

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

MEETING DATE: Thursday, March 20, 2014

TIME: 8:00 —10:00 a.m.

PLACE: Toni Jennings Committee Room, 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 536 Agriculture / Simpson (Similar CS/H 601)	Reclaimed Water; Requiring the Department of Environmental Protection to conduct a study in coordination with the Department of Agriculture and Consumer Services and the water management districts on the expansion of the beneficial use of reclaimed water and to submit a report based upon such study; providing requirements for the report; requiring the departments to provide the public an opportunity for input and for public comment, etc. AG 02/10/2014 AG 02/17/2014 Fav/CS EP 03/20/2014 Fav/CS	Fav/CS Yeas 9 Nays 0
2	SB 1126 Dean (Compare CS/H 955)	Fish and Wildlife Conservation Commission; Providing that a boating safety course may be offered in a classroom or online; eliminating an exemption from boating safety education requirements for boating law violators; repealing provisions relating to a charge to be applied to areas covered by cooperative agreements with the United States Forest Service over and above the license fee for hunting; authorizing the commission to require a license, permit, or authorization number for a person to take certain wildlife on public lands; requiring certain people to provide a valid hunter safety certification card number in order to purchase a Florida hunting license, etc. EP 03/20/2014 Fav/CS AP	Fav/CS Yeas 9 Nays 0
3	SB 1176 Abruzzo (Identical H 1049)	Divers; Requiring all divers to prominently display a divers-down flag or buoy in the area in which the diving occurs; requiring vessel operators encountering divers-down buoys to take specified actions; prohibiting a divers-down buoy from being used or displayed onboard a vessel, etc. EP 03/20/2014 Favorable CM JU	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Environmental Preservation and Conservation

Thursday, March 20, 2014, 8:00 —10:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1336 Evers (Identical H 1069)	Lionfish; Providing a definition; prohibiting the importation and aquaculture of lionfish and the sale of illegally imported lionfish; providing penalties; authorizing the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services to adopt rules, etc. EP 03/20/2014 Favorable CM AG	Favorable Yeas 9 Nays 0
5	SB 1576 Dean (Similar H 1313)	Springs; Specifying distributions to the Ecosystem Management and Restoration Trust Fund; requiring the Department of Environmental Protection or the governing board of a water management district to establish the minimum flow and water level for an Outstanding Florida Spring; creating the "Florida Springs and Aquifer Act"; specifying prohibited activities within a spring protection and management zone of an Outstanding Florida Spring; repealing provisions relating to periodic evaluation and assessment of onsite sewage treatment and disposal systems, etc. EP 03/13/2014 Temporarily Postponed EP 03/20/2014 Fav/CS AG AP	Fav/CS Yeas 8 Nays 0
6	SB 1582 Dean (Similar H 7093)	Rehabilitation of Petroleum Contamination Sites; Revising legislative findings and intent regarding the Petroleum Restoration Program and the rehabilitation of contamination sites; providing requirements for site rehabilitation contracts and procedures for payment of rehabilitation work under the Petroleum Restoration Program; limiting eligibility for funding under the Early Detection Incentive Program, etc. EP 03/20/2014 Favorable AGG AP	Favorable Yeas 8 Nays 0

Other related meeting documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 536

INTRODUCER: Environmental Preservation and Conservation Committee; Agriculture Committee; and Senator Simpson

SUBJECT: Reclaimed Water

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 536 directs the Florida Department of Environmental Protection (DEP) in coordination with the Florida Department Agriculture and Consumer Services (DACS) and the five water management districts (WMDs) to conduct a study and submit a report on expanding the use of reclaimed water in Florida, including stormwater and excess surface water. The bill specifies the elements the report must include. It directs the DEP and DACS to hold a minimum of two public meeting to gather input on the study design and allow the public to submit written comments on the report. Lastly, the bill requires the report to be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by December 1, 2015,

II. Present Situation:

Reclaimed water is wastewater that has been treated to remove harmful organisms and substances such as bacteria, viruses, and heavy metals. The degree of treatment depends upon where the reclaimed water will be used. Reclaimed water is clear, odorless, and safe. However, it can only be used for nondrinking water purposes in Florida. Examples of uses include:

- Landscape and commercial agricultural irrigation, (the most common type of use);
- Groundwater recharge;
- Industrial uses such as cooling, process, or wash waters;
- Fire protection; and

- Wetlands creation, restoration, and enhancement.¹

For nearly 100 years, highly treated reclaimed water has been used in the United States. In 1912, the first small urban reuse system began with the irrigation of Golden Gate Park in San Francisco. In 1966, Florida constructed the Tallahassee Reclaimed Water Farm. Since then, reuse within Florida has grown steadily, and has eclipsed all other states.²

In an effort to conserve the state's potable surface water and groundwater resources, the statutes authorize the WMDs to restrict water use to the lowest quality water source appropriate for the specific use and to adopt rules that identify preferred water supply sources for consumptive uses.³ The WMDs may consider all economically and technically feasible alternatives to the proposed water source, including alternative water sources – desalination, aquifer storage and recovery, and reuse of nonpotable reclaimed water.⁴ Of these enumerated alternative water sources, the Legislature expressly encourages the use of reclaimed water as an alternative water source “whenever practicable.”⁵

The DEP defines “reclaimed water” as “water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.”⁶ In essence, water reuse involves taking domestic wastewater (i.e., sewage), giving it a high degree of treatment, and using the resulting high-quality reclaimed water for a new, beneficial purpose. Extensive treatment and disinfection during this process ensure public health and environmental quality are protected.⁷

Reclaimed water is an important alternative water source in Florida in light of mounting pressures on the state's fresh water resources, principally surface water and groundwater. The use of reclaimed water saves water that would otherwise need to be withdrawn from surface water and groundwater sources to meet nonpotable supply needs such as agricultural or residential irrigation, power generation, or recreation (e.g., golf courses). Additionally, reclaiming wastewater reduces reliance on traditional wastewater disposal methods such as surface water discharges, ocean outfalls, or deep well injection wells. Florida is recognized as a national leader in water reuse. In 2012, Florida reused approximately 725 million gallons per day for beneficial uses.⁸

Section 373.250(3)(c), F.S., authorizes a WMD to require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. Reclaimed water is presumed to be available to a consumptive use

¹ Florida Department of Agriculture and Consumer Services, *Senate Bill 536 Agency Analysis* (January 22, 2014) (on file with the Senate Agriculture Committee).

² Southwest Florida Water Management District, *Reclaimed Water*, 1, available at www.watereuse.org/files/s/docs/reclaimed_water_leve2_08_09.pdf (last visited Mar. 16, 2014).

³ See s. 373.2234, F.S.

⁴ Section 373.223(3)(c), F.S.

⁵ Section 373.016(4)(a), F.S.

⁶ Rule 62-610.200(48), F.A.C.

⁷ DEP, *Water Reuse*, <http://www.dep.state.fl.us/water/reuse/index.htm> (last visited Mar. 16, 2014).

⁸ DEP, *Water Reuse Program, Florida's Reuse Activities*, <http://www.dep.state.fl.us/water/reuse/activity.htm>, (last visited Mar 17, 2014).

permit applicant when a reclaimed water provider has “uncommitted” reclaimed water capacity and there are distribution facilities provided by the utility to the site of the proposed use. Uncommitted reclaimed water is defined as the average amount of reclaimed water produced during the lowest-flow months, less the amount of reclaimed water that a reclaimed water provider is contractually obligated to provide a customer or user. However, by its express terms, this provision does not authorize a WMD to require a provider of reclaimed water to redirect reclaimed water from one user to another or to provide uncommitted water to a specific user if such water is anticipated to be used by the provider, or a different user selected by the provider, within a reasonable amount of time.⁹

Water resource caution areas are areas that have critical water supply problems or are projected to have critical water supply problems within the next 20 years. Reuse of reclaimed water from domestic wastewater treatment facilities is required within these water resource caution areas. However, reuse is not required if such reuse is not economically, environmentally, or technically feasible.¹⁰ For example, the entire St. Johns River WMD has been designated a water resource conservation area, and WMD rules require reclaimed water to be used throughout the district if it is readily available and feasible.¹¹ In contrast, the Northwest Florida WMD has designated only two water resource caution areas – the coastal areas of Santa Rosa, Okaloosa, and Walton Counties, and the Upper Telogia Creek Drainage Basin of Gadsden County. Applicants in those two areas who propose to withdraw water from the Floridan aquifer are required to use reclaimed water unless its use is not economically, environmentally, or technically feasible as determined by the WMD.¹²

For areas outside of designated water resource caution areas, the DEP encourages local governments to implement programs for the use of reclaimed water. Specifically, the WMDs are encouraged to establish incentives, such as longer permit duration and cost-sharing, for local governments and other interested parties to implement programs for reclaimed water use.¹³ With respect to Florida’s “Home Rule Power,”¹⁴ the provisions of the Water Resource Implementation Rule provide that the rule itself may not preempt any local water reuse programs.¹⁵

Additionally, mandatory reuse zones established by local government ordinance may require a person living within the area to connect to any alternative water supply system, when available, including reclaimed water.¹⁶ Mandatory reuse zones have been established in three WMDs –

⁹ Section 373.250(3)(a-b), F.S.

¹⁰ DEP, *Water Reuse Caution Areas*, (Sept. 21, 2011), <http://www.dep.state.fl.us/water/reuse/wrca.htm> (last visited Mar. 17, 2014).

¹¹ Rule 40C-23.001, F.A.C.

¹² Rule 40A-2.802, F.A.C.

¹³ Rule 62-40.416(2), F.A.C.

¹⁴ In Florida, “Home Rule Power” language was proposed in the 1968 Constitutional revision and was adopted by the people. After several legal challenges, the Florida Legislature adopted the Home Rule Powers Act in 1973, which ended challenges related to city and county powers. The Florida Constitution states in Art. VIII, § 2(b) for municipalities: “Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise power for municipal purposes except as otherwise provided by law.”

¹⁵ Rule 62-40.416(2), F.A.C.

¹⁶ Section 125.01(k)1., F.S., authorizes counties to: “[p]rovide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs.” Section 180.02, F.S., provides that municipalities may, “create a zone or

South Florida, Suwannee River, and St. Johns River – mostly for irrigation. In the St. Johns River WMD, the conflict between the WMD’s authority and the “Home Rule Power” of the local government was resolved by including language in local ordinances requiring reclaimed water use, unless the WMD required otherwise. This allowed the utility to use the most logical, lowest quality source, which sometimes may be another source, such as stormwater.¹⁷

III. Effect of Proposed Changes:

Section 1 requires the DEP in coordination with the DACS and the five WMDs, to conduct a comprehensive study on expanding the use of reclaimed water, stormwater, and excess surface water in Florida. The report must:

- Identify factors that prohibit or complicate the use of reclaimed water, stormwater, and excess surface water and how to eliminate or mitigate those factors;
- Identify measures that lead to the efficient use of reclaimed water;
- Identify constraints for expanding reuse, including, environmental, engineering, public health, public perception, fiscal, and rate structures;
- Identify areas where the use of reclaimed water is necessary because traditional sources are limited;
- Recommend permit incentives for the use of reclaimed water; and
- Determine the feasibility, benefit, and cost estimate of infrastructure needed to construct regional storage facilities on public or private land.

The bill also directs the departments to hold at least two public meetings to gather input on the study design and to provide the public with the opportunity to provide written comments. Lastly, the bill requires the report to be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by December 1, 2015.

Section 2 provides that this act shall take effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

area by ordinance and to prescribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect, when available, with any...alternative water supply system, including, but not limited to, reclaimed water...”

¹⁷ DEP, *Connecting Reuse and Water Use: A Report of the Reuse Stakeholders Meetings*, D-5 (Feb. 23, 2009), available at http://www.dep.state.fl.us/water/reuse/docs/reuse-stake-rpt_0209.pdf (last visited Mar. 16, 2014).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DEP, DACS, and WMDs may incur some travel expenses associated with interagency and public meetings. The actual cost of the study is indeterminate because it will not be designed until passage of this act.

VI. Technical Deficiencies:

It is unclear whether the public meetings are joint meetings with both departments or whether each department must hold two public meetings.

VII. Related Issues:

The water management districts are required to coordinate with the DEP to complete the study but are not required to participate in the public meeting to gather input on the study's design.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida Law.

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

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

CS/CS by Environmental Preservation and Conservation on March 20, 2014:

- Further clarifies that the DEP will take the lead in conducting the study required by this bill;
- Clarifies that areas of study required by the bill include stormwater and excess surface water;
- Requires measures that would lead to the efficient use of reclaimed water to be included in the report; and
- Requires at least two public meetings to be held by the departments, and that the public must have an opportunity to submit written comments before the report is submitted.

CS by Agriculture on February 17, 2014:

The committee substitute clarifies that the Department of Environmental Protection will take the lead in conducting the study required in this bill and that the Department of

Agriculture and Consumer Services and the water management districts will work in conjunction with DEP.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2014	.	
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The Committee on Environmental Preservation and Conservation
(Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Use of reclaimed water, stormwater, and excess
surface water.—

(1) The Department of Environmental Protection, in
coordination with the Department of Agriculture and Consumer
Services and the five water management districts, shall conduct
a comprehensive study and submit a report on the expansion of



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the beneficial use of reclaimed water, stormwater, and excess surface water in this state.

(2) The report must:

(a) Identify factors that prohibit or complicate the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water and recommend how those factors can be mitigated or eliminated.

(b) Identify measures that would lead to the efficient use of reclaimed water.

(c) Identify the environmental, engineering, public health, public perception, and fiscal constraints of such an expansion, including utility rate structures for reclaimed water.

(d) Identify areas in the state where traditional water supply sources are limited and the use of reclaimed water, stormwater, or excess surface water for irrigation or other purposes is necessary.

(e) Recommend permit incentives, such as extending current authorizations for long-term consumptive use permits for all entities that substitute reclaimed water for traditional water sources that become unavailable or otherwise cost prohibitive.

(f) Determine the feasibility, benefit, and cost estimate of the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, stormwater, and excess surface water, including the collection and delivery mechanisms for beneficial uses such as agricultural irrigation, power generation, public water supply, wetland restoration, groundwater recharge, and waterbody base flow augmentation.

(3) The departments shall:



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(a) Hold two public meetings, at a minimum, to gather input on the study.

(b) Provide an opportunity for the public to submit written comments before submitting the report.

(4) The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 1, 2015.

Section 2. This act shall take effect July 1, 2014.

===== 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 reclaimed water; requiring the Department of Environmental Protection to conduct a study in coordination with the Department of Agriculture and Consumer Services and the water management districts on the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water and to submit a report based upon such study; providing requirements for the report; requiring the departments to provide the public an opportunity for input and for public comment; requiring that the report be submitted to the Governor and the Legislature by a specified date; providing an effective date.

By the Committee on Agriculture; and Senator Simpson

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A bill to be entitled

An act relating to reclaimed water; requiring the Department of Environmental Protection to conduct a study in coordination with the Department of Agriculture and Consumer Services and the water management districts on the expansion of the beneficial use of reclaimed water and to submit a report based upon such study; providing requirements for the report; requiring the departments to provide the public an opportunity for input and for public comment; requiring that the report be submitted to the Governor and the Legislature by a specified date; providing an effective date.

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

Section 1. Reuse of reclaimed water.—

(1) The Department of Environmental Protection in coordination with the Department of Agriculture and Consumer Services and the five water management districts, shall conduct a comprehensive study and submit a report on the expansion of the beneficial use of reclaimed water, including stormwater and excess surface water, in this state.

(2) The report must:

(a) Identify factors that prohibit or complicate the expansion of the beneficial use of reclaimed water and recommend how those factors can be mitigated or eliminated.

(b) Identify the environmental, engineering, public health, public perception, and fiscal constraints of such an expansion,

575-01836-14

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30 including utility rate structures for reclaimed water.

31 (c) Identify areas in the state where traditional water
32 supply sources are limited and the use of reclaimed water for
33 irrigation or other uses is necessary.

34 (d) Recommend permit incentives, such as extending current
35 authorizations for long-term consumptive use permits for all
36 entities that substitute reclaimed water for traditional water
37 sources that become unavailable or otherwise cost prohibitive.

38 (e) Determine the feasibility, benefit, and cost estimate
39 of the infrastructure needed to construct regional storage
40 features on public or private lands for reclaimed water,
41 including the collection and delivery mechanisms for beneficial
42 uses such as agricultural irrigation, power generation, public
43 water supply, wetland restoration, groundwater recharge, and
44 waterbody base flow augmentation.

45 (3) The departments shall:

46 (a) Hold a public meeting to gather input on the study
47 design.

48 (b) Provide an opportunity for public comment before
49 submitting the report.

50 (4) The report shall be submitted to the Governor, the
51 President of the Senate, and the Speaker of the House of
52 Representatives no later than December 1, 2015.

53 Section 2. This act shall take effect July 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1126

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Dean

SUBJECT: Fish and Wildlife Conservation Commission

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	Fav/CS
2.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1126 relates to the Fish and Wildlife Conservation Commission (FWC). Specifically, the bill:

- Requires boating law violators to complete a mandatory boating safety course in person or online;
- Extends the FWC's anchoring and mooring pilot program until July 1, 2017, and requires an updated report by Jan. 1, 2017;
- Expands uses of the Marine Resources Conservation Trust Fund to include additional boating-related projects;
- Repeals the fee the FWC is authorized to charge for hunting on areas subject to cooperative agreements between the FWC and the U.S. Forest Service (Forest Service);
- Repeals a provision allowing for trawling for shrimp for personal use in the St. Johns River;
- Specifies that the annual military gold sportsman's license authorizes the same activities as the annual gold sportsman's license;
- Eliminates the Special Recreational Spiny Lobster license;
- Repeals the fees for the freshwater trawl seine gear license and the statewide freshwater haul seine gear license. It also repeals the ability to charge fees for the Lake Okeechobee haul and trawl seine permits; and
- Makes technical and conforming changes.

II. Present Situation:

The present situation for the relevant provisions of the bill is discussed in the Effect of Proposed Changes section of this bill analysis.

III. Effect of Proposed Changes:

Boating Safety Education for Boating Law Violators (Sections 1 and 3):

Section 327.395(1), F.S., requires that, subject to exceptions listed in s. 327.395(6), F.S., a person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless that person has a photographic identification and a boater safety identification card issued by the FWC, which shows he or she has:

- Completed an FWC approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators;
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.

The boater safety education course covers a broad range of subjects designed to educate boaters on safe boating in Florida.¹

The boater safety education course may be taken in person, in a classroom, where available, or online.² Failure to comply with the boating safety education requirement is a noncriminal infraction under s. 327.395(7), F.S., and is punishable with a \$50 fine.

For violations of certain FWC rules related to boating, the boating safety education and/or a MEV course is required. These courses must be completed following the date of the violation that triggered the education requirement. The courses may not be taken online.³

The MEV course must, at a minimum, cover:

- Florida boating laws;
- Causes and prevention of boating accidents;
- The importance of wearing personal flotation devices;
- The use of common sense and common courtesy; and
- Operating defensively.⁴

If convicted of two non-criminal infractions within a 12 month period, the violator must take the boating safety course. If convicted of any criminal boating violation or convicted of any infraction that includes a reportable boating accident, the person must take the boating safety course and the MEV course.⁵

Criminal violations of ch. 327, F.S., include:

- Unlawfully leaving the scene of a boating accident;⁶

¹ Rule 68D-36.104, F.A.C.

² FWC, *Boating Courses*, <http://myfwc.com/boating/safety-education/courses/>, (last visited Mar. 15, 2014).

³ *Id.*

⁴ Rule 68D-36.106(2), F.A.C.

⁵ FWC, *FAQs: Florida Mandatory Education for Violators*, <http://myfwc.com/boating/regulations/mandatory-boating-education/> (last visited Mar. 18, 2014).

⁶ Section 327.30(5), F.S.

