) The Department of Environmental Protection is responsible for allocating the tax credits provided for in s. 220.1845, which may not exceed a total of $4 ~~$2~~ million in tax credits annually.

(5) To claim the credit for site rehabilitation or solid waste removal, each tax credit applicant must apply to the Department of Environmental Protection for an allocation of the $4 ~~$2~~ million annual credit by filing a tax credit application with the Division of Waste Management on a form developed by the Department of Environmental Protection in cooperation with the Department of Revenue. The form shall include an affidavit from each tax credit applicant certifying that all information contained in the application, including all records of costs incurred and claimed in the tax credit application, are true and correct. If the application is submitted pursuant to subparagraph (3)(a)2., the form must include an affidavit signed by the real property owner stating that it is not, and has never been, the owner or operator of the drycleaning facility where the contamination exists. Approval of tax credits must be accomplished on a first-come, first-served basis based upon the date and time complete applications are received by the Division of Waste Management, subject to the limitations of subsection (14). To be eligible for a tax credit, the tax credit applicant must:

(a) For site rehabilitation tax credits, have entered into a voluntary cleanup agreement with the Department of Environmental Protection for a drycleaning-solvent-contaminated site or a Brownfield Site Rehabilitation Agreement, as applicable, and have paid all deductibles pursuant to s. 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program sites, as applicable. A site rehabilitation tax credit applicant must submit only a single completed application per site for each calendar year's site rehabilitation costs. A site

rehabilitation application must be received by the Division of Waste Management of the Department of Environmental Protection by January 31 of the year after the calendar year for which site rehabilitation costs are being claimed in a tax credit application. All site rehabilitation costs claimed must have been for work conducted between January 1 and December 31 of the year for which the application is being submitted. All payment requests must have been received and all costs must have been paid prior to submittal of the tax credit application, but no later than January 31 of the year after the calendar year for which site rehabilitation costs are being claimed.

(b) For solid waste removal tax credits, have entered into a brownfield site rehabilitation agreement with the Department of Environmental Protection. A solid waste removal tax credit applicant must submit only a single complete application per brownfield site, as defined in the brownfield site rehabilitation agreement, for solid waste removal costs. A solid waste removal tax credit application must be received by the Division of Waste Management of the Department of Environmental Protection subsequent to the completion of the requirements listed in paragraph (3)(e).

(11) If a tax credit applicant does not receive a tax credit allocation due to an exhaustion of the $4 ~~2~~ million annual tax credit authorization, such application will then be included in the same first-come, first-served order in the next year's annual tax credit allocation, if any, based on the prior year application.

Section 3. This act shall take effect July 1, 2011.