

<b>Tab 1</b>	<b>SB 1214</b> by <b>Smith</b> ; Community Yard Trash Safe Burn Program
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<b>Tab 2</b>	<b>SB 1318</b> by <b>Dean</b> ; (Compare to CS/H 0489) Shellfish Regulations
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<b>Tab 3</b>	<b>SB 1498</b> by <b>Benacquisto</b> ; (Similar to H 1205) Pest Control
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**AGRICULTURE**  
**Senator Montford, Chair**  
**Senator Dean, Vice Chair**

**MEETING DATE:** Monday, February 1, 2016

**TIME:** 4:00—6:00 p.m.

**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Montford, Chair; Senator Dean, Vice Chair; Senators Bullard, Galvano, Garcia, Grimsley, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1214</b> Smith	Community Yard Trash Safe Burn Program; Creating the Community Yard Trash Safe Burn Program within the Florida Forest Service; requiring the Department of Agriculture and Consumer Services to adopt minimum standards for community burn plans; authorizing homeowners' associations to create community burn plans and establish one or more community burn locations; establishing conditions homeowners' associations must meet before commencing community burns; requiring the service to issue a burn permit when certain requirements are met, etc.  AG 02/01/2016 Favorable AGG FP	Favorable Yeas 7 Nays 0
Community Yard Trash Burn Program			
2	<b>SB 1318</b> Dean (Compare CS/H 489, S 1564)	Shellfish Regulations; Deleting a prohibition against the harvesting by means other than hand tongs of oysters from natural or artificial state reefs or beds and of all shell fish in certain areas of Apalachicola Bay; authorizing lessees or grantees who hold current aquaculture leases to request modifications to their leases to allow mechanical harvesting, etc.  AG 02/01/2016 Fav/CS EP FP	Fav/CS Yeas 7 Nays 0
Shellfish Regulations			
3	<b>SB 1498</b> Benacquisto (Similar H 1205)	Pest Control; Authorizing the Department of Agriculture and Consumer Services to specify the circumstances when a written, 24-hour advance notice of fumigation to the department is not required; requiring the department to adopt rules that require certain safety measures for clearance of residential structures after fumigation, etc.  AG 02/01/2016 Favorable AGG FP	Favorable Yeas 7 Nays 0
Pest Control			

**COMMITTEE MEETING EXPANDED AGENDA**

Agriculture

Monday, February 1, 2016, 4:00—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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4	Presentation by Tallahassee Community College on Oyster Aquaculture Program		Presented
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Other Related Meeting Documents

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

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

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: SB 1214

INTRODUCER: Senator Smith

SUBJECT: Community Yard Trash Safe Burn Program

DATE: February 1, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Becker	AG	<b>Favorable</b>
2.			AGG	
3.			FP	

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**I. Summary:**

SB 1214 makes a legislative finding that a program allowing homeowners' associations to obtain permits to burn yard trash can significantly reduce the risk of wildfires. It sets forth definitions and requirements that empower a homeowners' association to apply for and obtain a permit from the Florida Forest Service (FFS) of the Department of Agriculture and Consumer Services (DACS) to conduct communitywide burning of yard trash at approved sites in accordance with an approved plan. The bill gives a homeowners' association enforcement powers and it requires DACS to adopt rules to administer this program.

**II. Present Situation:**

Open burning of yard waste is currently allowed without permit per rules adopted by the Department of Environmental Protection (DEP). One criterion set forth in the rule is that the yard waste must be generated on residential premises of not more than two family units.<sup>1</sup> The FFS has the primary responsibility for prevention, detection, and suppression of wildfires wherever they may occur.<sup>2</sup> By statute, the FFS may delegate to a county or municipality the authority to oversee open burning programs.<sup>3</sup> Some local governments regulate the burning of yard trash or even prohibit the burning of yard trash and provide a pickup service to meet national air quality regulations.<sup>4</sup> There are more than 14,000 homeowners' associations across the state based on a 2016 list published by the Department of Business and Professional Regulation.<sup>5</sup>

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<sup>1</sup> Fla. Admin. Code R. 62-256.700 (2008).

<sup>2</sup> Section 590.01, F.S.

<sup>3</sup> Section 590.125(6), F.S.

<sup>4</sup> Department of Agriculture and Consumer Services (DACS), *Senate Bill 1214 Analysis* (Jan. 26, 2016) (on file with the Senate Committee on Agriculture).

<sup>5</sup> *Ibid.*

### III. Effect of Proposed Changes:

**Section 1** creates the Community Yard Trash Safe Burn Program with the following provisions:

- It states that it is the Legislature's intent to allow homeowners' associations to establish locations for burning yard trash and it makes a legislative finding that having such locations can significantly reduce the risk of wildfires resulting from burning yard trash.
- It establishes the following definitions:
  - Community burn location – a location established and certified by the Florida Forest Service for the purpose of open burning of yard trash.
  - Community burn plan – a plan filed by a homeowners' association that includes at a minimum a site map, qualifications of individuals managing or conducting burns, plans for managing risks of wildfires, provisions to enforce compliance by residents, and other information that may be required by the Florida Forest Service.
  - Community burns – burning of residential yard trash at the certified location and in accordance with the approved community burn plan.
  - Homeowners' association – by reference to s. 720.301, F.S., it means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute.
  - Service – the Florida Forest Service of the Department of Agriculture and Consumer Services.
  - Yard trash – by reference to s. 590.125(1)(m), F.S., it means vegetative matter resulting from landscaping and yard maintenance operations and other such routine property cleanup activities. The term includes materials such as leaves, shrub trimmings, grass clippings, brush, and palm fronds.
- It creates the program and sets forth requirements as follows:
  - The Community Yard Trash Safe Burn Program is created in the Florida Forest Service of the Department of Agriculture. DACS is directed to adopt by rule standards for community burn plans which at a minimum must include:
    - A communitywide ban on burning yard trash outside the certified location(s).
    - Reasonable setbacks.
    - Minimum qualifications for individuals in charge of burning.
    - Reasonable requirements for managing wildfire related risks.
    - Requirements for enforcing resident compliance with burn plans which may include fines, suspension of use rights, and other remedies implemented in compliance with chapter 720, F.S. (Homeowners' Associations).
  - Homeowners' associations may establish one or more community burn locations after doing the following:
    - Apply and be approved for a permit from the Florida Forest Service.
    - Have an approved plan on file with the Florida Forest Service.
    - Ensure that all burns comply with the approved community burn plan.

- Ensure that all burns comply with local, municipal, and county ordinances.
- The Florida Forest Service must issue a permit granting authorization to conduct community burns to a homeowners' association after it fulfills all of the conditions required.
- The homeowners' association is given authority to enforce the community burn plan by levying fines, suspending use rights, and enforcing other available remedies all in accordance with chapter 720, F.S. (Homeowners' Associations). If a homeowners' association has been found by final order to have failed to oversee compliance or enforce restrictions, the Florida Forest Service may suspend or revoke the burn permit until it deems the homeowners' association is willing and able to comply with the plan, in which circumstance the service may assess costs and attorney fees and may make payment thereof a condition for reinstatement.
- The department is required to adopt rules to administer this program by July 1, 2017.