- Reckless operation of a vessel of personal watercraft;⁷ or
- Boating under the influence of alcohol or drugs.⁸

Reportable boating accidents are accidents that involve:

- Personal injury requiring medical treatment beyond first aid;
- The death of a person;
- The disappearance of a person under circumstances that indicate the possibility of death or injury; or
- Damage to a vessel or other property totaling \$2,000 or more.⁹

Section 327.355(5)(c), F.S., requires any person under the age of 21 who is convicted of being in control of a vessel with a breath-alcohol level of 0.02 or higher to enroll in, attend, and complete only the boater safety education course.¹⁰

Approximately 500 boaters are required to complete MEV courses each year.¹¹ They are not offered online. Section 327.731, F.S., authorizes the FWC to provide by rule for waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available.¹²

When ss. 327.355¹³ and 327.731, F.S.,¹⁴ were adopted, boating safety education courses were available only in a classroom setting or through home study courses. The home study course consists of a booklet containing the course material, the test, and the test sheet. Home study students take the course and complete the test at their leisure and without any oversight. Section 327.731, F.S., was changed to require classroom attendance, in part because of a concern about a lack of supervision for the home study course.¹⁵

There were no online boating safety courses available in Florida then the requirement to attend courses for violations was instituted.¹⁶ With advances in technology, online courses have been growing in availability and popularity, and classroom course offerings have been declining. Over sixty percent of students who take an approved basic boating safety course in Florida do so online.¹⁷

⁷ Section 327.33(1), F.S.

⁸ Section 327.35(2)(a)-(b), F.S.

⁹ FWC, *Boating Accidents: 2012 Boating Accident Statistics: Glossary of Definitions*, XIV available at <http://myfwc.com/media/2602447/2012-BoatingStatistics-Glossary.pdf> (last visited Mar. 15, 2014).

¹⁰ Section 327.355, F.S.

¹¹ FWC, *Senate Bill 1126 Agency Analysis*, 3 (July 1, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹² *Supra*, note 5.

¹³ See ch. 98-308, s. 8, Laws of Fla.

¹⁴ See ch. 88-133, s. 7, Laws of Fla.

¹⁵ *Supra* note 11.

¹⁶ *Supra* note 11.

¹⁷ *Supra* note 11.

Of the 500 people required to complete the boater safety education courses each year, approximately 50 complaints are received concerning the difficulty people have in finding a course within a reasonable distance.¹⁸

Effect of Proposed Changes

Section 1 amends s. 327.355, F.S., providing that operators of vessels by persons under 21 years of age who have consumed alcoholic beverages must complete a boater safety education course at their own expense and may take the course in a classroom or online.

Section 3 amends s. 327.731, F.S., provides the option of taking the boater education safety course in a classroom or online. It also removes the FWC's rulemaking authority to waive the attendance requirement in areas where the class is not available. Lastly, it removes the exemption from taking the boater safety education course if the violator has previously taken a boater safety education course.

Anchoring and Mooring Pilot Program (Section 2):

Local governments face problems resolving issues with improperly stored, abandoned, and derelict boats. They must also interact with homeowners who dislike vessels anchored close to their residences and address property damage resulting from vessels breaking loose during weather events. These considerations present complex issues for local governments that want to regulate anchoring but have no legal means to do so outside properly permitted mooring fields.¹⁹

In 2009, the Florida Legislature directed the FWC, in consultation with the Florida Department of Environmental Protection, to establish a pilot program to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields. This has come to be called the "Anchoring and Mooring Pilot Program."²⁰

The purpose of establishing the pilot program in five locations is to test policies and regulatory schemes that:

- Promote the establishment and use of public mooring fields;
- Promote public access to the waters of the state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect the environment; and
- Deter improperly stored, abandoned, or derelict vessels.²¹

The State of Florida has jurisdiction over the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields. Local governments have jurisdiction over the anchoring and mooring of live-aboard vessels and vessels within their permitted

¹⁸ *Supra* note 11, at 4.

¹⁹ FWC, Division of Law Enforcement, *Anchoring and Mooring Pilot Program: Report of Findings and Recommendations*, 1 (Dec. 31, 2013), available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf>, (last visited Mar. 13, 2014).

²⁰ *Id.*

²¹ Section 327.4105, F.S.

mooring fields. The program seeks to explore the question of how much authority local governments should have with respect to vessels anchoring within their jurisdictions.²²

Multiple locations were chosen to allow for the study of different approaches to the issue. The locations chosen for the pilot program are the Cities of St. Augustine, St. Petersburg, and Sarasota, and Martin, and Monroe Counties.²³

General provisions of the program in St. Augustine provide examples of some of the approaches being taken, including:

- Buffer zones preventing anchoring near marine infrastructure;
- Buffer zones around sensitive environmental resources such as shellfish harvesting areas;
- Check-in provisions requiring stored vessels to navigate to the city marina twice a year; and
- Provisions providing limits on the amount of time an occupied vessel may stay anchored before it has to either move out of the jurisdiction for one day or move to one of the city's mooring fields.²⁴

The pilot program is set to expire on July 1, 2014.²⁵ The latest program status report states that an extension of the program is necessary to “more fully evaluate each of the pilot program locations and assess effectiveness through continued data collection and public input opportunities.”²⁶

Effect of Proposed Changes

Section 2 amends s. 327.4105, F.S., extending the Anchoring and Mooring Pilot Program to July 1, 2017. It also requires an updated report on the program by January 1, 2014.

Use of Vessel Registration Fees (Section 4):

Section 328.72, F.S., concerns vessel registration fees. It details fees for seven classifications of vessels and the fee for a dealer registration certificate.²⁷ It also specifies the portion of each fee that is remitted to the county in which the vessel is registered. The fee schedule is based on boat length:

- **Class A-1** - Less than 12 feet in length, and all canoes to which propulsion motors have been attached, regardless of length: \$5.50 for each 12-month period registered;
- **Class A-2** - 12 feet or more and less than 16 feet in length: \$16.25 for each 12-month period registered; **County portion: \$2.85** for each 12-month period registered;
- **Class 1** - 16 feet or more and less than 26 feet in length: \$28.75 for each 12-month period registered. **County portion: \$8.85** for each 12-month period registered;
- **Class 2** - 26 feet or more and less than 40 feet in length: \$78.25 for each 12-month period registered. **County portion: \$32.85** for each 12-month period registered;

²² *Supra* note 19.

²³ *Supra* note 19.

²⁴ *Supra* note 19, at 19.

²⁵ Section 327.4105(6), F.S.

²⁶ *Supra* note 19, at 2.

²⁷ Section 328.48(2), F.S.

- **Class 3** - 40 feet or more and less than 65 feet in length: \$127.75 for each 12-month period registered. **County portion: \$56.85** for each 12-month period registered;
- **Class 4** - 65 feet or more and less than 110 feet in length: \$152.75 for each 12-month period registered. **County portion: \$68.85** for each 12-month period registered; and
- **Class 5** - 110 feet or more in length: \$189.75 for each 12-month period registered. **County portion: \$86.85** for each 12-month period registered.²⁸

There are restrictions on what the funds remitted to the county may be used for. Specifically, they can be spent to provide for:

- Recreational channel marking and other uniform water markers;
- Public boat ramps;
- Lifts and hoists;
- Marine railways and other public launching facilities;
- Derelict vessel removal; and
- Removal of vessels and floating structures deemed a hazard to public safety and health for failure to comply with s. 327.53, F.S., which concerns marine sanitation.²⁹

These designated uses do not allow for any other uses of the registration fees remitted to the counties, even if they could also be used for other marine and boating related projects and uses, such as piers and docks.³⁰ It allows for the removal of derelict vessels, but does not allow for the removal of waterway debris, which may inhibit navigation.³¹ The statute allows for construction of boat ramps, uniform waterway markers, and other boat access facilities but it does not provide for operation and maintenance of them.³²

Counties must report yearly on how vessel registration fees are used.³³ The FWC reports that counties frequently ask the FWC if they may use the fees for the benefit of the boating community and in keeping with the spirit of the statute. However, any uses not specifically permitted by statute are not allowed.³⁴

Effect of Proposed Changes

Section 4 amends s. 328.72, F.S., expanding the list of acceptable uses of county portions of vessel registration fees. It:

- Provides for the maintenance and operation of channel markers, public boat ramps, lifts, hoists, marine railways, boat piers, docks, mooring buoys, and other public launching facilities, the removal of derelict vessels, and debris that impedes boat access;
- Adds boat piers, docks, and mooring buoys to the list of projects that may be funded by county vessel registration fees;
- Allows the removal of debris that impedes boat access; and
- Provides that the fees may not be used for dredging channels.

²⁸ Section 328.72(1), F.S.

²⁹ Section 328.72(15), F.S.

³⁰ *Supra* note 19, at 6.

³¹ *Supra* note 11, at 6.

³² *Supra* note 11, at 6.

³³ *Supra* note 19.

³⁴ *Supra* note 11, at 6.

Cooperative Agreements between the FWC and the U.S. Forest Service (Forest Service) (Section 5):

The FWC is authorized to enter into cooperative agreements with the Forest Service to develop game bird, fish, reptile, or fur-bearing animal management and demonstration projects.³⁵ The law also provides that, in addition to the hunting license fees already required, the FWC may charge up to an additional \$5 for every person 18 years of age or older using lands covered by the cooperative agreements, and up to an additional \$2 for every person under the age of 18, using lands covered by the cooperative agreement.³⁶ Neither the FWC, nor its predecessor, the Game and Freshwater Fish Commission, has charged those fees since at least 1978.³⁷

The FWC issues a management area permit to hunt on lands owned, leased, or managed by the FWC. The fee may not exceed \$30 per year.³⁸ Currently, the Annual Management Area Permit costs \$26.50.³⁹ Even if the additional fees were being charged, they would be much less than the current fee. Also, both fees are directed at essentially the same purpose. The fees are therefore duplicative.

Effect of Proposed Changes

Section 5 repeals s. 379.2257(3), F.S., eliminating the ability to charge a fee in addition to the fee for a hunting license on land subject to cooperative agreements with the Forest Service.

Non-commercial Shrimp Trawling for Personal Food Use in the St. Johns River (Section 6)

Section 379.247(5), F.S., authorizes noncommercial trawling for shrimp in the St. Johns River for personal use as food. To do so, each person wanting to trawl for shrimp must obtain a permit, costing \$50. All trawling is restricted to the St. Johns River north of the Acosta Bridge in Jacksonville, Florida, and none of the shrimp that are caught under the permit may be sold or offered for sale.⁴⁰

In January 1996, the Marine Fisheries Commission (predecessor to the FWC) adopted a rule prohibiting the use of trawls in the recreational shrimp fishery.⁴¹ Since then, no noncommercial permits have been issued.

Effect of Proposed Changes

Section 6 repeals s. 379.247(5), F.S., removing authorization for noncommercial shrimp trawling. The bill also amends s. 379.247(4)(d), F.S., making a conforming change by removing a prohibition on holding a commercial dead shrimp permit and a noncommercial dead shrimp

³⁵ Section 379.2257(1), F.S.

³⁶ Section 379.2257(3), F.S.

³⁷ *Supra* note 11, at 9.

³⁸ Section 379.354(8)(g), F.S.

³⁹ FWC, *Recreational Land Use Permits*, <http://myfwc.com/license/public-land-use/> (last visited Mar. 15, 2014). The Wildlife Management Permit fee is in addition to fees charged for a required hunting license.

⁴⁰ Section 379.247(5)(a)-(c), F.S.

⁴¹ See Rule 68B-31.007, F.A.C., which lists the gear that may be used to harvest shrimp recreationally. Trawls are absent from the list.

permit at the same time. Since 1996, the FWC has prohibited noncommercial trawling for shrimp, therefore the change will have no effect.

Recreational Hunting and Fishing License Exemptions (Section 7):

A person who wants to hunt or fish recreationally in Florida must obtain a recreational license, permit, or authorization number and pay the appropriate fee.⁴² Section 379.353(2), F.S., exempts specified individuals from having to possess a recreational license while hunting or fishing. Section 379.353(2)(g), F.S., provides an exemption for any person fishing who has been accepted as a client for developmental disabilities services by the Department of Children and Family Service (DCF), provided the DCF furnishes the necessary proof.

In 2004, HB 1823 was signed into law, creating the Agency for Persons with Disabilities (APD) as an entity separate from the DCF.⁴³ The APD was subsequently tasked with serving the needs of Floridians with developmental disabilities. Consequently, s. 379.353(2)(g), F.S., has an incorrect statutory reference.

Effect of Proposed Changes

Section 7 amends s. 379.353, F.S., to correct the incorrect reference to DCF. The bill correctly references the APD.

Resident Hunting and Fishing Licenses (Section 8):

There are several recreational hunting licenses offered by the FWC. The two licenses relevant to this analysis are the Annual Gold Sportsman's License and the Annual Military Gold Sportsman's License, both of which include hunting, Freshwater and Saltwater fishing licenses; and Wildlife Management Area, Archery, Muzzleloading Gun, Crossbow, Deer, Turkey, Florida Waterfowl, Snook, and Lobster permits. The only difference between the two licenses is cost – \$100 for the regular license and \$20 for the military one.⁴⁴

The Annual Military Gold Sportsman's license is available to:

- All active duty military personnel who can show military orders stating that they are stationed in Florida;
- Florida residents who are active duty military personnel, stationed anywhere, and who can show a current military identification card and a Florida Driver's License; and
- Resident retired military persons who can show a current Red or Blue Military ID Card and proof of Florida Residency.

This license is not available to family members unless they are also active duty or retired.⁴⁵

⁴² Section 379.354, F.S.

⁴³ Chapter 2004-267, s. 70, Laws of Fla.

⁴⁴ FWC, *Recreational Hunting Licenses & Permits*, <http://myfwc.com/license/recreational/hunting/> (last accessed Mar. 21, 2014).

⁴⁵ FWC, *Military Gold Sportsman's License*, <http://myfwc.com/license/recreational/military-gold/> (last accessed Mar. 21, 2014).

Effect of Proposed Changes

Section 8 amends s. 379.354, F.S., clarifying that the authorized activities granted by Annual Military Gold Sportsman's License are the same as the Annual Gold Sportsman's License. The bill has no substantive effect because the authorized activities under each license are currently identical.

Repeal of the Special Recreational Spiny Lobster Permit (Section 9):

Spiny lobster may be harvested both commercially and recreationally. Spiny lobsters and stone crabs may be harvested recreationally by anyone who has a valid recreational saltwater fishing license and a spiny lobster permit.⁴⁶ The spiny lobster bag limit during the regular recreational spiny lobster season is six spiny lobsters per person per day. During the two-day sport season, the recreational bag limit is 12 spiny lobster per person per day, except in Monroe County, where the limit is six spiny lobsters per day. For commercial fishermen fishing during the commercial season, there is no bag limit when using traps.⁴⁷

In order to harvest spiny lobster commercially, fishermen must possess a saltwater products license (SPL) and a restricted species (RS) and crawfish endorsement.

Florida offers three types of SPLs:⁴⁸

- An individual SPL authorizes one individual person to engage in commercial fishing activities from the shore or a vessel. The Individual SPL is not tied to any one vessel and is issued in the individual's name.
- A crew SPL is also issued in an individual's name and authorizes the named individual to engage in commercial fishing activities from shore or a vessel. It also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities. This means the license holder can take a crew out on any vessel to harvest saltwater fish and the SPL covers the crew as well.
- A vessel SPL is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. Unlike the first two SPLs, the vessel SPL is tied to a vessel rather than a person.

The cost for each license:⁴⁹

SPL Type	Florida Resident	Non-Resident	Alien
Individual	\$50.00	\$200.00	\$300.00
Crew	\$150.00	\$600.00	\$900.00
Vessel	\$100.00	\$400.00	\$600.00

⁴⁶ FWC, *Spiny Lobster – Panulirus argus*, <http://myfwc.com/fishing/saltwater/recreational/lobster/> (last visited Mar. 14, 2014).

⁴⁷ FWC, *Commercial Regulations for Spiny Lobster (Crawfish)*, <http://myfwc.com/fishing/saltwater/recreational/lobster/> (last visited Mar. 15, 2014).

⁴⁸ Section 379.361(2)(e)1.-3., F.S.

⁴⁹ FWC, *Commercial Saltwater Products License Fees*, <http://myfwc.com/license/saltwater/commercial-fishing/csl-fees/> (last visited Mar. 16, 2014).

In addition to an SPL, a restricted species endorsement (RS) is required to commercially harvest and sell the following species: amberjack, bluefish, cobia, dolphin, black drum, flounder, golden tilefish, most types of grouper, hogfish (hog snapper), jack, king and Spanish mackerel, mullet, permit fish, pompano, red porgy, rudderfish, sea bass, spotted seatrout, sheepshead, most types of snapper, tripletail, wahoo, blue crab, stone crab, spiny lobster, and most types of shrimp.⁵⁰

There is no cost to acquire an RS. In order to receive one, however, licensed commercial fishermen must qualify by showing proof of landings (actual saltwater products harvested and brought to shore) reported under their SPLs that indicate either \$5,000 or 25 percent of their total annual income during one of the previous three years was attributable to reported landings and sales of saltwater products to a Florida wholesale dealer unless the fisherman qualifies for an exemption.⁵¹

The spiny lobster was designated a restricted species in 1994.⁵² That same year, the Florida Legislature created the Special Recreational Spiny Lobster License.⁵³ The license was available to any individual with a spiny lobster trap number who also had an SPL during the 1993-1994 license year.⁵⁴ People issued the license were precluded from having both the special recreational spiny lobster license and a trap number. They were required, however, to have a recreational spiny lobster license.⁵⁵ The total number of special recreational spiny lobster licenses is limited to the number of licenses issued during the 1994-1995 license year.⁵⁶

Provisions for receiving a special recreational crawfish license are detailed in rule 68B-24.0035, Florida Administrative Code (F.A.C.). The rule specifies that beginning with the 2012-2013 license year and every year thereafter, no special recreational Spiny Recreational Spiny Lobster License are to be issued or renewed.⁵⁷ Rule 68B-24.004 established Special Recreational Spiny Lobster bag limits. Starting in the 2003-2004 permit year, the bag limit was 50 spiny lobsters. Every year thereafter, the bag limit was reduced by five. The current bag limit is less than the recreational harvest limit of six spiny lobsters per day.⁵⁸

Effect of Proposed Changes

Section 9 repeals s. 379.355, F.S., eliminating the Special Recreational Spiny Lobster License, which is outdated and has no effect since the bag limit is now less than the recreational bag limit. By rule, no Special Recreational Spiny Lobster Licenses are being issued as of the 2012-2013 license year.

⁵⁰ FWC, *Commercial Food and Bait Species*, <http://www.myfwc.com/license/saltwater/commercial-fishing/restricted-species/> (last visited Mar. 15, 2014).

⁵¹ FWC, *Qualifying for the Restricted Species Endorsement (RS)*, <http://myfwc.com/license/saltwater/commercial-fishing/qualifying-for-rs/> (last visited Mar. 15, 2014).

⁵² See rule 68B-24.001, F.A.C.

⁵³ The license was originally called the Special Recreational Crawfish License, but has come to be known as the Special Recreational Spiny Lobster License

⁵⁴ Section 379.355(1), F.S.

⁵⁵ Section 379.355(3), F.S.

⁵⁶ Section 379.355(4), F.S.

⁵⁷ Rule 68B-24.0035(2)(g), F.A.C.

⁵⁸ Rule 68B-24.004(3)(a-j), F.A.C.

Haul and Trawl Seine Annual Gear License Fees (Section 10):

All commercial fishermen permitted to fish in freshwaters with trawl seine nets (baglike nets that are pulled behind a boat to harvest fish) are required to pay a \$50 annual gear license fee.⁵⁹ All commercial fishermen permitted to fish in freshwaters with haul seines (long nets pulled by boats to harvest fish) must pay a \$100 annual gear license fee.⁶⁰ Both fees have remained unchanged since 1978.⁶¹

The FWC issues five freshwater haul seine annual gear licenses each year, which are limited for use in Polk County.⁶² The number of permits that may be issued annually is five.⁶³ The FWC has not issued a statewide trawl seine license in more than 25 years.⁶⁴

Effect of Proposed Changes

Section 10 repeals s. 379.363(h) and (i), F.S., removing the annual gear license fees for trawl and haul seine nets.

Haul and Trawl Seine Permits in Lake Okeechobee (Section 11):

The FWC is authorized to issue permits for the commercial use of haul or trawl seines on Lake Okeechobee.⁶⁵ The three permits that may be issued by the FWC and their fees are:

- Resident Trawl Seine Permit: \$50;
- Resident Haul Seine Permit: \$100; and
- Nonresident Trawl or Haul Seine Permit: \$500.⁶⁶

Currently, the FWC issues six resident haul seine permits for commercial activity on Lake Okeechobee. Permits for resident Trawl Seines for commercial activity have not been issued in over 30 years and nonresident trawl or haul seine permits have never been issued.⁶⁷

Effect of Proposed Changes

Section 11 repeals s. 379.3635, F.S., eliminating the FWC's authority to charge fees for haul or trawl seines in Lake Okeechobee. The FWC may still issue permits under its constitutional authority. This only eliminates the ability to charge fees.

Sections 12-14 amend ss. 373.101, 379.208, and 379.401, F.S., respectively, making conforming and cross-reference changes.

Section 15 provides an effective date of July 1, 2014.

⁵⁹ Section 379.363(1)(h), F.S.

⁶⁰ Section 379.363(1)(i), F.S.

⁶¹ *Supra* note 11, at 12.

⁶² Rule 68A-23.003(9)(a)4., F.A.C.

⁶³ Rule 68A-23.003(9)(a)1., F.A.C.

⁶⁴ *Supra* note 11, at 13.

⁶⁵ See rule 68A-23.012, F.A.C. See also ss. 379.363 and 379.3635, F.S.

⁶⁶ Section 379.3635(2), F.S.

⁶⁷ *Supra* note 11, at 11.

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:

Because the fees for MEV classroom courses tend to be higher than for online courses, there may be a negative effect on businesses offering those courses. They may offer the online courses as well, so the impact will likely be minimal. The ability to take the MEV course online will benefit those who would otherwise have to travel a significant distance to take the course in person. The online course may also cost less.

Repealing permit fees for haul and trawl seines will have a positive effect on those using those permits to fish, but given the number of permits issued, the effect will be minimal.

C. Government Sector Impact:

The repeal of fees on freshwater haul and trawl seines will, according to the FWC, have a minimal negative effect on revenues.

Expanding the acceptable uses of vessel registration funds for counties to other boating-related activities will provide a new source of funds for those additional activities. For those activities that would otherwise require county funds, this will provide a positive financial impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.355, 327.4105, 327.731, 328.72, 379.101, 379.208, 379.247, 379.353, 379.354, and 379.401.

This bill repeals the following sections of the Florida Statutes: 379.2257(3), 379.355, 379.363(1)(h) and (i), and 379.3635.

IX. Additional Information:

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

CS by Environmental Preservation and Conservation on March 20, 2014:

The committee substitute removes provisions redefining “game” to mean “wildlife” for the purpose of requiring a hunting license, and makes conforming changes.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2014	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (5) of section 327.355, Florida
Statutes, is amended to read:

327.355 Operation of vessels by persons under 21 years of
age who have consumed alcoholic beverages.—

(5) A Any person who is convicted of a violation of
subsection (1) shall be ordered by the court to ~~be punished as~~



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11 ~~follows:~~

12 (a) ~~The court shall order the defendant to~~ Participate in
13 public service or a community work project for a minimum of 50
14 hours;

15 (b) ~~The court shall order the defendant to~~ Refrain from
16 operating any vessel until the 50 hours of public service or
17 community work has been performed; and

18 (c) Enroll in, attend, and successfully complete, at his or
19 her own expense, a classroom or online boating safety course
20 that meets minimum standards established by commission ~~the~~
21 ~~department by~~ rule.

22 Section 2. Subsections (5) and (6) of section 327.4105,
23 Florida Statutes, are amended to read:

24 327.4105 Pilot program for regulation of mooring vessels
25 outside of public mooring fields.—The Fish and Wildlife
26 Conservation Commission, in consultation with the Department of
27 Environmental Protection, is directed to establish a pilot
28 program to explore potential options for regulating the
29 anchoring or mooring of non-live-aboard vessels outside the
30 marked boundaries of public mooring fields.

31 (5) The commission shall submit a report of its findings
32 and recommendations to the Governor, the President of the
33 Senate, and the Speaker of the House of Representatives by
34 January 1, 2014, and shall submit an updated report by January
35 1, 2017.

36 (6) The pilot program shall expire on July 1, 2017 ~~2014~~,
37 unless reenacted by the Legislature. All ordinances enacted
38 under this section shall expire concurrently with the expiration
39 of the pilot program and shall be inoperative and unenforceable



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thereafter.

Section 3. Subsection (1) of section 327.731, Florida Statutes, is amended to read:

327.731 Mandatory education for violators.—

(1) ~~A Every~~ person convicted of a criminal violation under ~~of~~ this chapter, ~~every person~~ convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, or ~~and every person~~ convicted of two noncriminal infractions as specified ~~defined~~ in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), said infractions occurring within a 12-month period, must:

(a) Enroll in, attend, and successfully complete, at his or her own expense, a classroom or online boating safety course that is approved by and meets the minimum standards established by ~~the commission by rule; however, the commission may provide by rule pursuant to chapter 120 for waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available;~~

(b) File with the commission within 90 days proof of successful completion of the course; and

(c) Refrain from operating a vessel until he or she has filed ~~the~~ proof of successful completion of the course with the commission.

~~Any person who has successfully completed an approved boating course shall be exempt from these provisions upon showing proof to the commission as specified in paragraph (b).~~

Section 4. Subsection (15) of section 328.72, Florida Statutes, is amended to read:



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328.72 Classification; registration; fees and charges;
surcharge; disposition of fees; fines; marine turtle stickers.—
(15) DISTRIBUTION OF FEES.—Except for the first \$2, \$1 of
which shall be remitted to the state for deposit into the Save
the Manatee Trust Fund created within the Fish and Wildlife
Conservation Commission and \$1 of which shall be remitted to the
state for deposit into the Marine Resources Conservation Trust
Fund to fund a grant program for public launching facilities,
pursuant to s. 206.606, giving priority consideration to
counties with more than 35,000 registered vessels, moneys
designated for the use of the counties, as specified in
subsection (1), shall be distributed by the tax collector to the
board of county commissioners for use only as provided in this
section. Such moneys to be returned to the counties are for the
sole purposes of providing, maintaining, or operating
recreational channel marking and other uniform waterway markers,
public boat ramps, lifts, and hoists, marine railways, boat
piers, docks, mooring buoys, and other public launching
facilities; and removing, derelict vessels, debris that
specifically impede boat access, not including the dredging of
channels ~~vessel removal~~, and ~~removal of~~ vessels and floating
structures deemed a hazard to public safety and health for
failure to comply with s. 327.53. Counties shall demonstrate
through an annual detailed accounting report of vessel
registration revenues that the registration fees were spent as
provided in this subsection. This report shall be provided to
the Fish and Wildlife Conservation Commission no later than
November 1 of each year. If, before ~~prior to~~ January 1 of each
calendar year, the ~~annual detailed~~ accounting report meeting the



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prescribed criteria has still not been provided to the commission, the tax collector of that county may ~~shall~~ not distribute the moneys designated for the use of counties, as specified in subsection (1), to the board of county commissioners but shall, ~~instead~~, for the next calendar year, remit such moneys to the state for deposit into the Marine Resources Conservation Trust Fund. The commission shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply with this section within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

Section 5. Subsection (3) of section 379.2257, Florida Statutes, is repealed.

Section 6. Paragraph (d) of subsection (4) and subsection (5) of section 379.247, Florida Statutes, are amended to read:

379.247 Regulation of shrimp fishing; Clay, Duval, Nassau, Putnam, Flagler, and St. Johns Counties.—

(4) DEAD SHRIMP PRODUCTION.—Any person may operate as a commercial dead shrimp producer provided that:

~~(d) No person holding a dead shrimp production permit issued pursuant to this subsection shall simultaneously hold a permit for noncommercial trawling under the provisions of subsection (5).~~ The number of permits issued by the commission for commercial trawling or dead shrimp production in any one year shall be limited to those active in the base year, 1976, and renewed annually since 1976. All permits for dead shrimp production issued pursuant to this section shall be inheritable



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or transferable to an immediate family member and annually renewable by the holder thereof. Such inheritance or transfer shall be valid upon being registered with the commission. Each permit not renewed shall expire and shall not be renewed under any circumstances.

~~(5) NONCOMMERCIAL TRAWLING. If noncommercial trawling is authorized by the Fish and Wildlife Conservation Commission, any person may trawl for shrimp in the St. Johns River for his or her own use as food under the following conditions:~~

~~(a) Each person who desires to trawl for shrimp for use as food shall obtain a noncommercial trawling permit from the local office of the Fish and Wildlife Conservation Commission upon filling out an application on a form prescribed by the commission and upon paying a fee for the permit, which shall cost \$50.~~

~~(b) All trawling shall be restricted to the confines of the St. Johns River proper in the area north of the Acosta Bridge in Jacksonville and at least 100 yards from the nearest shoreline.~~

~~(c) No shrimp caught by a person licensed under the provisions of this subsection may be sold or offered for sale.~~

Section 7. Paragraph (g) of subsection (2) of section 379.353, Florida Statutes, is amended to read:

379.353 Recreational licenses and permits; exemptions from fees and requirements.—

(2) A hunting, freshwater fishing, or saltwater fishing license or permit is not required for:

(g) Any person fishing who has been accepted as a client for developmental disabilities services by the Agency for Persons with Disabilities if ~~Department of Children and Family~~



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Services, ~~provided~~ the agency ~~department~~ furnishes proof thereof.

Section 8. Paragraph (j) of subsection (4) of section 379.354, Florida Statutes, is amended to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(4) RESIDENT HUNTING AND FISHING LICENSES.—The licenses and fees for residents participating in hunting and fishing activities in this state are as follows:

(j) Annual military gold sportsman's license, \$18.50. ~~A The gold sportsman's license authorizes the person to whom it is issued to take freshwater fish, saltwater fish, and game, subject to the state and federal laws, rules, and regulations, including rules of the commission, in effect at the time of taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, a Florida waterfowl permit, a deer permit, an archery season permit, a snook permit, and a spiny lobster permit. Any resident who is an active or retired member of the United States Armed Forces, the United States Armed Forces Reserve, the National Guard, the United States Coast Guard, or the United States Coast Guard Reserve may~~ is eligible to purchase the military gold sportsman's license upon submission of a current military identification card. The annual military gold sportsman's license authorizes the same activities as the annual gold sportsman's license.

Section 9. Section 379.355, Florida Statutes, is repealed.

Section 10. Paragraphs (h) and (i) of subsection (1) of



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section 379.363, Florida Statutes, are repealed.

Section 11. Section 379.3635, Florida Statutes, is repealed.

Section 12. Subsection (30) of section 379.101, Florida Statutes, is amended, to read:

379.101 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(30) "Resident" or "resident of Florida" means:

(a) For purposes of part VII ~~and for purposes of s. 379.355~~, a citizen of the United States who has continuously resided in this state for 1 year before applying for a hunting, fishing, or other license. However, for purposes of ss. 379.363, ~~379.3635~~, 379.364, 379.3711, 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752, 379.3761, and 379.3762, the term ~~"resident" or "resident of Florida"~~ means a citizen of the United States who has continuously resided in this state for 6 months before applying for a hunting, fishing, or other license.

(b) For purposes of part VI, ~~except s. 379.355~~:

1. ~~A~~ Any member of the United States Armed Forces who is stationed in the state and his or her family members residing with such member; or

2. ~~A~~ Any person who has declared Florida as his or her only state of residence as evidenced by a valid Florida driver license or identification card that has ~~with~~ both a Florida address and a Florida residency verified by the Department of Highway Safety and Motor Vehicles, or, in the absence thereof, one of the following:

a. A current Florida voter information card;



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b. A sworn statement manifesting and evidencing domicile in Florida in accordance with s. 222.17;

c. Proof of a current Florida homestead exemption; or

d. For a child younger than 18 years of age, a student identification card from a Florida school or, ~~if when~~ accompanied by his or her parent at the time of purchase, the parent's proof of residency.

Section 13. Paragraph (c) of subsection (2) of section 379.208, Florida Statutes, is amended to read:

379.208 Marine Resources Conservation Trust Fund; purposes.—

(2) The Marine Resources Conservation Trust Fund shall receive the proceeds from:

(c) All fees collected under ss. 379.2424, ~~379.3557~~, 379.357, 379.365, 379.366, and 379.3671.

Section 14. Paragraph (a) of subsection (1) and paragraph (a) of subsection (3) of section 379.401, Florida Statutes, are amended to read:

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

(1)(a) LEVEL ONE VIOLATIONS.—A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.

2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping,



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alcoholic beverages, vehicles, and check stations within
wildlife management areas or other areas managed by the
commission.

3. Rules or orders of the commission relating to daily use
permits, alcoholic beverages, swimming, possession of firearms,
operation of vehicles, and watercraft speed within fish
management areas managed by the commission.

4. Rules or orders of the commission relating to vessel
size or specifying motor restrictions on specified water bodies.

~~5. Section 379.355, providing for special recreational
spiny lobster licenses.~~

~~5.6.~~ Section 379.354(1)-(15), providing for recreational
licenses to hunt, fish, and trap.

~~6.7.~~ Section 379.3581, providing hunter safety course
requirements.

~~7.8.~~ Section 379.3003, prohibiting deer hunting unless
required clothing is worn.

(3)(a) LEVEL THREE VIOLATIONS.—A person commits a Level
Three violation if he or she violates any of the following
provisions:

1. Rules or orders of the commission prohibiting the sale
of saltwater fish.

2. Rules or orders of the commission prohibiting the
illegal importation or possession of exotic marine plants or
animals.

3. Section 379.407(2), establishing major violations.

4. Section 379.407(4), prohibiting the possession of
certain finfish in excess of recreational daily bag limits.

5. Section 379.28, prohibiting the importation of



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freshwater fish.

6. Section 379.354(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.

7. Section 379.3014, prohibiting the illegal sale or possession of alligators.

8. Section 379.404(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.

9. Section 379.406, prohibiting the possession and transportation of commercial quantities of freshwater game fish.

Section 15. This act shall take effect July 1, 2014.

===== 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 the Fish and Wildlife Conservation Commission; amending s. 327.355, F.S.; providing that a boating safety course may be offered in a classroom or online; conforming provisions relating to the reassignment of the boating safety program from the Department of Environmental Protection to the commission; amending s. 327.4105, F.S.; requiring the commission to submit an updated report relating to the regulation of mooring vessels; extending the expiration date of the pilot program for the regulation of mooring vessels; amending s. 327.731, F.S.; providing that a boating safety course may be



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offered in a classroom or online; eliminating an exemption from boating safety education requirements for boating law violators; amending s. 328.72, F.S.; expanding a county's authorization to use moneys collected from vessel registration fees; repealing s. 379.2257(3), F.S., relating to a charge to be applied to areas covered by cooperative agreements with the United States Forest Service over and above the license fee for hunting; amending s. 379.247, F.S.; removing provisions relating to noncommercial trawling; amending s. 379.353, F.S.; conforming provisions relating to the change in responsibility for providing developmental disabilities services from the Department of Children and Families to the Agency for Persons with Disabilities; amending s. 379.354, F.S.; clarifying the activities authorized under an annual military gold sportsman's license; repealing s. 379.355, F.S., relating to special recreational spiny lobster licenses; repealing s. 379.363(1)(h) and (i), F.S., relating to the annual gear license fee; repealing s. 379.3635, F.S., relating to haul seine and trawl permits to be used in Lake Okeechobee; amending ss. 379.101, 379.208, and 379.401, F.S.; conforming cross-references; providing an effective date.

By Senator Dean

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A bill to be entitled

An act relating to the Fish and Wildlife Conservation Commission; amending s. 327.355, F.S.; providing that a boating safety course may be offered in a classroom or online; conforming provisions relating to the reassignment of the boating safety program from the Department of Environmental Protection to the commission; amending s. 327.4105, F.S.; requiring the commission to submit an updated report relating to the regulation of mooring vessels; extending the expiration date of the pilot program for the regulation of mooring vessels; amending s. 327.731, F.S.; providing that a boating safety course may be offered in a classroom or online; eliminating an exemption from boating safety education requirements for boating law violators; amending s. 328.72, F.S.; expanding a county's authorization to use moneys collected from vessel registration fees; amending s. 379.101, F.S.; redefining and defining certain terms; conforming a cross-reference; repealing s. 379.2257(3), F.S., relating to a charge to be applied to areas covered by cooperative agreements with the United States Forest Service over and above the license fee for hunting; amending s. 379.247, F.S.; removing provisions relating to noncommercial trawling; amending s. 379.353, F.S.; conforming provisions relating to the change in responsibility for providing developmental disabilities services, from the Department of Children and Families to the

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Agency for Persons with Disabilities; conforming provisions to changes made by the act; amending s. 379.354, F.S.; authorizing the commission to require a license, permit, or authorization number for a person to take certain wildlife on public lands; clarifying that a license to take fur-bearing animals is required unless otherwise provided; conforming provisions to changes made by the act; repealing s. 379.355, F.S., relating to special recreational spiny lobster licenses; amending s. 379.3581, F.S.; revising the proof of compliance that certain people must have in their personal possession to take game, fur-bearing animals, or other wildlife; requiring certain people to provide a valid hunter safety certification card number in order to purchase a Florida hunting license; providing that such license indicates completion of the hunter safety course; providing that a license with a special authorization to hunt under supervision serves as proof of compliance; conforming provisions to changes made by the act; repealing s. 379.363(1)(h) and (i), F.S., relating to the annual gear license fee; repealing s. 379.3635, F.S., relating to haul seine and trawl permits to be used in Lake Okeechobee; amending ss. 379.208, 379.337, 379.401, and 589.19, F.S.; conforming cross-references and provisions to changes made by the act; providing an effective date.

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

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59 Section 1. Subsection (5) of section 327.355, Florida
60 Statutes, is amended to read:

61 327.355 Operation of vessels by persons under 21 years of
62 age who have consumed alcoholic beverages.—

63 (5) A ~~Any~~ person ~~who is~~ convicted of a violation of
64 subsection (1) shall be ordered by the court to ~~punished as~~
65 ~~follows:~~

66 (a) ~~The court shall order the defendant to~~ Participate in
67 public service or a community work project for a minimum of 50
68 hours;

69 (b) ~~The court shall order the defendant to~~ Refrain from
70 operating any vessel until the 50 hours of public service or
71 community work have ~~has~~ been performed; and

72 (c) Enroll in, attend, and successfully complete, at his or
73 her own expense, a classroom or online boating safety course
74 that meets minimum standards established by commission ~~the~~
75 ~~department by~~ rule.

76 Section 2. Subsections (5) and (6) of section 327.4105,
77 Florida Statutes, are amended to read:

78 327.4105 Pilot program for regulation of mooring vessels
79 outside of public mooring fields.—The Fish and Wildlife
80 Conservation Commission, in consultation with the Department of
81 Environmental Protection, is directed to establish a pilot
82 program to explore potential options for regulating the
83 anchoring or mooring of non-live-aboard vessels outside the
84 marked boundaries of public mooring fields.

85 (5) The commission shall submit a report of its findings
86 and recommendations to the Governor, the President of the
87 Senate, and the Speaker of the House of Representatives by

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January 1, 2014, and shall submit an updated report by January 1, 2017.

(6) The pilot program shall expire on July 1, 2017 2014, unless reenacted by the Legislature. All ordinances enacted under this section shall expire concurrently with the expiration of the pilot program and shall be inoperative and unenforceable thereafter.

Section 3. Subsection (1) of section 327.731, Florida Statutes, is amended to read:

327.731 Mandatory education for violators.—

(1) A ~~Every~~ person convicted of a criminal violation under ~~of~~ this chapter, ~~every person~~ convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, or ~~and every person~~ convicted of two noncriminal infractions as specified ~~defined~~ in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), said infractions occurring within a 12-month period, must:

(a) Enroll in, attend, and successfully complete, at his or her own expense, a classroom or online boating safety course that is approved by and meets the minimum standards established by the commission by rule; ~~however, the commission may provide by rule pursuant to chapter 120 for waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available;~~

(b) File with the commission within 90 days proof of successful completion of the course; and

(c) Refrain from operating a vessel until he or she has filed ~~the~~ proof of successful completion of the course with the commission.