**Section 2** provides that this bill takes effect on July 1, 2016.

#### **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:

It may be more convenient and cost effective for homeowners' associations to burn yard trash on their premises.

C. Government Sector Impact:

DACS cannot determine a fiscal impact as it is unknown how many of the 14,000 homeowners' associations in the state would apply for a community burn plan which would require FSS to spend time for inspection and approval.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Florida Administrative Code Rule 62-256.700 referred to herein is part of the State Implementation Plan (SIP) to meet national ambient air quality standards of the Federal Clean Air Act. This bill would require a revision in the aforementioned rule, which would have to be approved by the United States Environmental Protection Agency.

**VIII. Statutes Affected:**

This bill substantially amends section 590.126 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By Senator Smith

31-01059-16

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A bill to be entitled

An act relating to the Community Yard Trash Safe Burn Program; creating s. 590.126, F.S.; providing legislative intent and findings; defining terms; creating the Community Yard Trash Safe Burn Program within the Florida Forest Service; requiring the Department of Agriculture and Consumer Services to adopt minimum standards for community burn plans; authorizing homeowners' associations to create community burn plans and establish one or more community burn locations; establishing conditions homeowners' associations must meet before commencing community burns; requiring the service to issue a burn permit when certain requirements are met; requiring homeowners' associations to comply with community burn plans; authorizing homeowners' associations to enforce the community burn plan; authorizing the service to take specified action upon a determination by the department that a homeowners' association has failed to reasonably oversee compliance with a community burn plan; requiring the department to adopt rules by a specified date; providing an effective date.

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

Section 1. Section 590.126, Florida Statutes, is created to read:

590.126 Community Yard Trash Safe Burn Program.—

(1) LEGISLATIVE INTENT AND FINDINGS.—It is the intent of the Legislature to allow homeowners' associations in this state to establish locations within their respective communities for burning yard trash. The Legislature finds that having such

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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locations can significantly reduce the risk of wildfires resulting from burning residential yard waste and vegetative debris by having an established location for such burns which is certified as safe and properly managed.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Community burn location" means a burn pile location established and certified by the service for the purpose of open burning of yard trash.

(b) "Community burn plan" means a plan filed by a homeowners' association with the service. At a minimum, the plan must include:

1. Each community burn location, including a site map of such location or locations.

2. Qualifications of individuals authorized to manage or conduct community burns.

3. Plans for managing wildfire risks, smoke, and other hazards, nuisances, or environmental impacts.

4. Enforcement provisions to ensure resident compliance.

5. Other information as required by the service.

(c) "Community burns" means the burning of residential yard trash at a community burn location which is conducted in accordance with an approved community burn plan.

(d) "Homeowners' association" has the same meaning as provided in s. 720.301.

(e) "Service" means the Florida Forest Service of the Department of Agriculture and Consumer Services.

(f) "Yard trash" has the same meaning as provided in s. 590.125(1).

(3) CREATION AND PROGRAM REQUIREMENTS.—

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(a) The Community Yard Trash Safe Burn Program is created in the Florida Forest Service of the Department of Agriculture and Consumer Services. The department shall adopt by rule minimum standards for community burn plans developed under this section. At a minimum, these standards must include:

1. A communitywide ban on the burning of yard trash by individual residents outside prescribed community burn locations.

2. Reasonable setbacks from wildlands, brush, combustible structures, and public thoroughfares.

3. Minimum qualifications for individuals authorized to manage and conduct community burns.

4. Reasonable requirements for managing wildfire risks, smoke, and other hazards, nuisances, or environmental impacts.

5. Requirements for ensuring and enforcing resident compliance with community burn plans. Plan enforcement may include the levying of fines, the suspension of use rights, and other remedies as allowed by law to homeowners' associations. Such remedies must be implemented in compliance with chapter 720 and other state law.

(b) Homeowners' associations may establish one or more community burn locations for the use of the community's residents to dispose of yard trash. Before commencing community burns, the homeowners' association must do all of the following:

1. Apply and be approved for a permit by the service.

2. Have an approved community burn plan on file with the service.

3. Ensure that all burns are in compliance with the approved community burn plan.

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4. Ensure that all burns are in compliance with local, municipal, and county ordinances governing open burning.

(c) Upon approval by the service of a community burn plan and compliance by the homeowners' association with any additional requirements established by the service, the service shall issue to the homeowners' association a permit granting authorization to conduct community burns.

(4) ENFORCEMENT.—

(a) Upon service approval, the homeowners' association may enforce the community burn plan by levying fines, suspending use rights, and taking other action as allowed by law and approved by the service as part of the community burn plan. Enforcement of these remedies must comply with chapter 720 and all other state law.

(b) Upon a final order finding that the homeowners' association has failed to reasonably oversee compliance with a community burn plan, including failure to enforce burn restrictions, the service may suspend or revoke the permit until the service deems the homeowners' association willing and able to comply with an approved community burn plan. The service may also assess costs and attorney fees upon issuance of a final order finding that a homeowners' association has failed to reasonably comply with the community burn plan. The service may, at its discretion, require that such costs and fees be repaid by the homeowners' association before reinstating the permit.

(5) RULEMAKING.—By July 1, 2017, the department shall adopt rules to administer this section.

Section 2. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Bill Montford, Chair  
Committee on Agriculture

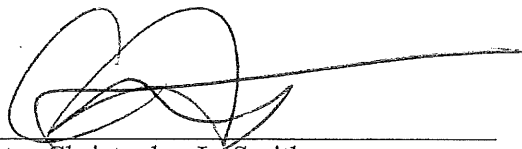
**Subject:** Committee Agenda Request

**Date:** January 14, 2016

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I respectfully request that **Senate Bill #1214**, relating to Community Yard Trash Safe Burn Program, be placed on the:

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



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Senator Christopher L. Smith  
Florida Senate, District 31

**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.)

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: CS/SB 1318

INTRODUCER: Agriculture Committee and Senator Dean

SUBJECT: Shellfish Regulations

DATE: February 2, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	<b>Fav/CS</b>
2.			EP	
3.			FP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 1318 authorizes the use of dredges or mechanical harvesting devices for the harvest of shellfish from submerged land leases, and it prohibits the use of dredge or mechanical harvesting devices on public shellfish beds and natural reefs. It provides an expanded definition for shellfish that may be harvested to include oysters, clams, mussels, and scallops. The bill directs the Department of Agriculture and Consumer Services (department), in cooperation with the Fish and Wildlife Conservation Commission and the Department of Environmental Protection, to protect all clam beds, oyster beds, shellfish grounds, and oyster reefs from damage or destruction resulting from improper cultivation, propagation, planting, or harvesting. The Department of Health is to cooperate with the department and to make available its laboratory testing facilities and apparatus. It authorizes the Board of Trustees of the Internal Improvement Trust Fund to permit the harvest of shellfish using a dredge or mechanical device under certain conditions, including the use of aquaculture best management practices. The bill also specifies that violations of lease agreements will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.

**II. Present Situation:**

Oysters were originally harvested by wading into coastal waters and picking them up from an oyster bar, but as the number of people eating the oysters increased, boats were needed to collect them from bars farther out. Hand tongs were developed to pick up the oysters from a boat. The tongs are a long scissor-like tool with metal rakes on the ends. The harvester stands on the side of his boat, opens the tongs, and reaches down in water that might be 15 or more feet deep. He

closes the tongs, scooping the oysters between the rakes. He then lifts the tongs into the boat and dumps the oysters onto the culling board. The tongs are very long, heavy, and hard to manage.<sup>1</sup>

To enhance efficiency of the harvest operation, rake-like mechanical dredges can be used to harvest planted shellfish seed or to collect naturally recruited stocks from leased beds. The type of mechanical dredge used depends on the type of shellfish harvested. Oysters may be collected by dragging a steel frame with bladed teeth behind the boat with a collection bag or by using a suction dredge. Clams may be collected by a hydraulic dredge which loosens the clams with high pressure jets and collects the clams in chain mesh bags. Harvesters collect scallops with a steel-framed structure with a cutting bar on the leading edge which rides above the surface of the submerged lands, kicking up sea scallops and collecting them into an attached bag.<sup>2</sup> Historically, opinions on the best methods for shellfish harvest have varied widely. Fishermen who use hand tongs or rakes often consider dredging detrimental to shellfish, while those who operate mechanical dredges believe that dredging of the seafloor enhances the environment for clam and oyster recruitment.<sup>3</sup>

The Florida Legislature and the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, have recognized that it is in the state's economic, resource, and food production interest to promote aquacultural production by leasing sovereign submerged lands. These are state waters in the Atlantic Ocean three nautical miles seaward from shore and in the Gulf of Mexico, nine nautical miles seaward from shore. Florida's Aquaculture Lease Program for sovereignty submerged state lands and the overlying water column is administered by the Division of Aquaculture's Bureau of Aquaculture Development. The policies, conditions, and criteria for using sovereign state lands for aquacultural production are provided in the Florida Aquaculture Policy Act and ch. 18-21, F.A.C., with authorization for their use from the Governor and Cabinet.<sup>4</sup> Currently, all ch. 253, F.S., submerged land aquaculture leases prohibit the use of dredges or mechanical harvesting devices. Some ch. 379, F.S., shellfish leases (in perpetuity leases) do allow the use of dredges or mechanical harvesting devices, but only if the lease document specifically allows such harvesting devices. Several "in perpetuity leases" located in Franklin County have the ability to use dredges as the result of a court ruling.<sup>5</sup>

Individuals who propose to use a dredge or mechanical harvesting device will be required to obtain authorization from the Army Corp of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.<sup>6</sup> Individuals who commercially harvest, possess, or sell shellfish must obtain a Saltwater Products License<sup>7</sup> and a shellfish endorsement<sup>8</sup> or Apalachicola Bay Oyster Harvesting License from the Florida Fish and Wildlife Conservation Commission, unless they are harvesting from an aquaculture lease under the

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<sup>1</sup> <http://www.marinersmuseum.org/sites/micro/cbhf/waterman/wat009.html>, (last visited January 12, 2016).

<sup>2</sup> National Oceanic and Atmospheric Administration, Review of the Ecological Effects of Dredging in the Cultivation and Harvest of Molluscan Shellfish, <http://www.nefsc.noaa.gov/publications/tm/tm220/>, (last visited January 12, 2016).

<sup>3</sup> National Oceanic and Atmospheric Administration, Review of the Ecological Effects of Dredging in the Cultivation and Harvest of Molluscan Shellfish, <http://www.nefsc.noaa.gov/publications/tm/tm220/>, (last visited January 12, 2016).

<sup>4</sup> [Http://www.freshfromflorida.com/Divisions-Offices/Aquaculture/Business-Services/Aquafarm-Proram/Aquaculture-Leasing](http://www.freshfromflorida.com/Divisions-Offices/Aquaculture/Business-Services/Aquafarm-Proram/Aquaculture-Leasing), (last visited January 25, 2016).

<sup>5</sup> Analysis by the Department of Agriculture and Consumer Services for SB 1318, p. 1 (January 19, 2016).

<sup>6</sup> Ibid.

<sup>7</sup> Section 379.361, F.S.

<sup>8</sup> [Rules 68B-17.009](#) and [68B-27.018\(1\), F.A.C.](#)

authority of an Aquaculture Certificate of Registration issued by the department.<sup>9</sup> Individuals may not commercially harvest bay scallops or freshwater mussels.<sup>10</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 597.010, F.S., to:

- Repeal an outdated provision relating to duties of the department and the Fish and Wildlife Conservation Commission relating to shellfish development. It replaces the provision with language requiring interagency coordination to protect shellfish beds, grounds, and reefs.
- Define “dredge or mechanical harvesting device” to mean a dredge, scrape, rake, drag, or other device, that is towed by a vessel or self-propelled and that is used to harvest shellfish. The bill specifically excludes handheld or hand drawn hydraulically or mechanically operated devices used to harvest cultured clams from leased sovereign submerged lands.
- Define the term “shellfish” to mean oysters, clams, mussels, and scallops.
- Authorize the harvesting of shellfish from a sovereign submerged land lease pursuant to ch. 253, F.S.
- Authorize the Board of Trustees of the Internal Improvement Trust Fund to allow the use of a dredge or mechanical harvesting device as a special lease condition of a sovereign submerged land lease if:
  - The use of the dredge or mechanical harvesting device does not adversely impact the public health, safety, and welfare of adjacent natural resources.
  - The use of the dredge or mechanical harvesting device is an existing condition of a perpetual shellfish lease issued pursuant to former ch. 370, F.S.
  - Aquaculture best management practices have been adopted which:
    - Describe the approved size and specification of the dredge or mechanical harvesting device to be used.
    - Provide conditions for deploying and using an approved dredge or mechanical harvesting device.
    - Specify the requirements for monitoring potential impacts at, and adjacent to, the sovereign submerged land lease site by the leaseholder; limit the number of dredges or mechanical harvesting devices per lease.
    - Prohibit the use of dredge or mechanical harvesting devices on public shellfish beds.
    - Prohibit the possession of any dredges or mechanical devices on the waters of the state from 5 pm until sunrise.
    - Prohibit harvesting shellfish from natural reefs.
- Provide that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.
- Repeal a provision relating to shellfish harvesting seasons.
- Delete a prohibition against harvesting oysters by means other than hand tongs in certain areas of Apalachicola Bay.

<sup>9</sup> FWC, *Shellfish*, available at: <http://myfwc.com/fishing/saltwater/commercial/shellfish/> (last visited January 26, 2016).

<sup>10</sup> [Rules 68B-18.004](#) and [68A-23.015](#), F.A.C.

- Remove the requirement that the harvester must notify the Fish and Wildlife Conservation Commission 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbering.
- Remove a provision that authorizes harvesting oysters from natural or public or private leased or granted grounds by hand tongs or by hand, by scuba diving, free diving, leaning from vessels, or wading.
- Authorize, rather than require, the department to designate areas for the taking of oysters and clams to be planted on public areas.
- Specify that the amount of oysters, clams, and mussels to be obtained for relaying or transplanting shall be established by the Fish and Wildlife Conservation Commission rather than the department.
- Remove provisions relating to dredging of dead shells and oyster culture.