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117
118 ~~Any person who has successfully completed an approved boating~~
119 ~~course shall be exempt from these provisions upon showing proof~~
120 ~~to the commission as specified in paragraph (b).~~

121 Section 4. Subsection (15) of section 328.72, Florida
122 Statutes, is amended to read:

123 328.72 Classification; registration; fees and charges;
124 surcharge; disposition of fees; fines; marine turtle stickers.-

125 (15) DISTRIBUTION OF FEES.-Except for the first \$2, \$1 of
126 which shall be remitted to the state for deposit into the Save
127 the Manatee Trust Fund created within the Fish and Wildlife
128 Conservation Commission and \$1 of which shall be remitted to the
129 state for deposit into the Marine Resources Conservation Trust
130 Fund to fund a grant program for public launching facilities,
131 pursuant to s. 206.606, giving priority consideration to
132 counties with more than 35,000 registered vessels, moneys
133 designated for the use of the counties, as specified in
134 subsection (1), shall be distributed by the tax collector to the
135 board of county commissioners for use only as provided in this
136 section. Such moneys to be returned to the counties are for the
137 sole purposes of providing, maintaining, or operating
138 recreational channel marking and other uniform waterway markers,
139 public boat ramps, lifts, and hoists, marine railways, boat
140 piers, docks, mooring buoys, and other public launching
141 facilities; and removing, derelict vessels, debris that
142 specifically impede boat access, not including the dredging of
143 channels vessel removal, and removal of vessels and floating
144 structures deemed a hazard to public safety and health for
145 failure to comply with s. 327.53. Counties shall demonstrate

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146 through an annual detailed accounting report of vessel
147 registration revenues that the registration fees were spent as
148 provided in this subsection. This report shall be provided to
149 the Fish and Wildlife Conservation Commission no later than
150 November 1 of each year. If, before ~~prior to~~ January 1 of each
151 calendar year, the ~~annual detailed~~ accounting report meeting the
152 prescribed criteria has still not been provided to the
153 commission, the tax collector of that county may ~~shall~~ not
154 distribute the moneys designated for the use of counties, as
155 specified in subsection (1), to the board of county
156 commissioners but shall, ~~instead~~, for the next calendar year,
157 remit such moneys to the state for deposit into the Marine
158 Resources Conservation Trust Fund. The commission shall return
159 those moneys to the county if the county fully complies with
160 this section within that calendar year. If the county does not
161 fully comply with this section within that calendar year, the
162 moneys shall remain within the Marine Resources Trust Fund and
163 may be appropriated for the purposes specified in this
164 subsection.

165 Section 5. Present subsections (29) through (39) of section
166 379.101, Florida Statutes, are renumbered as subsections (30)
167 through (40), respectively, new subsections (29) and (41) are
168 added to that section, and subsections (3), (20), and (27) and
169 present subsection (30) of that section are amended, to read:

170 379.101 Definitions.—In construing these statutes, where
171 the context does not clearly indicate otherwise, the word,
172 phrase, or term:

173 (3) "Closed season" means ~~shall be~~ that portion of the year
174 during which ~~wherein the laws or rules of Florida forbid the~~

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175 taking of particular species of wildlife ~~game~~ or varieties of
176 fish is prohibited by state law or by commission rule.

177 (20) "Game" means deer, bear, squirrel, rabbits, ~~and, where~~
178 ~~designated by commission rules, wild hogs,~~ ducks, geese, rails,
179 coots, gallinules, snipe, woodcock, wild turkeys, grouse,
180 pheasants, quail, and doves.

181 (27) "Open season" means ~~shall be~~ that portion of the year
182 during which state wherein the laws allow for ~~of Florida for the~~
183 ~~preservation of fish and game permit~~ the taking of particular
184 species of wildlife ~~game~~ or varieties of fish.

185 (29) "Public lands" means lands within the state which are
186 available for public use and are owned, operated, or managed by
187 a federal, state, county, or municipal governmental entity.

188 (31)~~(30)~~ "Resident" or "resident of Florida" means:

189 (a) For purposes of part VII ~~and for purposes of s.~~
190 ~~379.355,~~ a citizen of the United States who has continuously
191 resided in this state for 1 year before applying for a hunting,
192 fishing, or other license. However, for purposes of ss. 379.363,
193 ~~379.3635,~~ 379.364, 379.3711, 379.3712, 379.372, 379.373,
194 379.374, 379.3751, 379.3752, 379.3761, and 379.3762, the term
195 ~~"resident" or "resident of Florida"~~ means a citizen of the
196 United States who has continuously resided in this state for 6
197 months before applying for a hunting, fishing, or other license.

198 (b) For purposes of part VI, ~~except s. 379.355:~~

199 1. A ~~Any~~ member of the United States Armed Forces who is
200 stationed in the state and his or her family members residing
201 with such member; or

202 2. A ~~Any~~ person who has declared Florida as his or her only
203 state of residence as evidenced by a valid Florida driver

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license or identification card that has ~~with~~ both a Florida address and a Florida residency verified by the Department of Highway Safety and Motor Vehicles, or, in the absence thereof, one of the following:

- a. A current Florida voter information card;
- b. A sworn statement manifesting and evidencing domicile in Florida in accordance with s. 222.17;
- c. Proof of a current Florida homestead exemption; or
- d. For a child younger than 18 years of age, a student identification card from a Florida school or, if ~~when~~ accompanied by his or her parent at the time of purchase, the parent's proof of residency.

(41) "Wildlife" means a wild or nondomesticated bird, mammal, fur-bearing animal, reptile, or amphibian.

Section 6. Subsection (3) of section 379.2257, Florida Statutes, is repealed.

Section 7. Paragraph (d) of subsection (4) and subsection (5) of section 379.247, Florida Statutes, are amended to read:

379.247 Regulation of shrimp fishing; Clay, Duval, Nassau, Putnam, Flagler, and St. Johns Counties.—

(4) DEAD SHRIMP PRODUCTION.—Any person may operate as a commercial dead shrimp producer provided that:

(d) ~~No person holding a dead shrimp production permit issued pursuant to this subsection shall simultaneously hold a permit for noncommercial trawling under the provisions of subsection (5).~~ The number of permits issued by the commission for commercial trawling or dead shrimp production in any one year shall be limited to those active in the base year, 1976, and renewed annually since 1976. All permits for dead shrimp

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production issued pursuant to this section shall be inheritable or transferable to an immediate family member and annually renewable by the holder thereof. Such inheritance or transfer shall be valid upon being registered with the commission. Each permit not renewed shall expire and shall not be renewed under any circumstances.

~~(5) NONCOMMERCIAL TRAWLING. If noncommercial trawling is authorized by the Fish and Wildlife Conservation Commission, any person may trawl for shrimp in the St. Johns River for his or her own use as food under the following conditions:~~

~~(a) Each person who desires to trawl for shrimp for use as food shall obtain a noncommercial trawling permit from the local office of the Fish and Wildlife Conservation Commission upon filling out an application on a form prescribed by the commission and upon paying a fee for the permit, which shall cost \$50.~~

~~(b) All trawling shall be restricted to the confines of the St. Johns River proper in the area north of the Acosta Bridge in Jacksonville and at least 100 yards from the nearest shoreline.~~

~~(c) No shrimp caught by a person licensed under the provisions of this subsection may be sold or offered for sale.~~

Section 8. Paragraphs (g) and (o) of subsection (2) of section 379.353, Florida Statutes, are amended to read:

379.353 Recreational licenses and permits; exemptions from fees and requirements.—

(2) A hunting, freshwater fishing, or saltwater fishing license or permit is not required for:

(g) Any person fishing who has been accepted as a client for developmental disabilities services by the Agency for

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Persons with Disabilities if ~~Department of Children and Family Services,~~ provided the agency ~~department~~ furnishes proof thereof.

(o) Any employee of the commission who takes freshwater fish, saltwater fish, or wildlife ~~game~~ as part of employment with the commission, or any other person authorized by commission permit to take freshwater fish, saltwater fish, or wildlife ~~game~~ for scientific or educational purposes.

Section 9. Subsections (1), (3), (4), (5), and (9), paragraph (b) of subsection (11), paragraph (b) of subsection (12), and subsection (17) of section 379.354, Florida Statutes, are amended to read:

379.354 Recreational licenses, permits, and authorization numbers; fees established.—

(1) LICENSE, PERMIT, OR AUTHORIZATION NUMBER REQUIRED.—

(a) Except as provided in s. 379.353, a ~~no~~ person may not ~~shall~~ take game, freshwater or saltwater fish, or fur-bearing animals within this state without ~~having~~ first obtaining ~~obtained~~ a license, permit, or authorization number and paying ~~paid~~ the fees set forth in this chapter.

(b) A license, permit, or authorization number may be required by commission rule or order for the taking of other wildlife on public lands if determined by the commission to be necessary for the proper management of natural resources, public safety, or public access.

(c) A ~~Such~~ license, permit, or authorization number authorizes ~~shall authorize~~ the person to whom it is issued to take the wildlife or ~~game,~~ freshwater or saltwater fish for ~~which the license, permit, or authorization number is issued,~~ ~~or~~

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~~fur-bearing animals,~~ and to participate in outdoor recreational activities in accordance with ~~the laws of the state~~ laws and ~~rules of the commission~~ rules.

(3) PERSONAL POSSESSION REQUIRED.—Each license, permit, or authorization number must be in the personal possession of the person to whom it is issued while such person is taking, attempting to take, or possessing ~~game,~~ freshwater or saltwater fish, or wildlife if a license, permit, or authorization number is required pursuant to this section or s. 379.353 ~~fur-bearing animals.~~ A ~~Any~~ person taking, attempting to take, or possessing wildlife or ~~game,~~ freshwater or saltwater fish, ~~or fur-bearing animals~~ who fails to produce a license, permit, or authorization number at the request of a commission law enforcement officer violates this subsection ~~commits a violation of the law.~~

(4) RESIDENT HUNTING AND FISHING LICENSES.—The licenses and fees for residents participating in hunting and fishing activities in this state are as follows:

(a) Annual freshwater fishing license, \$15.50.

(b) Annual saltwater fishing license, \$15.50.

(c) Annual hunting license to take wildlife ~~game,~~ \$15.50.

(d) Annual combination hunting and freshwater fishing license, \$31.

(e) Annual combination freshwater fishing and saltwater fishing license, \$31.

(f) Annual combination hunting, freshwater fishing, and saltwater fishing license, \$46.50.

(g) Annual license to take fur-bearing animals, \$25.

Notwithstanding a license issued under this section or a license or exemption under s. 379.353, this license is required to take

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fur-bearing animals unless otherwise provided in this paragraph.

~~However,~~ A resident with a valid hunting license or a no-cost license who is taking fur-bearing animals for noncommercial purposes using guns or dogs only, and not traps or other devices, is not required to purchase this license. Also, a resident 65 years of age or older is not required to purchase this license.

(h) Annual sportsman's license, \$79, except that an annual sportsman's license for a resident 64 years of age or older is \$12. A sportsman's license authorizes the person to whom it is issued to take wildlife ~~game~~ and freshwater fish, subject to the state and federal laws, rules, and regulations, including rules of the commission, in effect at the time of the taking. Other authorized activities include activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, a Florida waterfowl permit, a deer permit, and an archery season permit.

(i) Annual gold sportsman's license, \$98.50. The gold sportsman's license authorizes the person to whom it is issued to take freshwater fish, saltwater fish, and wildlife ~~game~~, subject to the state and federal laws, rules, and regulations, including rules of the commission, in effect at the time of taking. Other authorized activities include those ~~activities~~ authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, a Florida waterfowl permit, a deer permit, an archery season permit, a snook permit, and a spiny lobster permit.

(j) Annual military gold sportsman's license, \$18.50. ~~A The gold sportsman's license authorizes the person to whom it is~~

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349 ~~issued to take freshwater fish, saltwater fish, and game,~~
350 ~~subject to the state and federal laws, rules, and regulations,~~
351 ~~including rules of the commission, in effect at the time of~~
352 ~~taking. Other authorized activities include activities~~
353 ~~authorized by a management area permit, a muzzle-loading gun~~
354 ~~season permit, a crossbow season permit, a turkey permit, a~~
355 ~~Florida waterfowl permit, a deer permit, an archery season~~
356 ~~permit, a snook permit, and a spiny lobster permit. Any resident~~
357 ~~who is an active or retired member of the United States Armed~~
358 ~~Forces, the United States Armed Forces Reserve, the National~~
359 ~~Guard, the United States Coast Guard, or the United States Coast~~
360 ~~Guard Reserve~~ may ~~is eligible to~~ purchase the military gold
361 sportsman's license upon submission of a current military
362 identification card. The annual military gold sportsman's
363 license authorizes the same activities as the annual gold
364 sportsman's license.

365 (k) An annual resident shoreline fishing license shall be
366 issued without a fee to allow a ~~any~~ resident to saltwater fish
367 from land or from a structure fixed to the land. This license is
368 not required for a ~~any~~ resident issued any other license
369 identified in this section which allows the taking of saltwater
370 fish.

371 (5) NONRESIDENT HUNTING AND FISHING LICENSES.—The licenses
372 and fees for nonresidents participating in hunting and fishing
373 activities in the state are as follows:

374 (a) Freshwater fishing license to take freshwater fish for
375 3 consecutive days, \$15.50.

376 (b) Freshwater fishing license to take freshwater fish for
377 7 consecutive days, \$28.50.

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(c) Saltwater fishing license to take saltwater fish for 3 consecutive days, \$15.50.

(d) Saltwater fishing license to take saltwater fish for 7 consecutive days, \$28.50.

(e) Annual freshwater fishing license, \$45.50.

(f) Annual saltwater fishing license, \$45.50.

(g) Hunting license to take wildlife ~~game~~ for 10 consecutive days, \$45.

(h) Annual hunting license to take wildlife ~~game~~, \$150.

(i) Annual license to take fur-bearing animals, \$25.

Notwithstanding a license issued under this section or a license or exemption under s. 379.353, this license is required to take fur-bearing animals unless otherwise provided in this paragraph.

~~However,~~ A nonresident with a valid Florida hunting license who is taking fur-bearing animals for noncommercial purposes using guns or dogs only, and not traps or other devices, is not required to purchase this license.

(9) RESIDENT 5-YEAR HUNTING AND FISHING LICENSES.—

(a) Five-year licenses are available for residents only, as follows:

1. A 5-year freshwater fishing or saltwater fishing license is \$77.50 for each type of license and authorizes the person to whom the license is issued to take or attempt to take or possess freshwater fish or saltwater fish consistent with the state and federal laws and regulations and rules of the commission in effect at the time of taking.

2. A 5-year hunting license is \$77.50 and authorizes the person to whom it is issued to take or attempt to take or possess wildlife ~~game~~ consistent with the state and federal laws

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and regulations and rules of the commission in effect at the time of taking.

3. The commission may ~~is authorized to~~ sell the hunting, fishing, and recreational activity permits authorized under ~~in~~ subsection (8) for a 5-year period to coincide with ~~match~~ the purchase of 5-year fishing and hunting licenses. The fee for each permit issued under this paragraph is ~~shall be~~ five times the annual fee cost ~~cost~~ established in subsection (8).

(b) Proceeds from the sale of all 5-year licenses and permits shall be deposited into the Dedicated License Trust Fund, to be distributed in accordance with ~~the provisions of~~ s. 379.203.

(11) RESIDENT LIFETIME HUNTING LICENSES.—

(b) The following activities are authorized by the purchase of a lifetime hunting license:

1. Taking, or attempting to take or possess, wildlife ~~game~~ consistent with the state and federal laws and regulations and rules of the commission in effect at the time of the taking.

2. All activities authorized by a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, an archery season permit, a Florida waterfowl permit, a deer permit, and a management area permit, excluding fishing.

(12) RESIDENT LIFETIME SPORTSMAN'S LICENSES.—

(b) The following activities are authorized by the purchase of a lifetime sportsman's license:

1. Taking, or attempting to take or possess, freshwater and saltwater fish, and wildlife ~~game~~, consistent with the state and federal laws and regulations and rules of the commission in effect at the time of taking.

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2. All activities authorized by a management area permit, a muzzle-loading gun season permit, a crossbow season permit, a turkey permit, an archery season permit, a Florida waterfowl permit, a deer permit, a snook permit, and a spiny lobster permit.

(17) SUSPENDED OR REVOKED LICENSES.—A person may not take game, freshwater fish, saltwater fish, ~~or~~ fur-bearing animals, or other wildlife for which the commission determines that a license, permit, or authorization number is required under subsection (1) within this state if a license issued to such person as required under this section or a privilege granted to such person under s. 379.353 is suspended or revoked. A person who violates this subsection commits a Level Three violation under s. 379.401.

Section 10. Section 379.355, Florida Statutes, is repealed.

Section 11. Subsections (2) and (6) of section 379.3581, Florida Statutes, are amended to read:

379.3581 Hunter safety course; requirements; penalty.—

(2) (a) Except as provided in paragraph (b), a person born on or after June 1, 1975, may not be issued a license pursuant to s. 379.353 or s. 379.354 to take wildlife ~~wild animal life~~ with the use of a firearm, gun, bow, or crossbow in this state without having first successfully completed a hunter safety course, as provided in this section, and without having in his or her personal possession a hunter safety certification card, as provided in this section.

(b) A person born on or after June 1, 1975, who has not successfully completed a hunter safety course may apply to the commission for a special authorization to hunt under

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supervision. The special authorization for supervised hunting shall be designated on any license or permit required under this chapter for a person to take wildlife ~~game or fur-bearing animals~~. A person issued a license with a special authorization to hunt under supervision must hunt under the supervision of, and in the presence of, a person 21 years of age or older who is licensed to hunt pursuant to s. 379.354 or who is exempt from licensure ~~licensing requirements~~ or eligible for a free license pursuant to s. 379.353.

(6) A person ~~All persons~~ subject to the requirements of subsection (2) must have in his or her ~~their~~ personal possession proof of compliance with this section, while taking or attempting to take, wildlife with the use of a firearm, gun, bow, or crossbow, game, fur-bearing animals, or other wildlife for which the commission determines that a license, permit, or authorization number is required under s. 379.354(1).

(a) A person subject to paragraph (2)(a) must provide and ~~must, unless the requirement to complete a hunter safety course is deferred pursuant to this section,~~ display a valid hunter safety certification card number in order to purchase a Florida hunting license. After the issuance of such a license, the license indicates the completion of the hunter safety course and ~~serves itself shall serve~~ as proof of compliance with this section. Otherwise, the only acceptable proof of compliance with this section for a person subject to paragraph (2)(a) is a valid hunter safety certification card.

(b) For a person subject to paragraph (2)(b), a license with a special authorization to hunt under supervision issued pursuant to paragraph (2)(b) serves as proof of compliance with

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~~this section A holder of a lifetime license whose license does not indicate on the face of the license that a hunter safety course has been completed must have in his or her personal possession a hunter safety certification card, as provided by this section, while attempting to take wild animal life with the use of a firearm, gun, bow, or crossbow.~~

Section 12. Paragraphs (h) and (i) of subsection (1) of section 379.363, Florida Statutes, are repealed.

Section 13. Section 379.3635, Florida Statutes, is repealed.

Section 14. Paragraph (c) of subsection (2) of section 379.208, Florida Statutes, is amended to read:

379.208 Marine Resources Conservation Trust Fund; purposes.—

(2) The Marine Resources Conservation Trust Fund shall receive the proceeds from:

(c) All fees collected under ss. 379.2424, ~~379.355,~~ 379.357, 379.365, 379.366, and 379.3671.

Section 15. Paragraph (d) of subsection (5) of section 379.337, Florida Statutes, is amended to read:

379.337 Confiscation, seizure, and forfeiture of property and products.—

(5) CONFISCATION AND SALE OF PERISHABLE SALTWATER PRODUCTS; PROCEDURE.—

(d) For purposes of confiscation under this subsection, the term "saltwater products" has the same meaning as provided set ~~out~~ in s. 379.101(36), except that the term does not include saltwater products harvested under the authority of a recreational license unless the amount of such harvested

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products exceeds three times the applicable recreational bag limit for trout, snook, or redfish.

Section 16. Paragraph (a) of subsection (1) and paragraph (a) of subsection (3) of section 379.401, Florida Statutes, are amended to read:

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

(1)(a) LEVEL ONE VIOLATIONS.—A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by the commission.

2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission.

3. Rules or orders of the commission relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.

4. Rules or orders of the commission relating to vessel size or specifying motor restrictions on specified water bodies.

~~5. Section 379.355, providing for special recreational spiny lobster licenses.~~

5.6. Section 379.354(1)-(15), providing for recreational licenses to hunt, fish, and trap.

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552 ~~6.7.~~ Section 379.3581, providing hunter safety course
553 requirements.