**Section 2** provides that this act shall take effect July 1, 2016.

**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 ability to use dredges or other mechanical devices could have a positive fiscal impact on individuals or companies who traditionally hire employees to harvest shellfish by hand.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 597.010 of the Florida Statutes.

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

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

**Cs by Agriculture on February 1, 2016:**

The committee substitute:

- Repeals an outdated provision regarding shellfish development and replace it with language regarding interagency coordination to protect shellfish beds, grounds, and reefs.
- Defines “dredge or mechanical harvesting device.”
- Specifies that best management practices must be used to dredge or mechanically harvest shellfish.
- Authorizes the use of only one dredge or mechanical harvesting device per lease to be possessed or operated at any one time.
- Prohibits the use of dredge or mechanical harvesting devices on public shellfish beds.
- Prohibits the possession of any dredges or mechanical devices on the waters of the state from 5 pm until sunrise.
- Prohibits harvesting shellfish from natural reefs.
- Removes the requirement that a harvester must notify the Fish and Wildlife Conservation Commission 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbering.
- Provides that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.
- Authorizes, rather than requires the department to designate areas for the taking of oysters and clams to be planted on public areas.
- Removes provisions relating to dredging of dead shells and oyster culture.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2016	.	
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The Committee on Agriculture (Dean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (14) and (17) through (25) of  
section 597.010, Florida Statutes, are amended to read:

597.010 Shellfish regulation; leases.—

(14) SHELLFISH DEVELOPMENT.—The department, in cooperation  
with the Fish and Wildlife Conservation Commission and the  
Department of Environmental Protection, shall protect all clam  
beds, oyster beds, shellfish grounds, and oyster reefs from





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12 damage or destruction resulting from improper cultivation,  
13 propagation, planting, or harvesting. To this end, the  
14 Department of Health is authorized and directed to cooperate  
15 with the department and to make available its laboratory testing  
16 facilities and apparatus.

17 ~~(a) The department shall improve, enlarge, and protect the~~  
18 ~~natural oyster and clam reefs and beds of this state to the~~  
19 ~~extent it may deem advisable and the means at its disposal will~~  
20 ~~permit.~~

21 ~~(b) The Fish and Wildlife Conservation Commission shall, to~~  
22 ~~the same extent, assist in protecting shellfish aquaculture~~  
23 ~~products produced on leased or granted reefs and beds.~~

24 ~~(c) The department, in cooperation with the commission,~~  
25 ~~shall provide the Legislature with recommendations as needed for~~  
26 ~~the development and the proper protection of the rights of the~~  
27 ~~state and private holders therein with respect to the oyster and~~  
28 ~~clam business.~~

29 (17) SHELLFISH HARVESTING FROM SOVEREIGN SUBMERGED LAND  
30 LEASES; USE OF DREDGE OR MECHANICAL HARVESTING DEVICE SEASONS;  
31 SPECIAL PROVISIONS RELATING TO APALACHICOLA BAY.—

32 (a) As used in this subsection, the term:

33 1. "Dredge or mechanical harvesting device" means a dredge,  
34 scrape, rake, drag, or other device that is towed by a vessel or  
35 self-propelled and that is used to harvest shellfish. The term  
36 does not include handheld or handdrawn hydraulically or  
37 mechanically operated devices used to harvest cultured clams  
38 from leased sovereign submerged lands, and this subsection does  
39 not apply to such handheld or handdrawn devices.

40 2. "Shellfish" means aquaculture oysters, clams, mussels,



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41 and scallops.

42 (b) The harvesting of shellfish from a sovereign submerged  
43 land lease may be authorized pursuant to chapter 253.

44 (c) The Board of Trustees of the Internal Improvement Trust  
45 Fund may authorize the use of a dredge or mechanical harvesting  
46 device as a special lease condition of a sovereign submerged  
47 land lease issued under chapter 253 if:

48 1. The use of the dredge or mechanical harvesting device  
49 does not adversely impact the public health, safety, and welfare  
50 of adjacent natural resources.

51 2. The use of the dredge or mechanical harvesting device is  
52 an existing condition of a perpetual shellfish lease issued  
53 pursuant to former chapter 370.

54 3. Aquaculture best management practices have been adopted  
55 pursuant to chapter 120 which:

56 a. Describe the approved size and specifications of the  
57 dredge or mechanical harvesting device to be used.

58 b. Provide conditions for deploying and using an approved  
59 dredge or mechanical harvesting device.

60 c. Specify requirements for monitoring potential impacts  
61 at, and adjacent to, the sovereign submerged land lease site by  
62 the leaseholder.

63 (d) Only one dredge or mechanical harvesting device per  
64 lease may be possessed or operated at any time at a lease site.

65 (e) A dredge or mechanical harvesting device authorized by  
66 this subsection may not be used for taking shellfish for any  
67 purpose from public shellfish beds in waters of the state, and  
68 such dredge or mechanical harvesting device may not be possessed  
69 on the waters of the state from 5 p.m. until sunrise.



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(f) This subsection does not authorize the harvesting of shellfish from natural reefs.

A violation of this subsection is a violation of the lease agreement and will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.

~~(a) The Fish and Wildlife Conservation Commission shall by rule set the noncultured shellfish harvesting seasons in Apalachicola Bay.~~

~~(b) If the commission changes the harvesting seasons by rule as set forth in this subsection, for 3 years after the new rule takes effect, the commission, in cooperation with the department, shall monitor the impacts of the new harvesting schedule on the bay and on local shellfish harvesters to determine whether the new harvesting schedule should be discontinued, retained, or modified. In monitoring the new schedule and in preparing its report, the following information shall be considered:~~

~~1. Whether the bay benefits ecologically from the new harvesting schedule.~~

~~2. Whether the new harvesting schedule enhances the enforcement of shellfish harvesting laws in the bay.~~

~~3. Whether the new harvesting schedule enhances natural shellfish production, oyster relay and planting programs, and shell planting programs in the bay.~~

~~4. Whether the new harvesting schedule has more than a short term adverse economic impact, if any, on local shellfish harvesters.~~



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~~(18) REMOVING OYSTERS, CLAMS, OR MUSSELS FROM NATURAL  
REEFS; LICENSES, ETC.; PENALTY.—~~

~~(a) It is unlawful to use a dredge or any means or  
implement other than hand tongs in removing oysters from the  
natural or artificial state reefs or beds. This restriction  
shall apply to all areas of Apalachicola Bay for all shellfish  
harvesting, excluding private grounds leased or granted by the  
state prior to July 1, 1989, if the lease or grant specifically  
authorizes the use of implements other than hand tongs for  
harvesting. Except in Apalachicola Bay, upon the payment of \$25  
annually, for each vessel or boat using a dredge or machinery in  
the gathering of clams or mussels, a special activity license  
may be issued by the Fish and Wildlife Conservation Commission  
pursuant to subsection (15) or s. 379.361 for such use to such  
person.~~

~~(b) Approval by the department to harvest shellfish by  
dredge or other mechanical means from privately held shellfish  
leases or grants in Apalachicola Bay shall include, but not be  
limited to, the following conditions:~~

~~1. The use of any mechanical harvesting device other than  
ordinary hand tongs for taking shellfish for any purpose from  
public shellfish beds in Apalachicola Bay shall be unlawful.~~

~~2. The possession of any mechanical harvesting device on  
the waters of Apalachicola Bay from 5 p.m. until sunrise shall  
be unlawful.~~

~~3. Leaseholders or grantees shall notify the department no  
less than 48 hours prior to each day's use of a dredge or scrape  
in order for the department to notify the Fish and Wildlife  
Conservation Commission that a mechanical harvesting device will~~



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~~be deployed.~~

~~4. Only two dredges or scrapes per lease or grant may be possessed or operated at any time.~~

~~5. Each vessel used for the transport or deployment of a dredge or scrape shall prominently display the lease or grant number or numbers, in numerals which are at least 12 inches high and 6 inches wide, in such a manner that the lease or grant number or numbers are readily identifiable from both the air and the water.~~

~~Any violation of this paragraph or of any other statutes, rules, or conditions referenced in the lease agreement shall be considered a violation of the license and shall result in revocation of the lease or a denial of use or future use of a mechanical harvesting device.~~

~~(c) Oysters may be harvested from natural or public or private leased or granted grounds by common hand tongs or by hand, by scuba diving, free diving, leaning from vessels, or wading. In Apalachicola Bay, this provision shall apply to all shellfish.~~

~~(18)(19) FISHING FOR RELAYING OR TRANSPLANTING PURPOSES.—~~

~~(a) The department may shall designate areas for the taking of oysters and clams to be planted on leases, grants, and public areas. Oysters, clams, and mussels may be taken for relaying or transplanting at any time during the year so long as, in the opinion of the department, the public health will not be endangered. The amount of oysters, clams, and mussels to be obtained for relaying or transplanting shall be established by the Fish and Wildlife Conservation Commission. The area relayed~~



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or transplanted to, and relaying or transplanting time periods shall be established in each case by the department.

(b) Application for a special activity license issued pursuant to subsection (15) for obtaining oysters, clams, or mussels for relaying from closed public shellfish harvesting areas to open areas or certified controlled purification plants or for transplanting sublegal-sized oysters, clams, or mussels must be made to the department. In return, the department may assign an area and a period of time for the oysters, clams, or mussels to be relayed or transplanted to be taken. All relaying and transplanting operations shall take place under the direction of the department.

(c) Relayed oysters, clams, or mussels shall not be subsequently harvested for any reason without written permission or public notice from the department.

(19) ~~(20)~~ OYSTER AND CLAM REHABILITATION.—The board of county commissioners ~~of the several counties~~ may appropriate and expend such sums as it may deem proper for the purpose of planting or transplanting oysters, clams, oyster shell, clam shell, or cultch or to perform such other acts for the enhancement of the oyster and clam industries of the state, out of any sum in the county treasury not otherwise appropriated.

~~(21) DREDGING OF DEAD SHELLS PROHIBITED.—The dredging of dead shell deposits is prohibited in the state.~~

(20) ~~(22)~~ COOPERATION WITH UNITED STATES FISH AND WILDLIFE SERVICE.—The department shall cooperate with the United States Fish and Wildlife Service, under existing federal laws, rules, and regulations, and is authorized to accept donations, grants, and matching funds from the Federal Government in order to carry



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out its oyster resource and development responsibilities. The department is further authorized to accept any and all donations including funds, oysters, or oyster shells.

(21)~~(23)~~ OYSTER AND CLAM SHELLS PROPERTY OF DEPARTMENT.—

(a) Except for oysters used directly in the half-shell trade, 50 percent of all shells from oysters and clams shucked commercially in the state shall be and remain the property of the department when such shells are needed and required for rehabilitation projects and planting operations, in cooperation with the Fish and Wildlife Conservation Commission, when sufficient resources and facilities exist for handling and planting such shells ~~shell~~, and when the collection and handling of such shells ~~shell~~ is practicable and useful, except that bona fide holders of leases and grants may retain 75 percent of such shells ~~shell~~ as they produce for aquacultural purposes. Storage, transportation, and planting of shells so retained by lessees and grantees shall be carried out under the conditions of the lease agreement or with the written approval of the department and shall be subject to such reasonable time limits as the department may fix. In the event of an accumulation of an excess of shells, the department is authorized to sell shells only to private growers for use in oyster or clam cultivation on bona fide leases and grants. No profit shall accrue to the department in these transactions, and shells are to be sold for the estimated moneys spent by the department to gather and stockpile the shells. Planting of shells obtained from the department by purchase shall be subject to the conditions set forth in the lease agreement or in the written approval as issued by the department. Any shells not claimed and used by private oyster



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215 cultivators 10 years after shells are gathered and stockpiled  
216 may be sold at auction to the highest bidder for any private  
217 use.

218 (b) ~~If Whenever~~ the department determines that it is  
219 unfeasible to collect oyster or clam shells, the shells become  
220 the property of the producer.

221 (c) ~~If Whenever~~ oyster or clam shells are owned by the  
222 department and it is not useful or feasible to use them in the  
223 rehabilitation projects, and if a ~~when no~~ leaseholder has not  
224 exercised his or her option to acquire them, the department may  
225 sell such shells for the highest price obtainable. Such ~~The~~  
226 shells ~~thus sold~~ may be used in any manner and for any purpose  
227 at the discretion of the purchaser.

228 (d) Moneys derived from the sale of shell shall be  
229 deposited in the General Inspection Trust Fund for shellfish  
230 programs.

231 (e) The department may publish notice, in a newspaper  
232 serving the county, of its intention to collect the oyster and  
233 clam shells and shall notify, by certified mail, each shucking  
234 establishment from which shells are to be collected. The notice  
235 shall contain the period of time the department intends to  
236 collect the shells in that county and the collection purpose.

237 ~~(24) OYSTER CULTURE. The department, in cooperation with~~  
238 ~~the Fish and Wildlife Conservation Commission and the Department~~  
239 ~~of Environmental Protection, shall protect all clam beds, oyster~~  
240 ~~beds, shellfish grounds, and oyster reefs from damage or~~  
241 ~~destruction resulting from improper cultivation, propagation,~~  
242 ~~planting, or harvesting and control the pollution of the waters~~  
243 ~~over or surrounding beds, grounds, or reefs, and to this end the~~





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~~Department of Health is authorized and directed to lend its cooperation to the department, to make available its laboratory testing facilities and apparatus.~~

~~(22)~~ (25) REQUIREMENTS FOR OYSTER OR CLAM VESSELS.—

(a) All vessels used for the harvesting, gathering, or transporting of oysters or clams for commercial purposes shall be constructed and maintained to prevent contamination or deterioration of shellfish. To this end, all such vessels shall have ~~be provided with~~ false bottoms and bulkheads fore and aft to prevent onboard shellfish from coming in contact with any bilge water. ~~No~~ Dogs or other animals are not ~~shall be~~ allowed at any time on vessels used to harvest or transport shellfish. A violation of ~~any provision of~~ this subsection will, at a minimum, ~~shall~~ result in ~~at least~~ the revocation of the violator's license.