554 ~~7.8.~~ Section 379.3003, prohibiting deer hunting unless
555 required clothing is worn.

556 (3) (a) LEVEL THREE VIOLATIONS.—A person commits a Level
557 Three violation if he or she violates any of the following
558 provisions:

559 1. Rules or orders of the commission prohibiting the sale
560 of saltwater fish.

561 2. Rules or orders of the commission prohibiting the
562 illegal importation or possession of exotic marine plants or
563 animals.

564 3. Section 379.407(2), establishing major violations.

565 4. Section 379.407(4), prohibiting the possession of
566 certain finfish in excess of recreational daily bag limits.

567 5. Section 379.28, prohibiting the importation of
568 freshwater fish.

569 6. Section 379.354(17), prohibiting the taking of game,
570 freshwater fish~~,~~ or saltwater fish, fur-bearing animals, or
571 other wildlife while a required license is suspended or revoked.

572 7. Section 379.3014, prohibiting the illegal sale or
573 possession of alligators.

574 8. Section 379.404(1), (3), and (5) ~~(6)~~, prohibiting the
575 illegal taking and possession of deer and wild turkey.

576 9. Section 379.406, prohibiting the possession and
577 transportation of commercial quantities of freshwater game fish.

578 Section 17. Paragraph (b) of subsection (4) of section
579 589.19, Florida Statutes, is amended to read:

580 589.19 Creation of certain state forests; naming of certain

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state forests; Operation Outdoor Freedom Program.—

(4)

(b) Participation in the Operation Outdoor Freedom Program ~~is shall be~~ limited to Florida residents, as defined in s. 379.101(31)(b) ~~s. 379.101(30)(b)~~, who:

1. Are honorably discharged military veterans certified by the United States Department of Veterans Affairs or its predecessor or by any branch of the United States Armed Forces to be at least 30 percent permanently service-connected disabled;

2. Have been awarded the Military Order of the Purple Heart; or

3. Are active duty servicemembers with a service-connected injury as determined by his or her branch of the United States Armed Forces.

Proof of eligibility under this subsection, as prescribed by the Florida Forest Service, may be required.

Section 18. This act shall take effect July 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1176

INTRODUCER: Senator Abruzzo

SUBJECT: Divers

DATE: March 20, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Gudeman	Uchino	EP	Favorable
2. _____	_____	CM	_____
3. _____	_____	JU	_____

I. Summary:

SB 1176 gives a diver the option to display a divers-down buoy instead of a divers-down flag. The bill specifies the buoy must meet specific design and display requirements. Lastly, the bill makes conforming changes to specify that divers-down buoys are valid displays when divers are in the water.

II. Present Situation:

Diving Regulations

Florida's coastlines, coral reefs, rivers, springs, and lakes provide more dive sites and attract more visitors than any other diving destination in the county. The state waters provide diving opportunities that include shore diving, wreck diving, cave diving, spear fishing, and treasure hunting. Florida's unique reef habitats are the only natural living coral reef in North America.¹ Since the 1980s, efforts have been made to preserve the reefs for recreational and educational use. The state has also provided numerous artificial reefs created by sinking steel ships and structures. Florida's natural and artificial reefs generate \$4.4 billion in local sales per year and \$2 billion in local income per year. The reefs have an estimated asset value of \$8.5 billion.²

SCUBA (self-contained underwater breathing apparatus) diving as a recreational sport gained recognition in the mid-1950s.³ At the time, much of the equipment used was crafted on an as needed basis for personal use. The original divers-down flag, designed to warn boaters that

¹ Florida Fish and Wildlife Commission, *Senate Bill 1176 Agency Analysis*, 2 (Mar.6, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

² *Id.*

³ SCUBA Divers Travel Network, *The History of Diving: SCUBA Evolution*, http://www.sdtm.com/dive_resources/technical_articles/history-diving-scuba-evolution#.UyQtoPldV8E (last visited Mar. 15, 2014).

divers were present in the area, was created by Denzel “Doc” Dockery, and consisted of a red square with a diagonal white stripe. The red and white divers-down flag was soon distributed nationwide. Michigan became the first state to require a divers-down flag.⁴

In 1974, the Florida Legislature required all divers to display a divers-down flag in the area that diving occurs, other than an area where swimming is the primary activity, and provided a penalty for violations.⁵ The statute defined “divers-down flag” as “a flag that is either square or rectangular to approximately four units high by five units long with a one-unit diagonal stripe. The Divers Down Flag shall have a white diagonal stripe on a red background. The stripe shall begin at the top staff-side of the flag and extend diagonally to the opposite lower corner. The flag shall be free flying and shall be lowered when all divers are aboard or ashore. The minimum size shall be twelve by twelve inches.”⁶

Section 861.065, F.S., was amended in 1986 to prohibit divers or a group of divers from displaying one or more divers-down flags (except in an emergency) on a river, inlet, or navigation channel, in a manner that would be considered a navigational hazard. The law also required divers to make a reasonable effort to stay within 100 feet of the divers-down flag on rivers, inlets, and navigation channels.⁷

In 2000, s. 861.065, F.S., was renumbered as s. 327.331, F.S., and amended to provide additional specifications for the divers-down flag, including:

- The flag must be square or rectangular;
- If the flag is rectangular then the length must not be less than the height or more than 25 percent longer than the height;
- The flag must have a wire stiffener and extend in the absence of a wind or breeze;
- The flag must be red with a white diagonal stripe that begins at the top staff-side and extends diagonally to the lower opposite corner;
- The width of the stripe must be 25 percent the height of the flag;
- The minimum size for the flag on a buoy or a float towed by a diver is 12 inches by 12 inches;
- The minimum size for the flag displayed on a vessel or structure is 20 inches by 24 inches; and
- The flag must be displayed from the highest point of the vessel or other location that provides an unobstructed view of the flag.⁸

The statute provides additional safety provisions for diving including:

- Any person operating a vessel must maintain a distance of at least 100 feet from a divers-down flag when on a river, inlet, or navigation channel, or 300 feet on waters other than a river, inlet, or navigation channel;

⁴ Florida Dive Connection, *History of the Diver Down Flag*, <http://www.floridadiveconnection.com/history-of-the-diver-down-flag/> (last visited Mar. 15, 2014).

⁵ Chapter 74-377, Laws of Fla.

⁶ *Id.*

⁷ Chapter 86-34, Laws of Fla.

⁸ Chapter 2000-362, s. 7, Laws of Fla

- Divers must attempt to stay within 300 feet of the divers-down flag on waters other than rivers, inlets, or navigation channels;
- Any vessel, other than a law enforcement or rescue vessel, that is within 100 feet of a divers-down flag on a river, inlet, or navigation channel, or within 300 feet of a divers-down flag outside of a river, inlet, or navigation channel, may not proceed faster than necessary to maintain its headway and steerageway (i.e., the ability of a boat to respond to the rudder or helm);
- The divers-down flag must be lowered on the vessel once all the divers are aboard or ashore; and
- The vessel may not be operated if the flag is displayed and all the divers are aboard.⁹

The statute provides that a violation of these provisions, unless the violation is considered reckless or careless operation of a vessel, is a noncriminal infraction, punishable by a civil penalty of \$50.¹⁰

Diver Accident Statistics

Accidents involving boat collisions with divers using a divers-down flags and staying within reasonable distances of the flags are not frequent occurrences. From 2009 through 2013, 13 boating accidents involving divers or snorkelers being struck by boats have been reported where visibility of a diver down flag may have been a contributing factor. These accidents resulted in two fatalities and 11 injuries requiring more treatment than basic first aid. A boat collision with a diver in the water is likely to result in severe injury or death to the diver because of the boat's steering/propulsion system.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 327.331, F.S., providing divers with the option of using a divers-down buoy instead of a divers-down flag. It defines "divers-down buoy" as a "buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on four flat sides, which is prominently visible on the water's surface when in use." The bill specifies the divers-down buoy may not be used or displayed onboard.

In addition, the bill defines "divers-down symbol," as used to describe the symbol on a divers-down buoy or flag, to mean "a rectangular or square red symbol with a white diagonal stripe. If rectangular, the length must not be less than the height or more than 25 percent longer than the height. The width of the stripe must be 25 percent of the height of the symbol."

Sections 2 and 3 amend ss. 327.395 and 327.73, F.S., respectively, providing conforming changes to incorporate the divers-down buoy into existing regulations for the divers-down flag.

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

⁹ *Id.*

¹⁰ *Id.* at 8.

¹¹ *Supra* note 1, at 3.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.331, 327.395, and 327.73.

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.

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

By Senator Abruzzo

25-01240D-14

20141176__

A bill to be entitled
An act relating to divers; amending s. 327.331, F.S.;
defining the terms "divers-down buoy" and "divers-down
symbol"; revising the definition of "divers-down"
flag; requiring all divers to prominently display a
divers-down flag or buoy in the area in which the
diving occurs; requiring vessel operators encountering
divers-down buoys to take specified actions;
prohibiting a divers-down buoy from being used or
displayed onboard a vessel; conforming provisions to
changes made by the act; making technical changes;
amending ss. 327.395 and 327.73, F.S.; conforming
provisions to changes made by the act; providing an
effective date.

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

Section 1. Section 327.331, Florida Statutes, is amended,
and subsection (1) of that section is reordered, to read:

327.331 Divers; definitions; divers-down flag or buoy
required; obstruction to navigation of certain waters; penalty.-

(1) As used in this section:

(a) "Diver" means a ~~any~~ person who is wholly or partially
submerged in the waters of the state and is equipped with a face
mask and snorkel or underwater breathing apparatus.

(e) ~~(b)~~ "Underwater breathing apparatus" means any
apparatus, whether self-contained or connected to a distant
source of air or other gas, whereby a person wholly or partially
submerged in water is enabled to obtain or reuse air or any

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other gas or gases for breathing without returning to the surface of the water.

(b) "Divers-down buoy" means a buoyant device, other than a vessel, which displays a divers-down symbol of at least 12 inches by 12 inches on four flat sides, which is prominently visible on the water's surface when in use.

(c) "Divers-down flag" means a flag that meets the following specifications:

1. The flag must be square or rectangular. If rectangular, the length must not be less than the height, or more than 25 percent longer than the height. The flag must have a wire or other stiffener to hold it fully unfurled and extended in the absence of a wind or breeze.

2. The flag must consist of a divers-down symbol on each side with ~~be red with~~ a white diagonal stripe that begins at the top staff-side of the flag and extends diagonally to the lower opposite corner. ~~The width of the stripe must be 25 percent of the height of the flag.~~

3. The minimum size for any divers-down flag displayed on a buoy or float towed by the diver is 12 inches by 12 inches. The minimum size for any divers-down flag displayed from a vessel or structure is 20 inches by 24 inches.

4. Any divers-down flag displayed from a vessel must be displayed from the highest point of the vessel or such other location which provides that the visibility of the divers-down flag is not obstructed in any direction.

(d) "Divers-down symbol" means a rectangular or square red symbol with a white diagonal stripe. If rectangular, the length must not be less than the height or more than 25 percent longer

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than the height. The width of the stripe must be 25 percent of the height of the symbol.

(2) All divers must prominently display a divers-down flag or buoy in the area in which the diving occurs, other than when diving in an area customarily used for swimming only. A divers-down buoy may not be used or displayed onboard a vessel.

(3) A diver or group of divers may not ~~No diver or group of divers shall~~ display one or more divers-down flags or buoys on a river, inlet, or navigation channel, except in case of emergency, in a manner which shall unreasonably constitute a navigational hazard.

(4) Divers shall make reasonable efforts to stay within 100 feet of a ~~the~~ divers-down flag or buoy on rivers, inlets, and navigation channels. A ~~Any~~ person operating a vessel on a river, inlet, or navigation channel must make a reasonable effort to maintain a distance of at least 100 feet from any divers-down flag or buoy.

(5) Divers must make reasonable efforts to stay within 300 feet of a ~~the~~ divers-down flag or buoy on all waters other than rivers, inlets, and navigation channels. A ~~Any~~ person operating a vessel on waters other than a river, inlet, or navigation channel must make a reasonable effort to maintain a distance of at least 300 feet from any divers-down flag or buoy.

(6) A ~~Any~~ vessel other than a law enforcement or rescue vessel that approaches within 100 feet of a divers-down flag or buoy on a river, inlet, or navigation channel, or within 300 feet of a divers-down flag or buoy on waters other than a river, inlet, or navigation channel, must proceed no faster than is necessary to maintain headway and steerageway.

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88 (7) A The divers-down flag or buoy may not be displayed
89 ~~must be lowered~~ once all divers are aboard or ashore. A No
90 person may not operate any vessel displaying a divers-down flag
91 unless the vessel has one or more divers in the water.

92 (8) Except as provided in s. 327.33, a any violation of
93 this section is ~~shall be~~ a noncriminal infraction punishable as
94 provided in s. 327.73.

95 Section 2. Subsection (3) of section 327.395, Florida
96 Statutes, is amended to read:

97 327.395 Boating safety identification cards.—

98 (3) Any commission-approved boater education or boater
99 safety course, course-equivalency examination developed or
100 approved by the commission, or temporary certificate examination
101 developed or approved by the commission must include a component
102 regarding diving vessels, awareness of divers in the water,
103 divers-down flags and buoys, and the requirements of s. 327.331.

104 Section 3. Paragraph (u) of subsection (1) of section
105 327.73, Florida Statutes, is amended to read:

106 327.73 Noncriminal infractions.—

107 (1) Violations of the following provisions of the vessel
108 laws of this state are noncriminal infractions:

109 (u) Section 327.331, relating to divers-down flags and
110 buoys, except for violations meeting the requirements of s.
111 327.33.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1336

INTRODUCER: Senator Evers

SUBJECT: Lionfish

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	Favorable
2.			CM	
3.			AG	

I. Summary:

SB 1336 creates a new section of law that prohibits the importation of live lionfish, hybrids, or their eggs. It also prohibits lionfish aquaculture or the sale of illegally imported live lionfish. The bill makes a violation of the provisions of the bill a Level Two offense, and provides rulemaking authority to the Fish and Wildlife Conservation Commissions (FWC) and the Department of Agriculture and Consumer Services (DACS).

II. Present Situation:

Lionfish are native to the Indo-Pacific and the Red Sea.¹ They grow to about 12 to 15 inches in length, spawn frequently and release thousands of eggs at a time. Lionfish have 18 venomous spines that they use defensively against predators. Lionfish are predatory reef fish that reduce Florida's native populations, compete with native predatory fish, such as grouper and snapper, and disrupt the balance of reef communities. The fish is a threat to Florida's saltwater fish, wildlife, and habitat.²

Lionfish are not native to the United States. They were first spotted in 1985, near Dania Beach in Broward County, Florida. During the 2000s, the lionfish population expanded north to the waters off the coasts of Georgia, South Carolina, and North Carolina and into the Gulf of Mexico.³

¹ FWC, *Lionfish – Pterois volitans*, <http://myfwc.com/wildlifehabitats/nonnatives/marine-species/lionfish/> (last accessed Mar. 16, 2014).

² *Id.*

³ *Id.*

The United States Geological Society produced a time lapse series of yearly sightings, beginning with the first report of lionfish in U.S. coastal waters.⁴ The series of images illustrates the spread of lionfish in the Atlantic Ocean and the Gulf of Mexico.

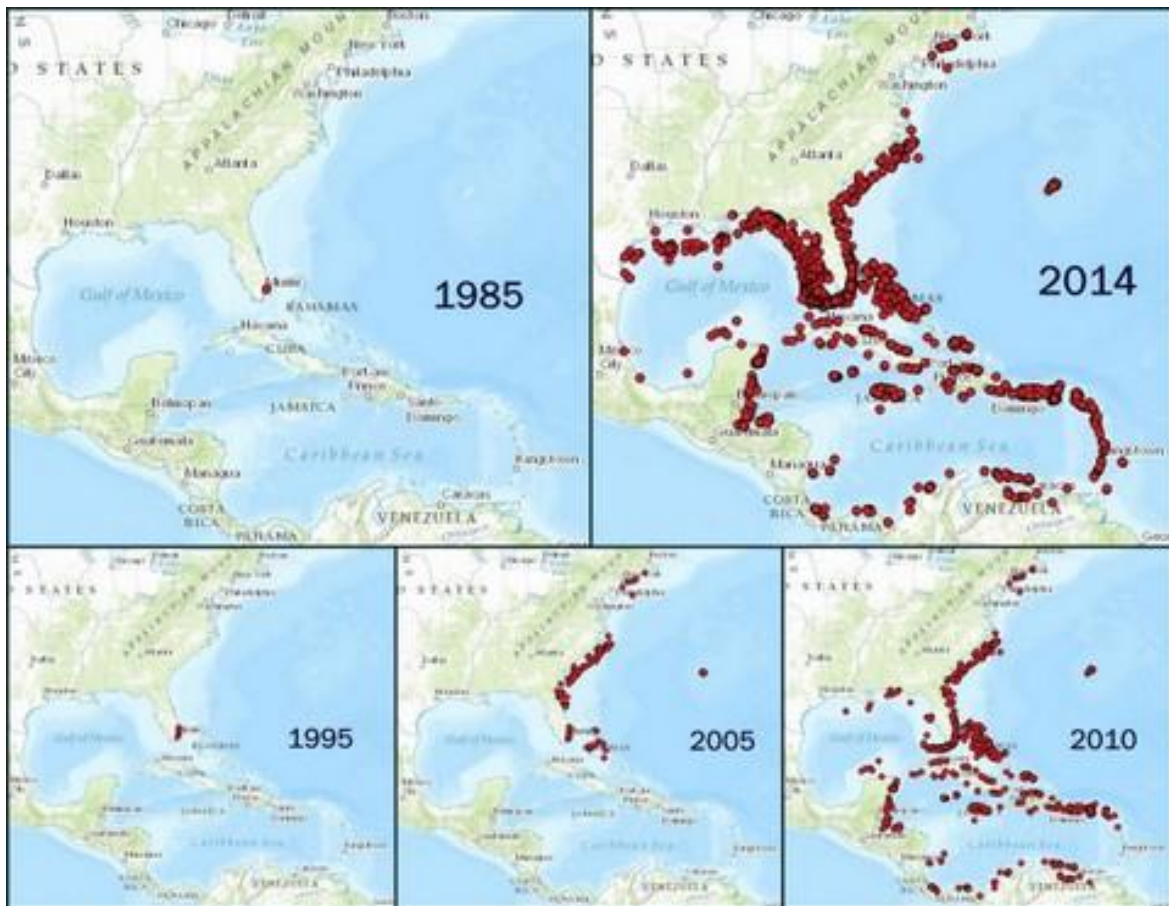


Figure 1. Lionfish population in the United States from 1985 to 2014.

There are relatively few restrictions for taking lionfish in state waters. A recreational fishing license is not required to fish for lionfish when using a pole spear, a Hawaiian Sling, a handheld net, or any spearing device specifically designed and marketed for lionfish. Otherwise, a recreational fishing license is required for all other methods of harvesting lionfish. There are no recreational or commercial bag limits for lionfish.⁶

The poisonous spines of the lionfish need to be avoided when capturing the fish, but the flesh is non-poisonous⁷ and served in several restaurants, primarily in South Florida. Anecdotally, customer response has been positive, but the fish can be difficult to prepare.

⁴ United States Geological Society, *NAS – Nonindigenous Aquatic Species*, (July 12, 2013), <http://nas.er.usgs.gov/queries/SpeciesAnimatedMap.aspx?speciesID=963> (last visited Mar. 15, 2014).

⁵ *Supra* note 1.

⁶ FWC, *Lionfish Recreational Regulations*, <http://myfwc.com/fishing/saltwater/recreational/lionfish/> (last visited Mar. 15, 2014).

⁷ *Supra* note 1.