(b) For the purpose of this subsection, "harvesting, gathering, or transporting of oysters or clams for commercial purposes" means to harvest, gather, or transport oysters or clams with the intent to sell and shall apply to a quantity of two or more bags of oysters per vessel or more than one 5-gallon bucket of unshucked hard clams per person or more than two 5-gallon buckets of unshucked hard clams per vessel.

Section 2. This act shall take effect July 1, 2016.

===== 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



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An act relating to shellfish harvesting; amending s. 597.010, F.S.; revising provisions directing the Department of Agriculture and Consumer Services, in cooperation with the Fish and Wildlife Conservation Commission and the Department of Environmental Protection, to protect specified shellfish beds, grounds, and reefs; defining the terms "dredge or mechanical harvesting devices" and "shellfish"; providing for the harvesting of shellfish from sovereign submerged land leases; providing for the Board of Trustees of the Internal Improvement Trust Fund to authorize the use of dredges or mechanical harvesting devices as special lease conditions of sovereign submerged land leases; limiting the number of such dredges or mechanical harvesting devices per lease; prohibiting certain use and possession of such dredges or mechanical harvesting devices; providing penalties; removing provisions relating to shellfish harvesting seasons and removal of oysters, clams, or mussels from natural reefs; authorizing the department, rather than requiring, to designate areas for the taking of oysters and clams to be planted on public lands; deleting a provision allowing such takings to be planted on leases and grants; specifying that the commission, rather than the department, shall establish the amount of oysters, clams, and mussels that may be relayed or transplanted; removing provisions relating to dredging of dead shells and oyster culture; making technical changes; providing an



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effective date.

By Senator Dean

5-00862A-16

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A bill to be entitled

An act relating to shellfish regulations; amending s. 597.010, F.S.; defining terms; deleting a prohibition against the harvesting by means other than hand tongs of oysters from natural or artificial state reefs or beds and of all shell fish in certain areas of Apalachicola Bay; authorizing the Board of Trustees of the Internal Improvement Trust Fund to allow the use of a mechanical harvesting device to harvest shellfish under aquaculture lease agreements in certain circumstances; deleting conditions that apply to approval by the department of certain harvesting of shellfish in certain areas; authorizing conditions for certain aquaculture lease agreements; authorizing lessees or grantees who hold current aquaculture leases to request modifications to their leases to allow mechanical harvesting; authorizing the Board of Trustees of the Internal Improvement Trust Fund to approve the use of a mechanical harvesting device in removing oysters and clams from shellfish leases; revising penalties for violations; providing an effective date.

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

Section 1. Subsection (18) of section 597.010, Florida Statutes, is amended to read:

597.010 Shellfish regulation; leases.—

(18) HARVESTING SHELLFISH REMOVING OYSTERS, CLAMS, OR MUSSELS FROM AQUACULTURE LEASES NATURAL REEFS, LICENSES, ETC.; PENALTY.—

(a) As used in this subsection, the term:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1. "Aquaculture lease" means the sovereignty submerged land leases authorized by the Board of Trustees of the Internal Improvement Trust Fund pursuant to ss. 253.67-253.75.

2. "Shellfish" means oysters, clams, mussels, and scallops.

3. "Shellfish lease" means oyster and clam leases that were authorized in perpetuity before July 1, 1989, pursuant to former chapter 370. It is unlawful to use a dredge or any means or implement other than hand tongs in removing oysters from the natural or artificial state reefs or beds. This restriction shall apply to all areas of Apalachicola Bay for all shellfish harvesting, excluding private grounds leased or granted by the state prior to July 1, 1989, if the lease or grant specifically authorizes the use of implements other than hand tongs for harvesting. Except in Apalachicola Bay, upon the payment of \$25 annually, for each vessel or boat using a dredge or machinery in the gathering of clams or mussels, a special activity license may be issued by the Fish and Wildlife Conservation Commission pursuant to subsection (15) or s. 379.361 for such use to such person.

(b) The Board of Trustees of the Internal Improvement Trust Fund may authorize the use of mechanical harvesting devices to harvest shellfish from aquaculture leases when the public health, public safety, and natural resources are not adversely impacted. Approval by the department to harvest shellfish by dredge or other mechanical means from privately held shellfish leases or grants in Apalachicola Bay shall include, but not be limited to, the following conditions:

1. The use of any mechanical harvesting device other than ordinary hand tongs for taking shellfish for any purpose from

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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62 ~~public shellfish beds in Apalachicola Bay shall be unlawful.~~

63 ~~2. The possession of any mechanical harvesting device on~~  
 64 ~~the waters of Apalachicola Bay from 5 p.m. until sunrise shall~~  
 65 ~~be unlawful.~~

66 ~~3. Leaseholders or grantees shall notify the department no~~  
 67 ~~less than 48 hours prior to each day's use of a dredge or scrape~~  
 68 ~~in order for the department to notify the Fish and Wildlife~~  
 69 ~~Conservation Commission that a mechanical harvesting device will~~  
 70 ~~be deployed.~~

71 ~~4. Only two dredges or scrapes per lease or grant may be~~  
 72 ~~possessed or operated at any time.~~

73 ~~5. Each vessel used for the transport or deployment of a~~  
 74 ~~dredge or scrape shall prominently display the lease or grant~~  
 75 ~~number or numbers, in numerals which are at least 12 inches high~~  
 76 ~~and 6 inches wide, in such a manner that the lease or grant~~  
 77 ~~number or numbers are readily identifiable from both the air and~~  
 78 ~~the water.~~

79 (c) Authorization to use mechanical harvesting devices may  
 80 be included in the aquaculture lease agreement, and conditions  
 81 for deploying and using a mechanical harvesting device to  
 82 harvest shellfish may be provided as a special lease condition  
 83 pursuant to s. 253.71(7). Special lease conditions for use of  
 84 mechanical harvesting devices granted under this subsection and  
 85 pursuant to s. 253.71(7) may include, but are not limited to:

86 1. The types or descriptions of the authorized mechanical  
 87 harvesting devices;

88 2. The conditions for deploying and using the authorized  
 89 mechanical harvesting devices;

90 3. The identification of the shellfish to be harvested; and

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91 4. The guidelines and best management practices to be  
 92 followed by the lessee.

93 (d) Lessees or grantees who hold valid aquaculture leases  
 94 may request modifications of their lease agreements to include  
 95 special lease conditions for using mechanical harvesting  
 96 devices. Requests to use mechanical harvesting devices must be  
 97 submitted in writing to the department.

98 (e) The Board of Trustees of the Internal Improvement Trust  
 99 Fund may approve the use of mechanical harvesting devices to  
 100 harvest oysters and clams from shellfish leases. Leaseholders or  
 101 grantees of valid shellfish leases whose lease agreements or  
 102 grants do not specifically authorize the use of mechanical  
 103 harvesting devices may request authorization to use mechanical  
 104 harvesting devices. Requests to use mechanical harvesting  
 105 devices must be submitted in writing to the department.

106 (f) Any violation of this subsection paragraph or of any  
 107 other statutes, rules, or conditions referenced in the  
 108 aquaculture lease agreement or in the shellfish lease agreement  
 109 is shall be considered a violation of the license and will shall  
 110 result in revocation of the lease or a denial of use or future  
 111 use of a mechanical harvesting device.

112 ~~(e) Oysters may be harvested from natural or public or~~  
 113 ~~private leased or granted grounds by common hand tongs or by~~  
 114 ~~hand, by scuba diving, free diving, leaning from vessels, or~~  
 115 ~~wading. In Apalachicola Bay, this provision shall apply to all~~  
 116 ~~shellfish.~~

117 Section 2. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and  
Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Community Affairs  
Ethics and Elections

**SENATOR CHARLES S. DEAN, SR.**

5th District

January 15, 2016

The Honorable Bill Montford  
214 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Montford,

I respectfully request you place Senate Bill 1318, relating to Shellfish Regulations, on your Agriculture Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean". The signature is fluid and cursive.

Charles S. Dean  
State Senator District 5

cc: Katherine Becker, Staff Director

**REPLY TO:**

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2/1/16

Meeting Date

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

✓ W  
SB 1318

Bill Number (if applicable)

Topic SB 1318

Amendment Barcode (if applicable)

Name Patrick Bell

Job Title Lobbyist

Address P.O. Box 10242  
Street

Phone 850-544-0784

Tallahassee FL 32301  
City State Zip

Email pebell@earthlink.net

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Webb's Seafood

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/1/2016  
Meeting Date

SB 1318  
Bill Number (if applicable)

Topic SHELLFISH REGULATIONS

Amendment Barcode (if applicable)

Name MARY BERRIBAN

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

Address 2916 ROYAL DAKES DRIVE  
Street  
TALLAHASSEE FL 32309  
City State Zip

Phone 850 264 6805

Email appliedaquaculture

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing CEAR KEY AQUACULTURE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



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

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

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: SB 1498

INTRODUCER: Senator Benacquisto

SUBJECT: Pest Control

DATE: February 1, 2016

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Akhavein	Becker	AG	<b>Favorable</b>
2. _____	_____	AGG	_____
3. _____	_____	FP	_____

---

## **I. Summary:**

SB 1498 relates to Florida law governing structural fumigation to further ensure public safety.

It provides rulemaking authority to the Department of Agriculture and Consumer Services (department) to:

- Require fumigators to notify the department where a fumigation will be performed at least 24 hours in advance of any general fumigation.
- Authorize the department to specify circumstances when notification of less than 24 hours in advance is allowed, rather than only during an authentic and verifiable emergency.
- Strengthen safety requirements for the clearance of residential structures before reoccupation after fumigation.

It also provides rulemaking authority for the department to place the following conditions on fumigant registration:

- Update training requirements for fumigant registrants.
- Conduct quality assurance reviews.
- Report the issuance of any probation or stop-sale notices.
- Assist the department with the removal of fumigant containers from distributors and end users for compliance with permanent or extended stop-sales.

## **II. Present Situation:**

Currently, there are 137 pest control businesses actively performing structural fumigations within the state of Florida. These businesses performed approximately 66,700 structural fumigations in Fiscal Year 2014-2015, representing a 57 percent increase in the average number performed over the past four fiscal years. For FY 2014-2015, sulfuryl fluoride was the pesticide used in 99.92 percent of the structural fumigations performed.

Sulfuryl fluoride is the most common pesticide used as a structural fumigant and is classified by the U.S. Environmental Protection Agency as a “Restricted Use Pesticide” due to its high toxicity to humans. Florida law requires that suspected exposures to pesticides be reported to the Florida Department of Health (DOH), as well as the Division of Agricultural Environmental Services within 24 hours.

According to the DOH, since January 2010, 166 calls were received by the Florida Poison Information Center Network related to sulfuryl fluoride exposure. Most exposures were unintentional (94.6%), occurred at a residence (86.1%), and were managed at the call site (56%). The largest number of exposures was reported in Miami-Dade (30.7%), Broward (17.5%), Palm Beach (12%), Pinellas (9%), and Hillsborough (7.8%) counties. Common clinical syndromes among individuals who reported signs and symptoms were gastrointestinal, neurological, respiratory, and ocular. Common symptoms reported were nausea, eye irritation or pain, dyspnea, headache, vomiting, and dizziness. Since January 2010, one major illness and one death were reported.<sup>1</sup>

Currently, licensees are required to notify the department of the location that fumigants will be applied at least 24 hours before the fumigation starts. Emergency notifications of structural fumigations (or notification in less than 24 hours prior to a fumigation) are allowed by s. 482.051, F.S., but what constitutes an emergency is not clearly defined. An average of 85 emergency notifications was reported each year from fiscal years 2010 through 2015.

After a structural fumigation has occurred, the structure must be aerated. The aeration process includes a minimum one-hour active aeration and a minimum five-hour passive aeration. An active aeration requires the doors and windows of the structure to be opened and fans used to allow the fumigant to dissipate. The passive aeration occurs after the active aeration and requires the structure to be re-secured. Currently, pest control businesses are not required to provide the department with the initiation time of the aeration process. After the aeration process is completed, licensees are required to use calibrated clearance devices to take readings throughout a structure to ensure any residual fumigant is within acceptable levels for re-occupancy. Licensees are required to maintain evidence of device calibration, but are not required to provide these records to the department unless requested.

Stewardship training educates applicators about pest control products, how to properly apply pest control products, and the risks associated with these products. Frequent and proper stewardship training is the most effective way to mitigate the risks involved in structural fumigations. Currently, the requirement for participation in a stewardship program is enforced through language on the label of the fumigant.<sup>2</sup> The manufacturers’ label requires the completion of a stewardship course before purchase or use of the product, but does not specify a training frequency. The division also does not require completion of a stewardship program for the

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<sup>1</sup> Office of Florida Inspector General, “*Structural Fumigation Regulations and Processes*,” review of the Division of Agricultural Environmental Services, (January 2016): 1, <http://media.wptv.com/image/Report.pdf>, (last visited January 19, 2016).

<sup>2</sup> Analysis by the Department of Agriculture and Consumer Services for SB 1498, p.1 (January 15, 2016).

certified operator to obtain a license. Therefore, the dealer can sell the pesticide to a certified operator who has not completed the stewardship training program.<sup>3</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 482.051, F.S., to authorize the department to define by rule circumstances under which less than 24 hour notification of structural fumigation is acceptable. It also authorizes the department to require by rule additional safety measures to be taken regarding the clearance of residential structures before reoccupation after a fumigation. These measures can include, but are not limited to, extended aeration times or specific clearance procedures.

**Section 2** amends s. 487.051, F.S., to authorize the department to adopt rules that require structural fumigant registrants (manufacturers) to:

- Train distributors and end users in safety measures and proper use, safe storage, and management of fumigant materials.
- Obtain continuing education program approval for stewardship training programs.
- Conduct quality assurance reviews.
- Report to the department any probation or stop-sale notices issued to end users.
- Assist the department, upon request, with the removal of fumigant containers from distributors and end users for failure to comply with stewardship requirements.