Section 379.401, F.S., details punishments for various violations. The statute categorizes violations on a scale of one to four, four being the most severe. Level two violations are punished as follows:

- A conviction for a level two violation that is not a second level two or higher violation within three years is a second degree misdemeanor.
- A conviction for a level two violation within three years of a previous conviction for a level two or higher violation is a first degree misdemeanor and subjects the violator to a mandatory minimum fine of \$250.
- A conviction for a level two violation within five years of two previous convictions for level two or higher violations is a first degree misdemeanor and subjects the violator to a mandatory minimum fine of \$500 and suspension of any recreational license or permit for one year.
- A conviction for a level two violation within 10 years of three previous convictions for level two or higher violations is a first degree misdemeanor and subjects the violator to a mandatory minimum fine of \$750 and suspension of any recreational license or permit for three years.⁸

III. Effect of Proposed Changes:

The bill creates s. 379.2414, F.S., defining lionfish as finfish of the genus *Pterois*. It prohibits the importation of live lionfish, hybrids, or their eggs, the aquaculture of lionfish, and the sale of illegally imported live lionfish. It provides that a conviction for violating any provision of the bill is a Level Two violation under s. 379.401, F.S. It provides rulemaking authority for the FWC to adopt rules to administer the provisions of the bill and provides the DACS rulemaking authority to adopt rules relating to the aquaculture of lionfish. Lastly, the bill amends s. 379.401, F.S., adding the prohibitions of the bill to the enumerated list of Level Two violations. The act will take effect August 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ Section 379.401(2)(b), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Given the rapid spread of lionfish in Florida's waters, the effects of this bill on the private sector will likely be minimal.

C. Government Sector Impact:

There could be a small increase in fines for violations of the bill. The effect will likely be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 379.2414 of the Florida Statutes.

This bill substantially amends section 379.401 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 Evers

2-01432A-14

20141336__

A bill to be entitled
An act relating to lionfish; creating s. 379.2414,
F.S.; providing a definition; prohibiting the
importation and aquaculture of lionfish and the sale
of illegally imported lionfish; providing penalties;
authorizing the Fish and Wildlife Conservation
Commission and the Department of Agriculture and
Consumer Services to adopt rules; amending s. 379.401,
F.S.; conforming provisions to changes made by the
act; providing an effective date.

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

Section 1. Section 379.2414, Florida Statutes, is created
to read:

379.2414 Lionfish.—

(1) As used in this section, the term "lionfish" means a
finfish of the genus *Pterois*.

(2) The importation of live lionfish or hybrids or eggs
thereof or the aquaculture of lionfish or the sale of illegally
imported live lionfish is prohibited.

(3) A person who violates this section commits a Level Two
violation under s. 379.401.

(4) The commission may adopt rules to administer this
section. The Department of Agriculture and Consumer Services may
adopt rules relating to the aquaculture of lionfish pursuant to
subsection (2).

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

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30 379.401 Penalties and violations; civil penalties for
31 noncriminal infractions; criminal penalties; suspension and
32 forfeiture of licenses and permits.—

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

35 1. Rules or orders of the commission relating to seasons or
36 time periods for the taking of wildlife, freshwater fish, or
37 saltwater fish.

38 2. Rules or orders of the commission establishing bag,
39 possession, or size limits or restricting methods of taking
40 wildlife, freshwater fish, or saltwater fish.

41 3. Rules or orders of the commission prohibiting access or
42 otherwise relating to access to wildlife management areas or
43 other areas managed by the commission.

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

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

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

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

52 8. Rules or orders of the commission relating to the use of
53 dogs for the taking of wildlife.

54 9. Rules or orders of the commission which are not
55 otherwise classified.

56 10. Rules or orders of the commission prohibiting the
57 unlawful use of finfish traps.

58 11. All prohibitions in this chapter which are not

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otherwise classified.

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

13. Section 379.407(6), prohibiting the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.

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

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

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

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

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

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

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

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

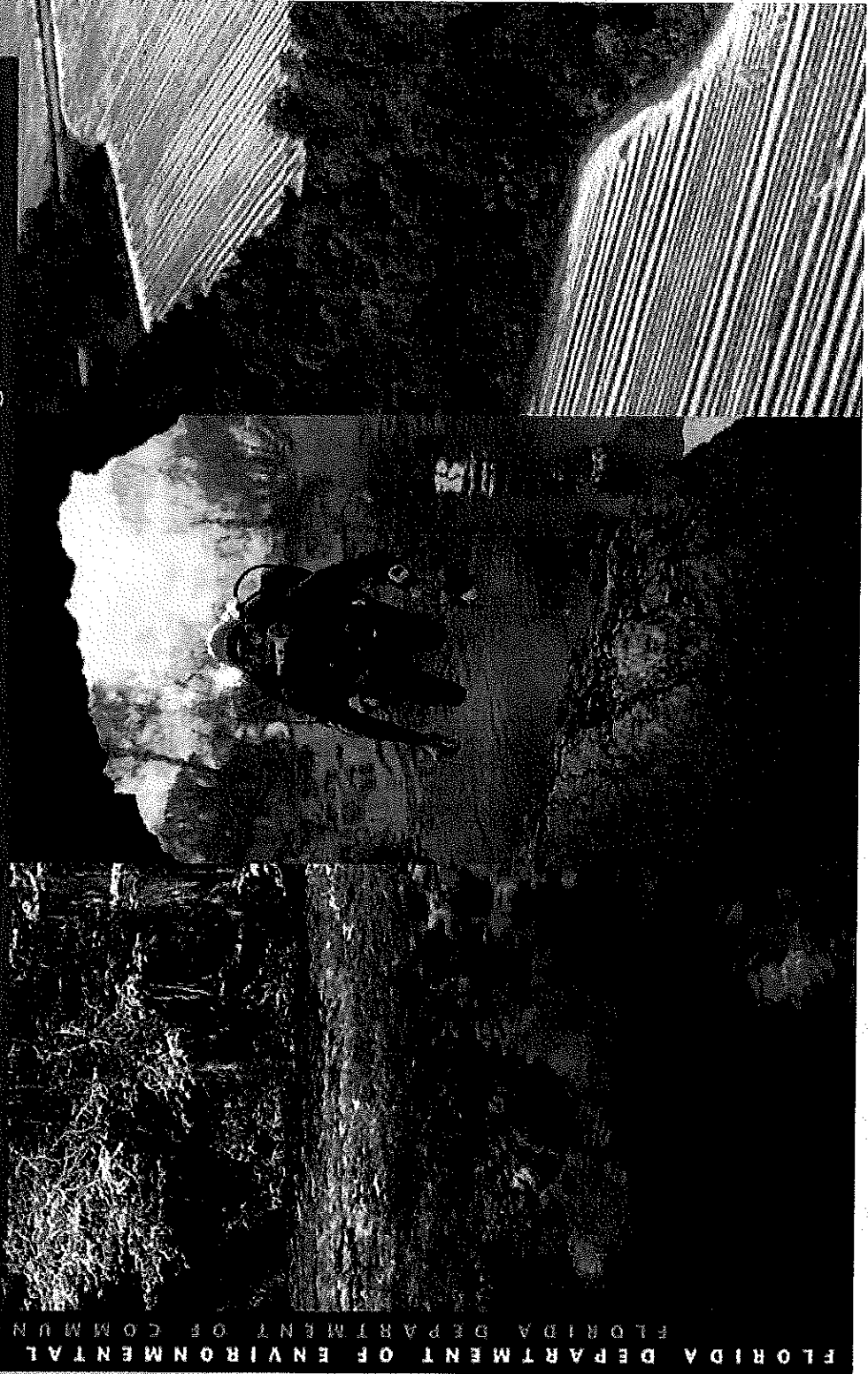
22. Section 379.2414, prohibiting the importation and aquaculture of lionfish and the sale of illegally imported lionfish.

Section 3. This act shall take effect August 1, 2014.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

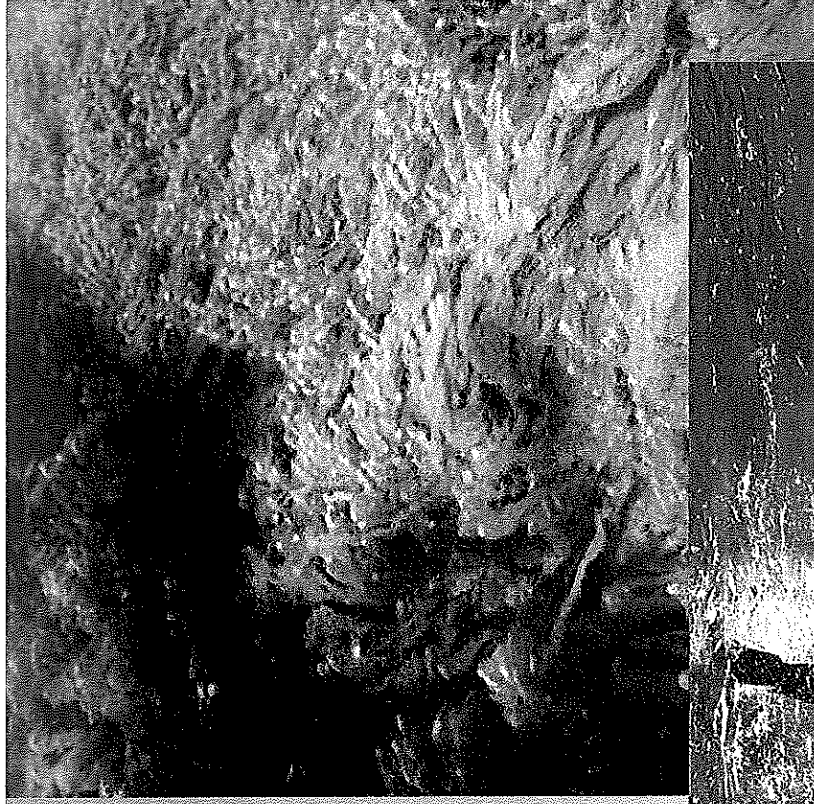
Protecting Florida's Springs

Land Use Planning Strategies and Best Management Practices



What's the Point

- With no sewer infrastructure, no advanced waste treatment to remove nutrients and no organized means (such as a RME) to begin overtime to manage the problem of large in-place populations of septic systems - we can expect the problem to continue, and likely get worse.



Wakulla Springs

Before and After Photos

Can you tell the more recent?

Leon and Wakulla County Aquifer Vulnerability Assessments

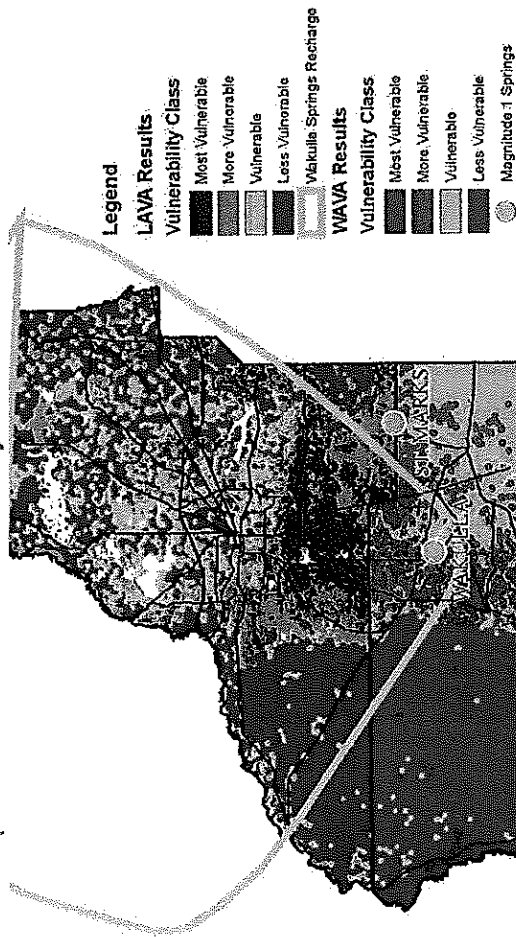
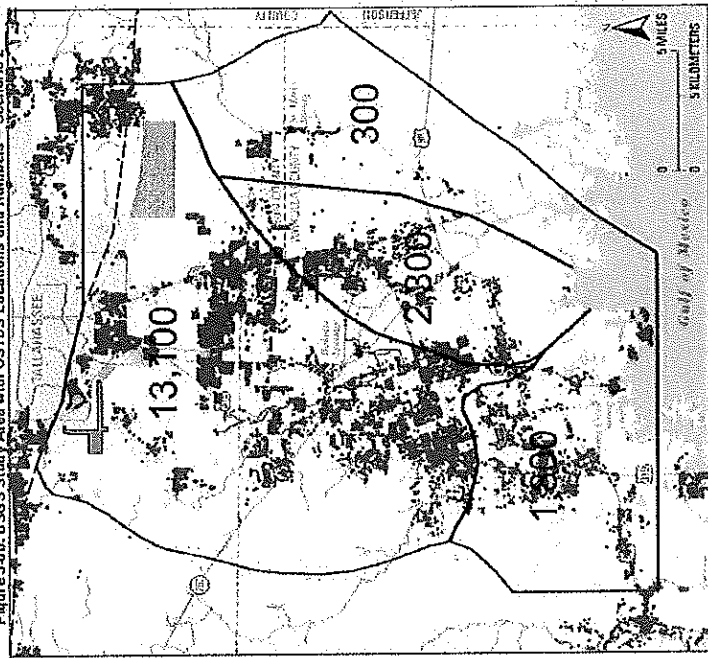


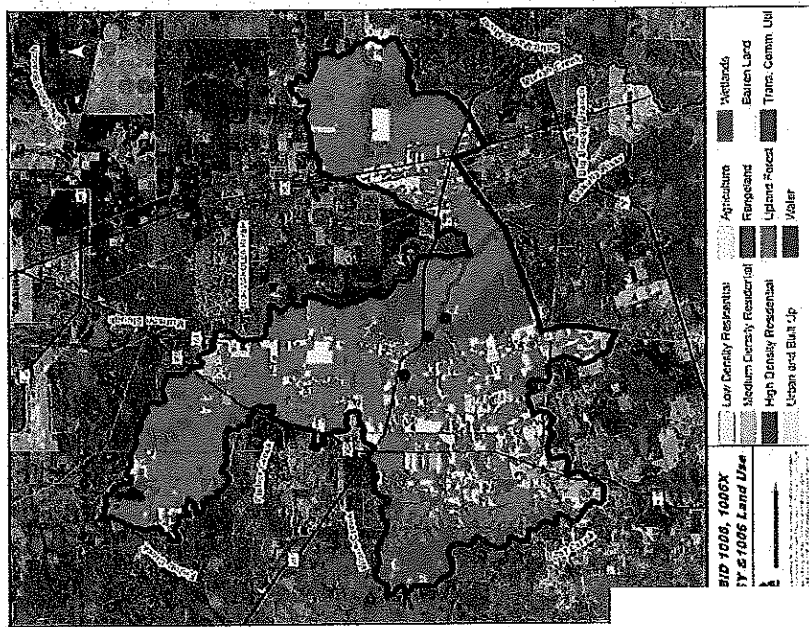
Figure 3.6b. USGS Study Area with OSTDS Locations and Numbers - Scenario 2



FAVA

Land Use

Septic Systems



U.S. Principal Land Uses in the Upper Wakulla River Watershed (WSDA 1996, 1998X, and 1998Y) in 1997

North Florida – Wakulla Springs

Levy County

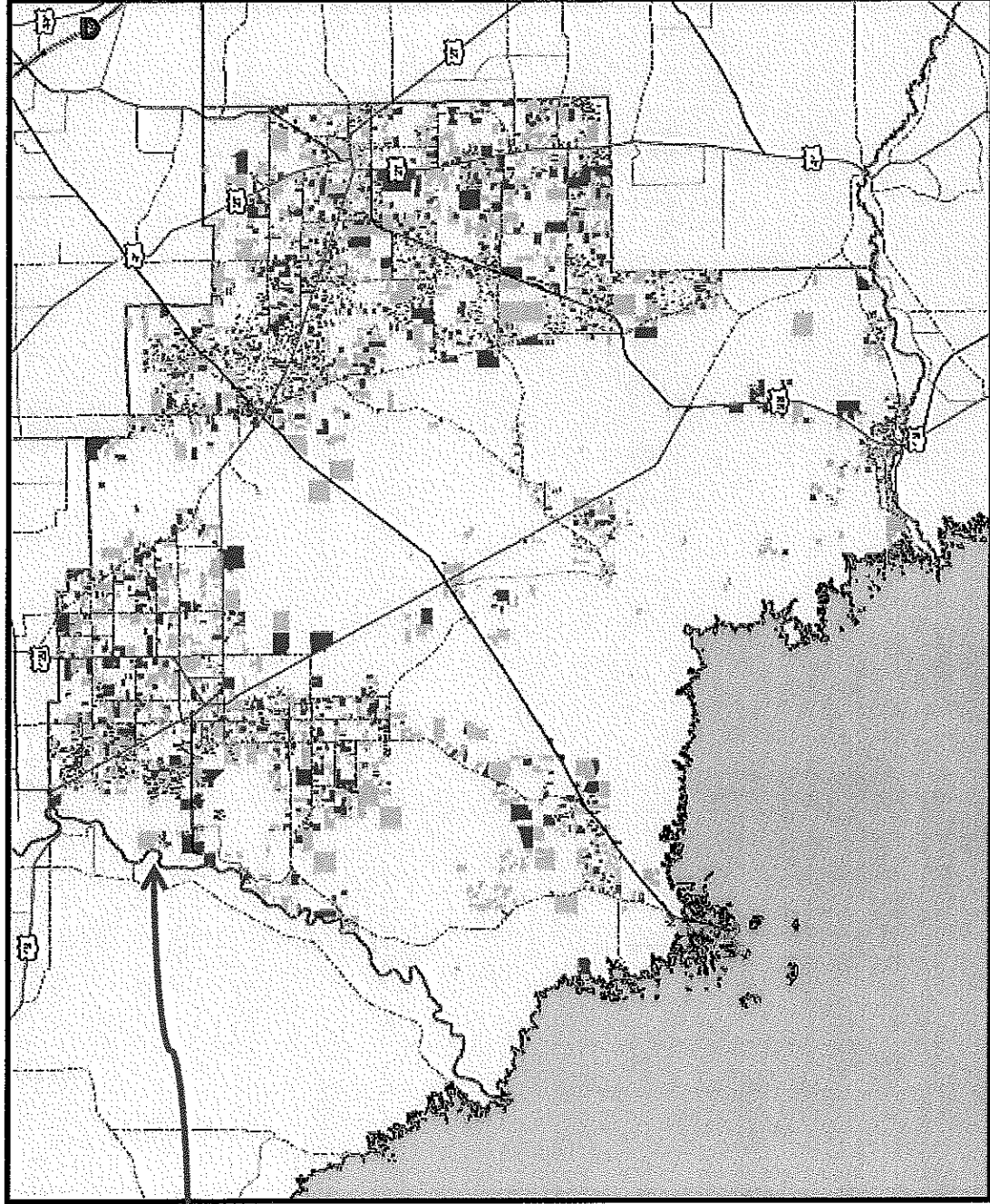
Wastewater Method

Manatee Springs



Legend

- Developed - Unknown
- Known Wastewater Method
- Septic
- Sewer

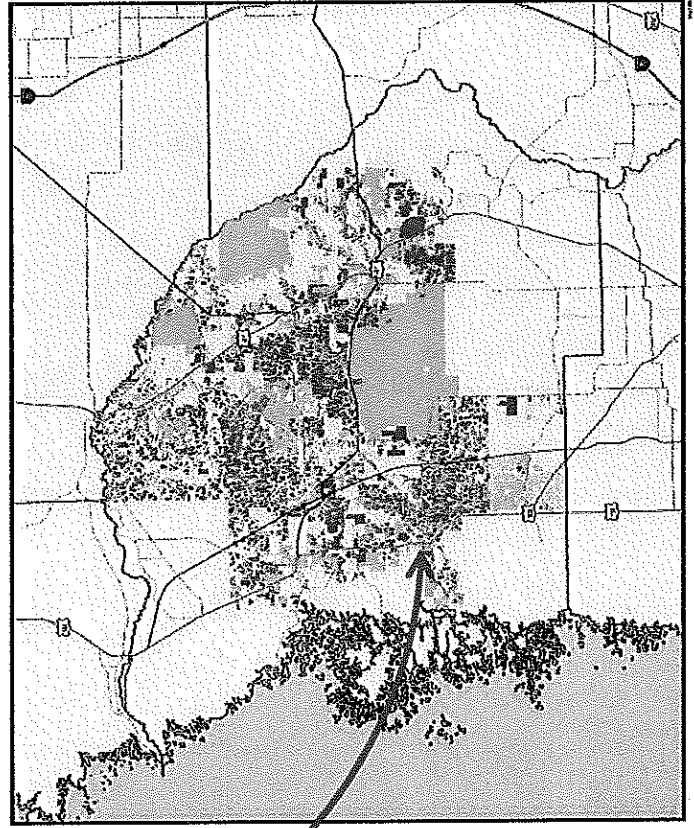
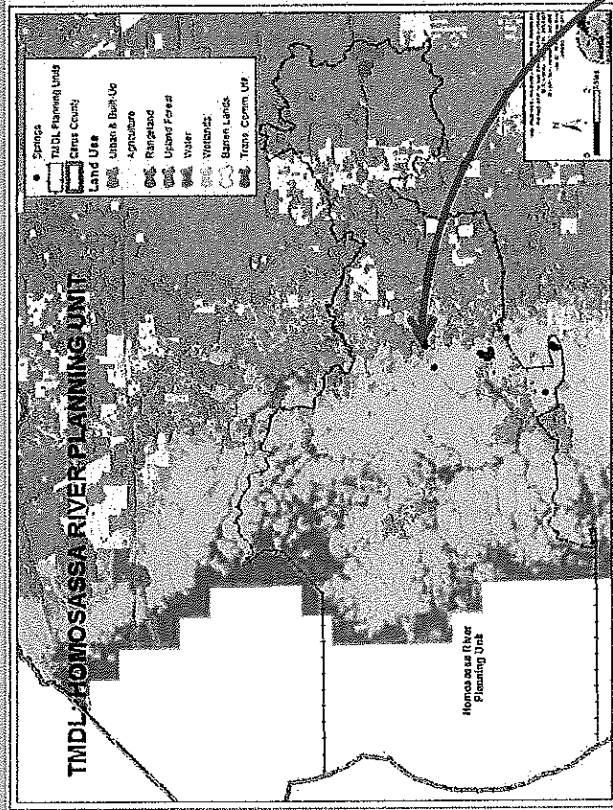


Levy County - Manatee Springs



- Overhead Irrigation/fertilizers
- Community on Septic Systems
- Golf Course - fertilizers

Citrus County – Homosassa Springs



Citrus County - Crystal River/Kings Bay

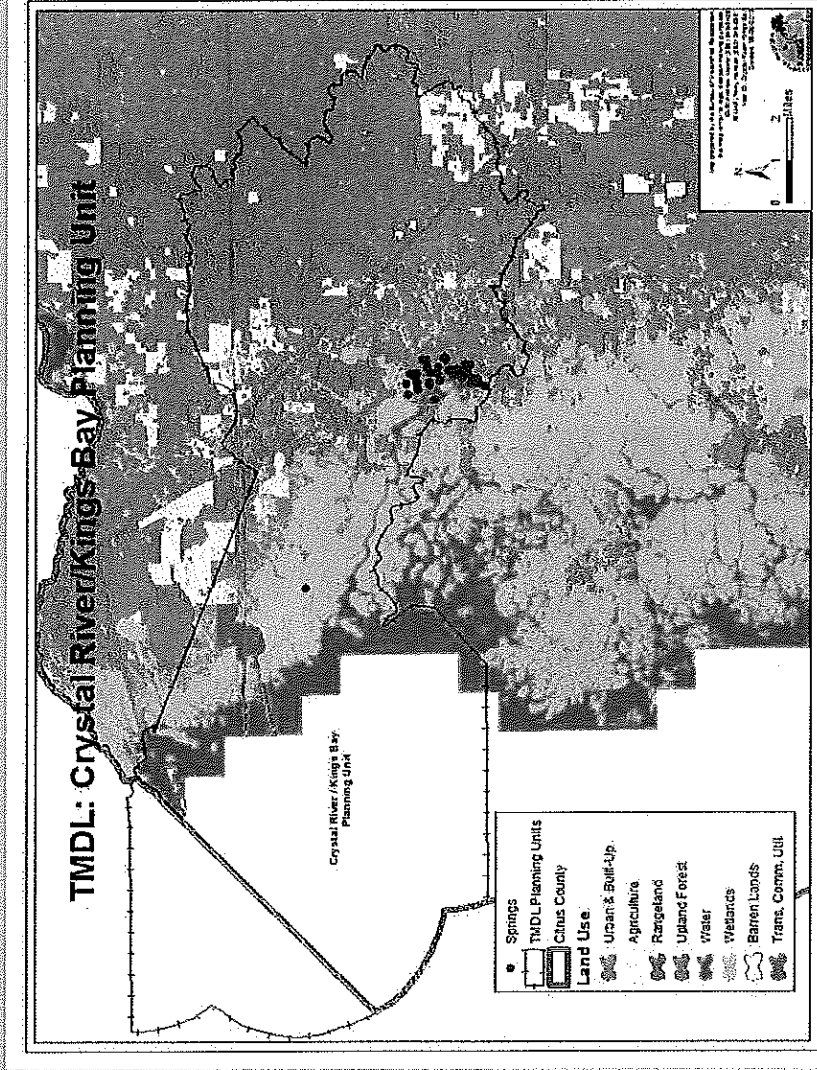


Figure 2.2. Floating *Lyngbya* sp. Mats at Hunter Spring (WBID 1341C) in November 2009 (Source: L. Hester)



Figure 2.3. Aerial Photo of Algal Coverage and Chlorophyll in the Water Column at Hunter Spring (WBID 1341C) in June 2010 (Source: H. Means, Department)

After

Citrus County - Crystal River/Kings Bay

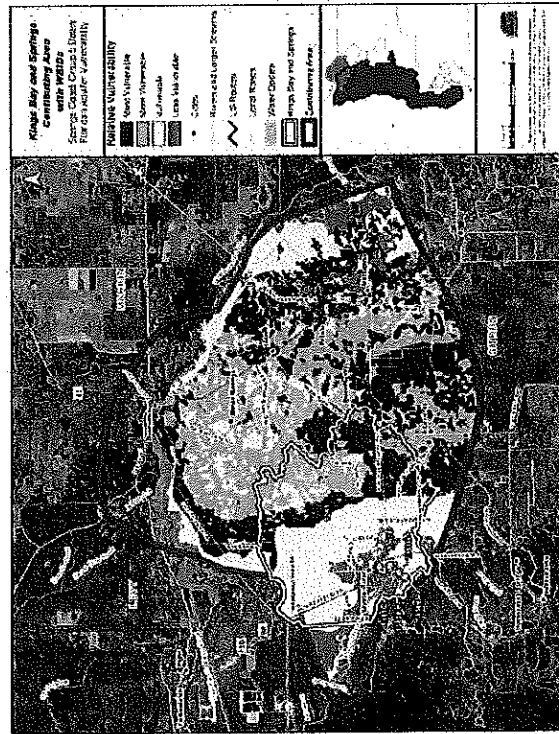


Figure 4.7. Florida Aquifer Vulnerability in the Portion of the Kings Bay Contributing Area within Florida

FAVA

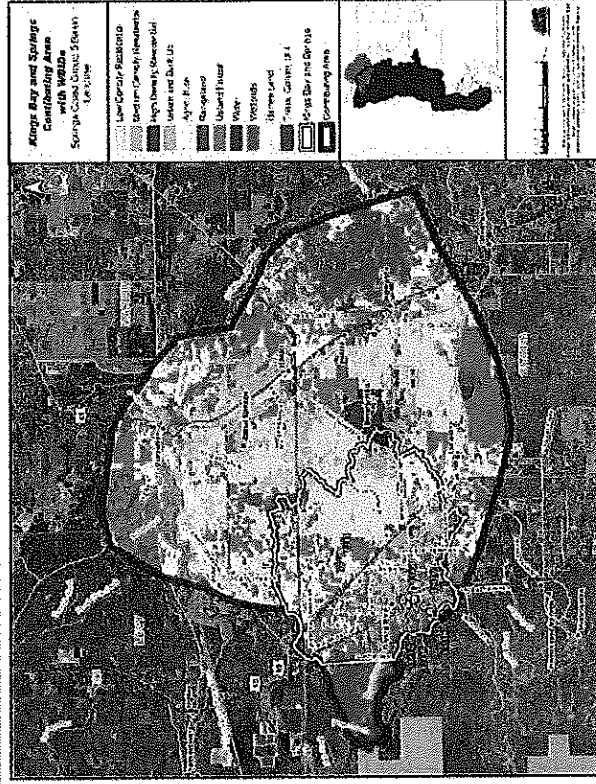


Figure 4.5. Principal Land Uses in the Kings Bay Contributing Area in 2009

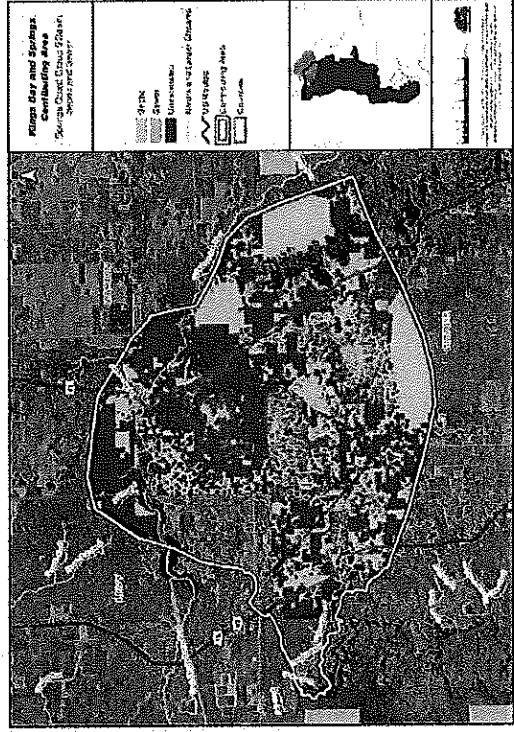


Figure 4.6. Density of OSTDS (Septic Tanks) and Sewer Systems in the Kings Bay Contributing Area in 2009 (Hall and Glancy 2009)

Land Use

Septic Systems

Hernando County Weeki Wachee System



Figure 2.1. Archives Underwater Photo of Weeki Wachee Spring Shows Native Vegetation (Florida Archives)



Figure 2.2. Archives Underwater Photo of Weeki Wachee Spring Shows Native Vegetation and Water Clarity (Florida Archives)

Before

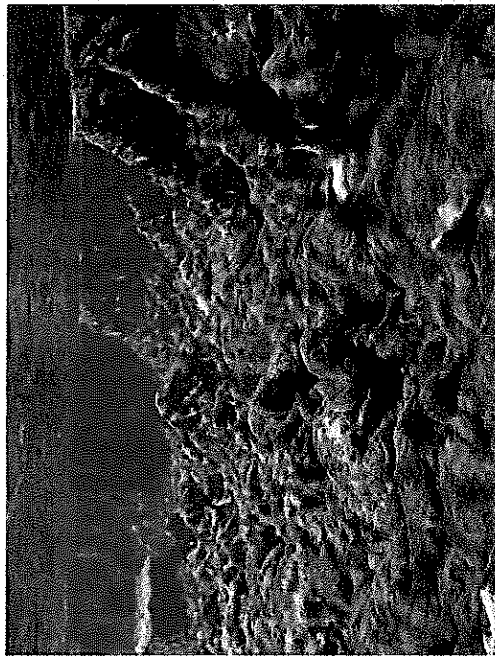


Figure 2.3. Algae on Tape Grass and Dead Logs in Weeki Wachee Spring, WBID 4382B, in 2006 (Department)

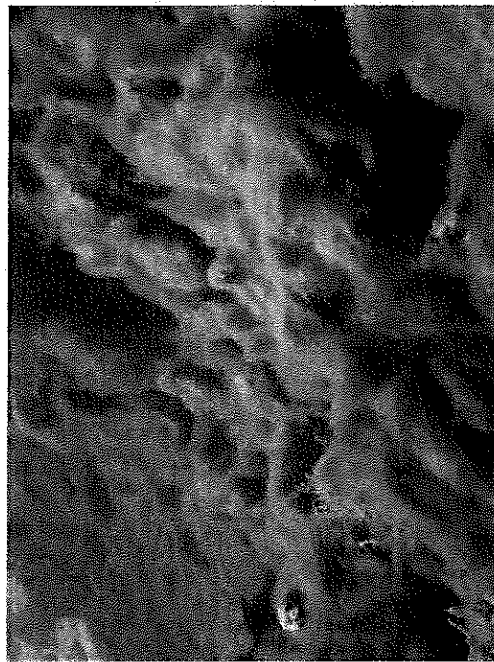
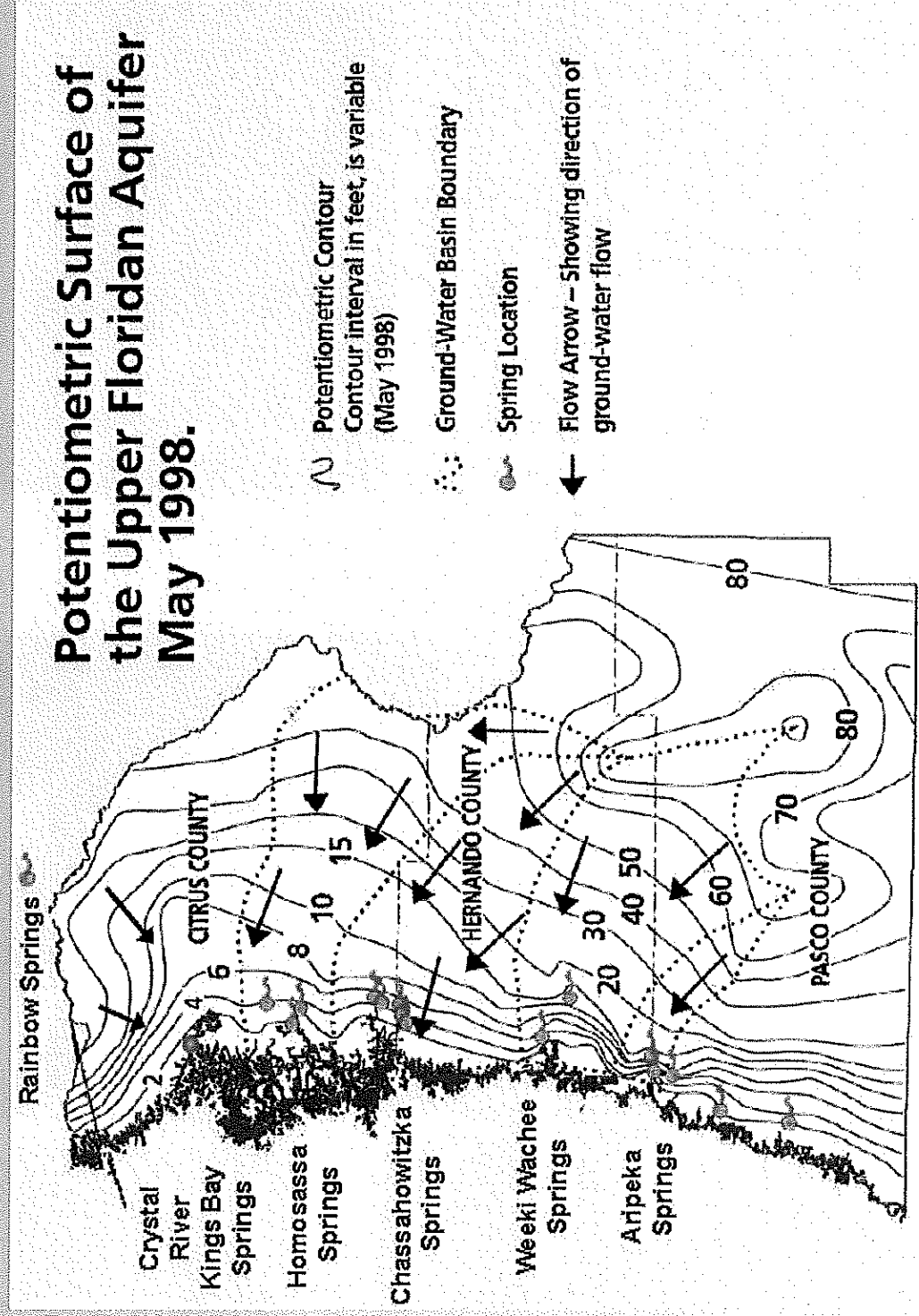


Figure 2.4. Algal Smothering at Weeki Wachee Spring, WBID 1382B, in 2009 (photo by Gary Maddox, Department)

After

Several Florida West Coast Springs

Direction of Groundwater flow



modified from USGS WRIR 01-4230: Knochenmus and

Marion County - Rainbow River System

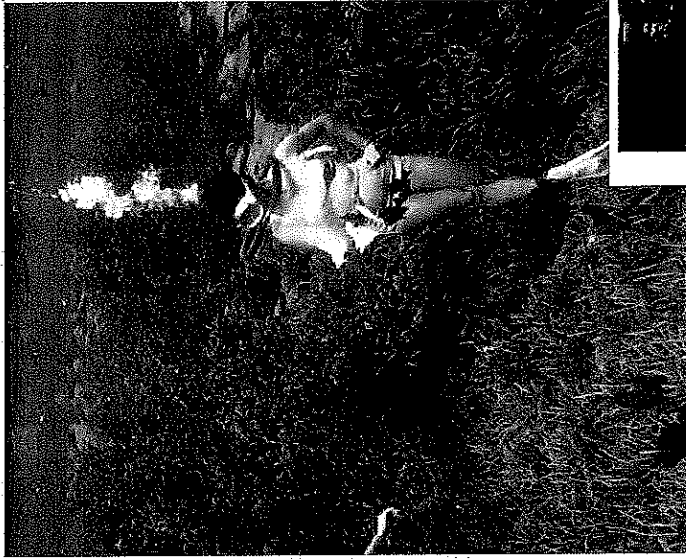


Figure 2.3. Underwater Photo of Rainbow Spring of Florida)



Figure 2.2. Underwater Photo of Rainbow Springs, 1935 (State Archives of Florida)

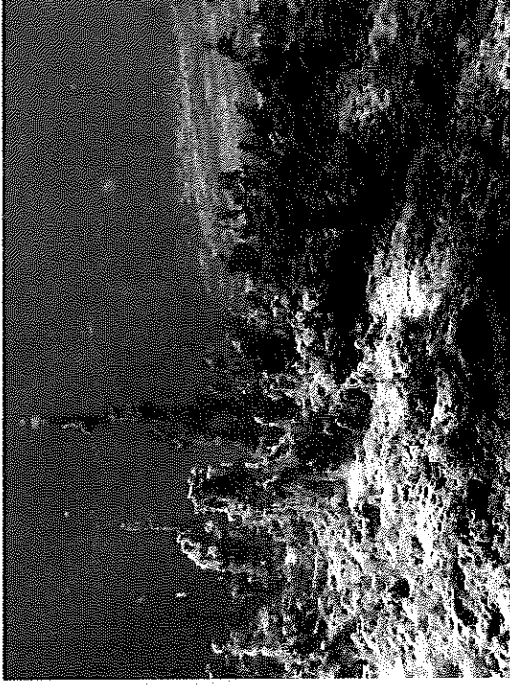


Figure 2.6. Rainbow Spring #4, South of Vent, March 2009 (FGS)



Figure 2.7. Rainbow Spring, #4, North of Vent, Close to Shoreline, November 2009 (FGS)