**Section 3** provides that this act shall take effect July 1, 2016.

### 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.

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<sup>3</sup> Office of Florida Inspector General, “*Structural Fumigation Regulations and Processes*,” review of the Division of Agricultural Environmental Services, (January 2016): 1, <http://media.wptv.com/image/Report.pdf>, (last visited January 19, 2016).

**B. Private Sector Impact:**

Relating to Florida law governing structural fumigation, the provisions of the bill should ensure further public safety.

**C. Government Sector Impact:**

SB 1498 would have an insignificant negative fiscal impact on the department because the agency will need to initiate the rulemaking process to strengthen safety requirements for structural fumigation and to update requirements for fumigant registrants.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends sections 482.051 and 487.051 of the Florida Statutes:

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

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

None.

**B. Amendments:**

None.

By Senator Benacquisto

30-00950A-16

20161498\_\_

A bill to be entitled

An act relating to pest control; amending s. 482.051, F.S.; making technical changes; authorizing the Department of Agriculture and Consumer Services to specify the circumstances when a written, 24-hour advance notice of fumigation to the department is not required; authorizing the department to determine the notice required in such circumstances; deleting a provision specifying that, under certain emergency situations, the required advance notice may be first given by certain specified communication methods; requiring the department to adopt rules that require certain safety measures for clearance of residential structures after fumigation; amending s. 487.051, F.S.; authorizing the department to establish certain conditions for fumigant registration or reregistration; providing an effective date.

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

Section 1. Section 482.051, Florida Statutes, is amended to read:

482.051 Rules.—The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this chapter. Before ~~Prior to~~ proposing the adoption of a rule, the department must ~~shall~~ counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public which ~~require~~:

(1) Require that all pesticides or economic poisons be used only in accordance with the registered labels and labeling, or

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as directed by the United States Environmental Protection Agency or the department.

(2) Require that vehicles and trailers used in pest control be permanently marked with the licensee's name that is registered with the department. However, vehicles that are used to perform only sales and solicitation may have temporary or removable markers.

(3) Require that written contracts be used ~~required~~ for providing termite ~~termites~~ and other wood-destroying organism ~~organisms~~ pest control, that provisions necessary to ensure ~~assure~~ consumer protection as specified by the department be included in such contracts, and that ~~require~~ licensees ~~to~~ comply with the contracts issued.

(4) Require that a licensee, before performing general fumigation, notify in writing the department of ~~inspector having jurisdiction over~~ the location where the fumigation is to be performed, which notice must be received by the department ~~inspector~~ at least 24 hours before the fumigation and must contain such information as the department requires. The department may specify under what circumstances less than 24-hour notification is allowed and what notice is required in those circumstances. ~~However, in an authentic and verifiable emergency, when 24 hours' advance notice is not possible, advance notice may be given by telephone, facsimile, or any other form of acceptable electronic communication, but such notice must be immediately followed by written confirmation providing the required information.~~

(5) Require that any pesticide used as the primary preventive treatment for subterranean termites in new

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construction be applied in the amount, concentration, and treatment area in accordance with the label; that a copy of the label of the registered pesticide being applied be carried in a vehicle at the site where the pesticide is being applied; and that the licensee maintain for 3 years the record of each preconstruction treatment, indicating the date of treatment, the location or address of the property treated, the total square footage of the structure treated, the type of pesticide applied, the concentration of each substance in the mixture applied, and the total amount of pesticide applied.

(6) Authorize ~~That~~ the department to may issue an immediate stop-use or stop-work order for fumigation performed in violation of fumigant label requirements or department rules, or in a manner that presents an immediate serious danger to the health, safety, or welfare of the public, including, but not limited to, failure to use required personal protective equipment, failure to use a required warning agent, failure to post required warning signs, failure to secure a structure's usual entrances as required, or using a fumigant in a manner that will likely result in hazardous exposure to humans, animals, or the environment.

(7) Require that safety measures be taken for clearance of residential structures before reoccupation after a fumigation. These measures may include, but are not limited to, extended aeration times or specific clearance procedures.

Section 2. Paragraph (f) is added to subsection (1) of section 487.051, Florida Statutes, to read:

487.051 Administration; rules; procedure.—

(1) The department may by rule:

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(f) Establish conditions of registration or reregistration for structural fumigants which include requirements that registrants:

1. Train distributors and end users in safety measures and in proper use, safe storage, and management of fumigant materials.

2. Obtain continuing education program approval for stewardship training programs.

3. Conduct quality assurance reviews.

4. Report to the department any probation or stop-sale notice issued to end users. Under such circumstances, the department shall notify all other structural fumigant registrants of the reported probation or stop-sale notice.

5. Assist the department, upon request, with the removal of fumigant containers from distributors and end users for compliance with permanent or extended stop-sale notices.

Section 3. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Banking and Insurance, *Chair*  
Appropriations, *Vice Chair*  
Appropriations Subcommittee on Health  
and Human Services  
Education Pre-K-12  
Higher Education  
Judiciary  
Rules

### SENATOR LIZBETH BENACQUISTO

30th District

### JOINT COMMITTEE:

Joint Legislative Auditing Committee  
Joint Select Committee on Collective Bargaining

January 7, 2016

The Honorable Bill Montford  
Senate Agriculture, Chair  
214 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

### RE: SB 1498- Pest Control

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 1498, Relating to Pest Control, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Lizbeth Benacquist".

Lizbeth Benacquist  
Senate District 30

Cc: Katherine Becker

### REPLY TO:

- ☐ 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

## THE FLORIDA SENATE

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

2/1/16  
Meeting Date

1498  
Bill Number (if applicable)

Topic Pest Control

Amendment Barcode (if applicable)

Name Jim Spratt

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

Address 310 W. College Ave  
Street

Phone 850-228-1296

City TALLAHASSEE, FL State 32311 Zip

Email Jim@magnoliastrategiesllc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Douglas Products, LLC (The Chair will read this information into the record.)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Feb 1, 2016  
Meeting Date

1498  
Bill Number (if applicable)

Topic Pest Control

Name Grace Lovett

Job Title Dir. of Legislative Affairs

Address PL 10 The Capitol  
Street

Tallahassee FL 32399  
City State Zip

Phone 850 617 7700

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FL Dept. of Agriculture & Consumer Services

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-1-16

Meeting Date

SB 1498

Bill Number (if applicable)

Topic Pest Control / Fumigation

Name Missy Timmink

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

Address 2910 Kerry Forest Pkwy

Street

Phone 668-8000

TLH

City

FL

State

32309

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Pest Management Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-1-16

Meeting Date

0

Bill Number (if applicable)

Topic TCC Oyster Aquaculture Program

Amendment Barcode (if applicable)

Name Bob Ballard

Job Title Director, Wakulla Environmental Institute

Address P.O. Box 426

Phone (850) 922-6290

Street

Crawfordville, FL 32326

City

State

Zip

Email ballardb@tcc.fl.edu

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Tallahassee Community College Oyster Aquaculture Program

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)