Before

After

Marion County - Rainbow River System

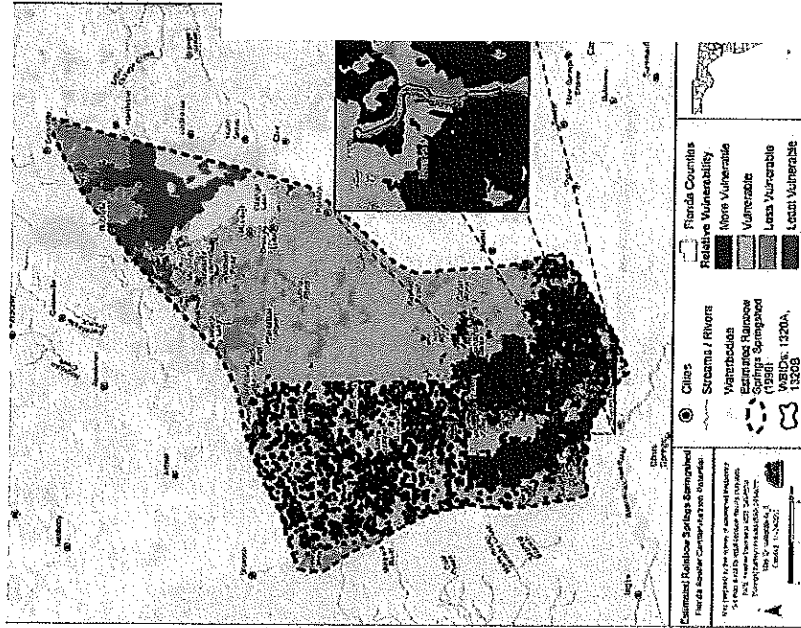


Figure 4.7. Aquifer Vulnerability in the Estimated Rainbow Springs Springshed

FAVA

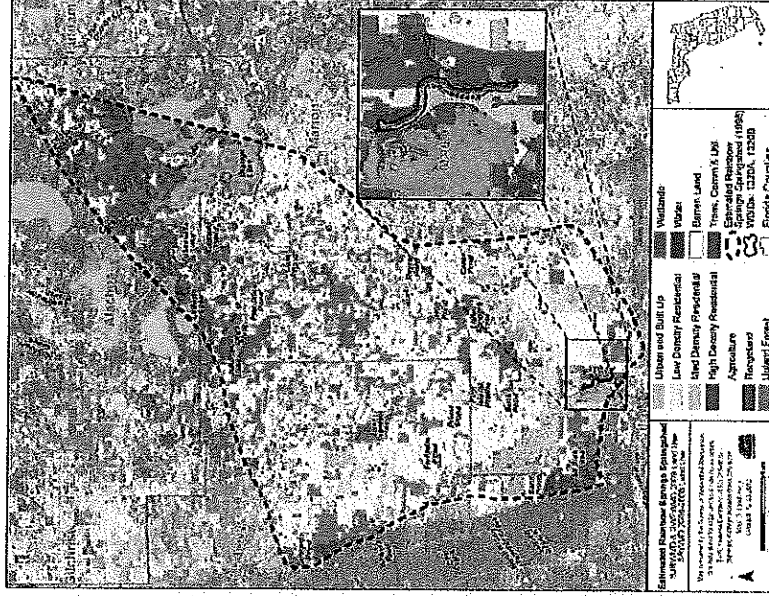


Figure 4.3. Principal Land Uses in the Rainbow Springs Springshed (based on 2006-08 GIS coverages)

Land Use

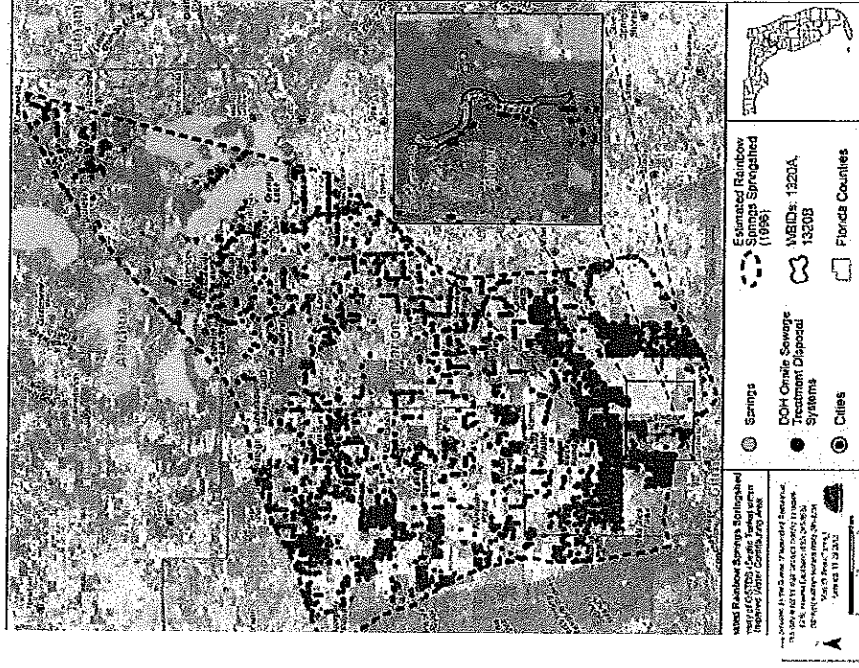


Figure 4.4. Density of OSTDS (Septic Tanks) in the Rainbow Springs Springshed (Marion County 2008; FDOH 2010)

Septic Systems

Orange, Seminole & Lake Counties - Wekiva System

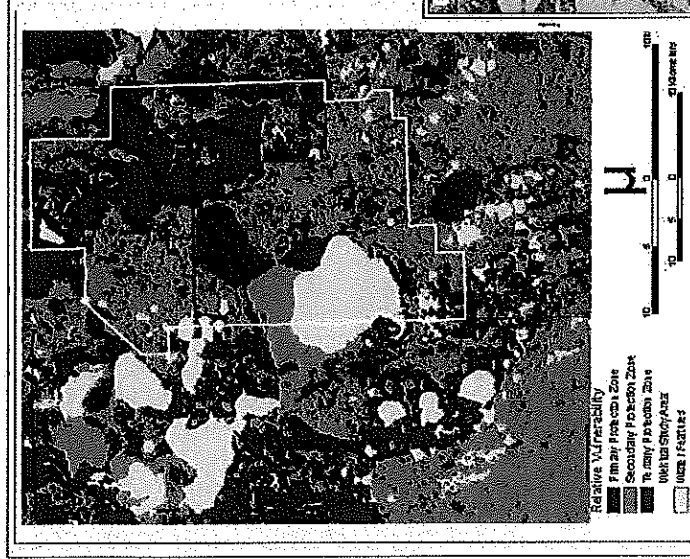
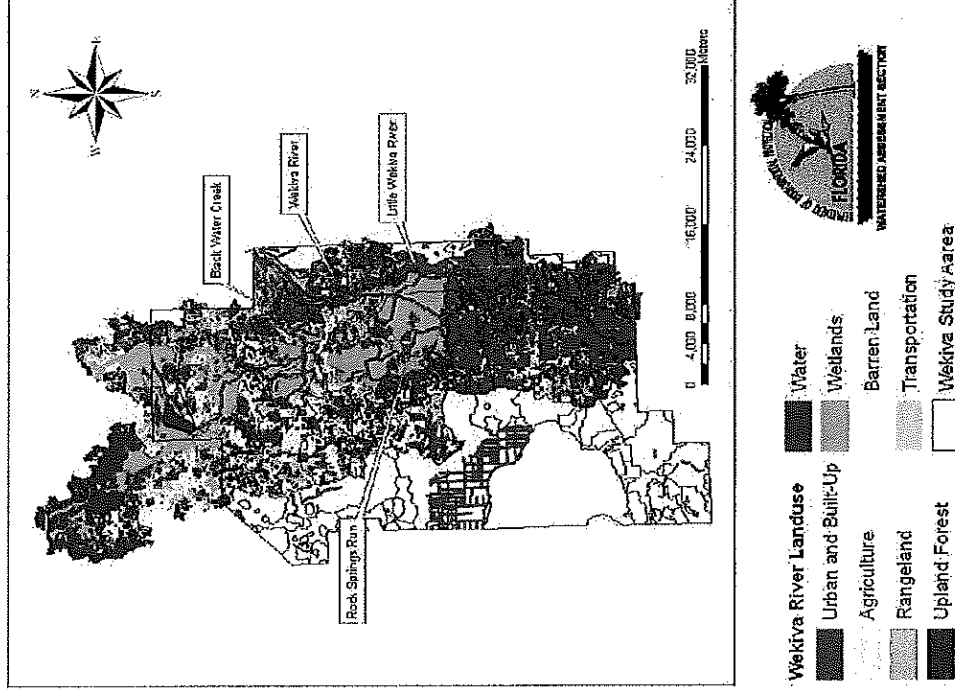
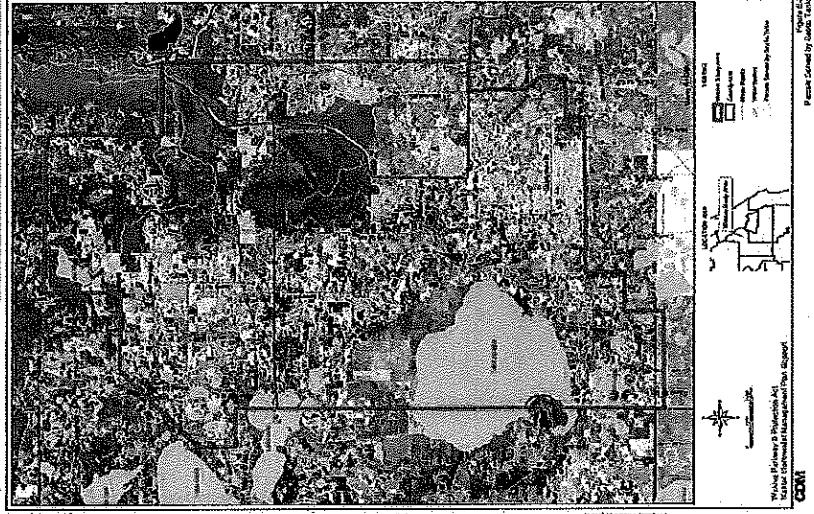


Figure 9. Relative vulnerability of the FAS WAVA model showing primary, secondary, and tertiary protection zones.

FAVA



Land Use

Septic Systems – In Yellow

Two Central Florida Springs

Wekiva
Rainbow

An Obvious Problem in need of Tools to Correct Comparative Between Various Florida Springs

* Aquifer Vulnerability (FAVA)

* Land Use

&

* Septic Systems Population

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1576

INTRODUCER: Environmental Preservation and Conservation Committee; and Senator Dean and others

SUBJECT: Springs

DATE: March 23, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	Fav/CS
2.			AG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1576 provides for the protection of springs in Florida. Specifically, the bill:

- Provides for funding from documentary stamp revenues to pay for the provisions of the bill;
- Requires the establishment of minimum flows and levels (MFLs) in Outstanding Florida Springs (OFSs) by July 1, 2020;
- Creates Part VIII of ch. 373, F.S.
- Provides findings, intent, and definitions;
- Directs the Department of Environmental Protection (DEP) and the water management districts (WMDs) to delineate spring protection and management zones;
- Directs the DEP to make determinations of impairment for OFSs and develop basin management action plans (BMAPs);
- Requires the DEP to develop spring action plans;
- Directs local governments within spring protection and management zones to adopt ordinances that meet or exceed those of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
- Requires remediation of domestic wastewater treatment plants and onsite sewage treatment and disposal systems (OSTDSs), and implementation of best management practices (BMPs) for agricultural operations, if funding is available;
- Directs the DEP to create a program to evaluate, select and rank project proposals;
- Prohibits certain activities in spring protection and management zones;
- Assigns duties to several agencies to carry out the provisions of Part VIII of ch. 373, F.S.;

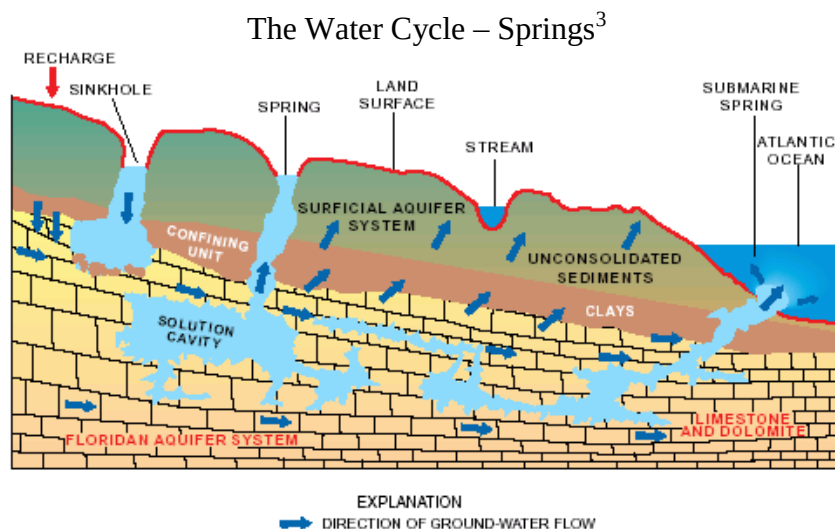
- Provides for variances and exceptions;
- Repeals s. 381.00651, F.S.;
- Requires the Department of Agriculture and Consumer Services (DACS) to study new or revised BMPs;
- Requires a report by the Department of Health (DOH), and the DEP on the creation and operation of responsible management entities (RMEs) by March 1, 2015; and
- Requires a study of the beneficial use of reclaimed water, stormwater, and excess surface water by December 1, 2015.

II. Present Situation:

Florida's Springs

Florida's springs are unique and beautiful resources. The historically crystal clear waters provide not only a variety of recreational opportunities and habitats, but also great economic value for recreation and tourism. The springs are major sources of stream flow in a number of rivers such as the Rainbow, Chassahowitzka, Homosassa, and Ichetucknee.¹ Additionally, Florida's springs provide a "window" into the Floridan Aquifer system, which provides most of the state's drinking water.

The Floridan Aquifer System is a limestone aquifer that has enormous freshwater storage and transmission capacity. The upper portion of the aquifer consists of thick carbonate rocks that have been heavily eroded and covered with unconsolidated sand and clay. The surficial aquifer is located within the sand deposits and forms the land surface that is present today. In portions of Florida, the surficial aquifer lies on top of deep layers of clay sediments that prevent the downward movement of water. Springs form when groundwater is forced out through natural openings in the ground.²



¹ Department of Community Affairs, *Protecting Florida's Springs: An Implementation Guidebook*, 3-1 (Feb. 2008), available at <http://www.dep.state.fl.us/springs/reports/files/springsimplementguide.pdf> (last visited Mar. 7, 2014).

² *Id.* at 3-1 to 3-2.

³ U.S. Environmental Protection Agency, *The Water Cycle: Springs*, <http://water.usgs.gov/edu/watercyclesprings.html> (last visited Mar. 10, 2014).

Florida has more than 700 recognized springs. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day. Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on a spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.⁴

The springshed is the area within the groundwater and surface water basins that contributes to the discharge of the spring. The spring recharge basin consists of all areas where water can be shown to contribute to groundwater flow discharging from the spring.

Spring protection zones are sub-areas of the groundwater and surface water basins of each spring or spring system that supply water to the spring and within which human activities, such as waste disposal or water use, are most likely to have negative impacts on the water discharging from the spring. When adverse conditions occur within a spring protection zone, the conditions can be minimized by:

- Land-use management and zoning by county or municipal government;
- Adoption of BMPs;
- Educating the public concerning environmental sensitivity; and
- If necessary, regulatory action.⁵

Nutrients

Phosphorus and nitrogen are essential nutrients for plants and animals and are the limiting nutrients in aquatic environments. The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems. Typically, nitrogen is the limiting nutrient in spring systems. Therefore, even modest increases in nitrogen above optimum levels can accelerate algae growth, plant growth, and deplete oxygen levels.⁶

Phosphorus and nitrogen are derived from natural and anthropogenic sources. Natural inputs include the atmosphere, soils, and the decay of plants and animals. Anthropogenic sources include sewage disposal systems (wastewater treatment facilities and septic tanks), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.

Excessive nutrients may result in harmful algal blooms, nuisance aquatic weeds, and alteration of the natural community of plants and animals. Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and generally impair the

⁴ Florida Geological Survey, *Springs of Florida Bulletin No. 66*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Mar. 11, 2014).

⁵ Upchurch, S.B. and Champion, K.M., *Delineation of Spring Protection Areas at Five, First-Magnitude Springs in North-Central Florida (Draft)*, 1 (Apr. 28, 2004), available at www.waterinstitute.ufl.edu/suwannee-hydro-observ/pdf/delineation-of-spring-protection-zones.pdf (last visited Mar. 9, 2014).

⁶ EPA, *Health and Environmental Effects Research*, http://www.epa.gov/nheerl/research/aquatic_stressors/nutrient_loading.html#decreased_o2 (last visited Mar. 10, 2014).

aesthetics and tastes of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities. Increased algae production, as a result of increased nutrients, can alter plant communities and affect natural systems.

In pristine conditions, spring water is high quality and lacks contaminants. It can be used directly for public water supplies or for irrigation. When pollutants are introduced to the land surface, some will be retained, but some will travel into the aquifer and later appear in spring flow. Often, nutrients introduced close to a spring will quickly reach the spring, especially in unconfined areas of the aquifer. While springs are valuable recreational and tourist attractions, they are also an indicator of reduced quality of the water in the aquifer.⁷

Urban Fertilizer Usage and Florida's Model Ordinance

Application of fertilizer in urban areas impacts springsheds when it runs off lawns and impervious surfaces into stormwater collection systems or directly into the surface water. The DEP has provided guidelines to minimize the impact of urban fertilizer use and adopted the "Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes." The model ordinance provides counties and municipalities with a range of ordinances to help minimize fertilizer inputs from urban applications. Some of the suggestions contained in the model ordinance are:

- Restricting the times fertilizer may be applied, such as restricting its application during the rainy season;
- Creating fertilizer free zones around sensitive waterbodies such as ponds, streams, watercourses, lakes, canals, or wetlands;
- Controlling application practices by, for example, restricting fertilizer application on impervious surfaces and requiring prompt cleanup of any fertilizer that is spilled on impervious surfaces; and
- Managing grass clipping and vegetative matter by disposing of such materials properly rather than simply blowing them into the street, ditches, stormwater drains, or waterbodies.⁸

Water Pollution Control Programs

Total Maximum Daily Loads (TMDLs) and Water Quality Standards (WQSs)

Under s. 303 of the federal Clean Water Act (CWA), states are incentivized to adopt WQSs for their navigable waters and must review and update those standards at least once every three years. These standards include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, and navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative standards, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.⁹

⁷ *Supra* note 1, at 3-4.

⁸ DEP, *Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes*, 6-9 (2010), available at <http://www.dep.state.fl.us/water/nonpoint/docs/nonpoint/dep-fert-modelord.pdf> (last visited Mar. 9, 2014).

⁹ 33 U.S.C. s. 1313(c)(2)(A) (2014); 40 C.F.R. ss. 131.6 and 131.10-131.12.

In 1999, the Legislature passed the Florida Watershed Restoration Act (WRA),¹⁰ which codified the establishment of TMDLs for pollutants of waterbodies as required by the CWA.¹¹ Each TMDL, which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by the waterbody while still meeting WQSs. Waterbodies that do not meet the established WQSs are deemed impaired and, pursuant to the CWA, the DEP establishes a TMDL for the waterbody or section of the waterbody that is impaired.¹² A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background. Waste load allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources such as the runoff from farms, forests, and urban areas.¹³

The U.S. Environmental Protection Agency (EPA) and the DEP enforce WQSs through the implementation and enforcement of the National Pollutant Discharge Elimination System (NPDES) permitting program. Every point source that discharges a pollutant into waters of the United States must obtain an NPDES permit establishing the amount of a particular pollutant that an individual point source can discharge into a specific waterbody. The amount of the pollutant that a point source can discharge under a NPDES permit is determined through the establishment of a technology-based effluent limitation. If a waterbody fails to meet the applicable WQS through the application of a technology-based effluent limitation, a more stringent pollution control program called the water quality based effluent limitation is applied.

Basin Management Action Plans

The DEP is the lead agency in coordinating the implementation of TMDLs and BMAPs through existing water quality protection programs. Such programs include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Non-regulatory and incentive-based programs, including BMPs, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(21), F.S., and public education;¹⁴
- Public works, including capital facilities; and
- Land acquisition.¹⁵

¹⁰ Chapter 99-223, Laws of Fla.

¹¹ Section 403.067, F.S.

¹² *Id.*

¹³ Rule 62-620.200(37), F.A.C. Point source means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. Nonpoint sources of pollution are essentially sources of pollution that are not point sources. They can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

¹⁴ Section 403.061, F.S., grants the DEP the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows the DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

¹⁵ Section 403.067(7)(b), F.S.

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific water body. First, the BMAP equitably allocates pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources.¹⁶ Then the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. The BMAP process has the flexibility to allow for adaptive changes if necessary. The BMAP development process provides an opportunity for local stakeholders, local government and community leaders, and the general public to collectively determine and share water quality clean-up responsibilities. The DEP works with stakeholders to develop effective BMAPs.¹⁷

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the plan must be made as appropriate.¹⁸

Producers of nonpoint source pollution included in a BMAP must comply with the established pollutant reductions by either implementing the appropriate BMPs or by conducting water quality monitoring.¹⁹ A nonpoint source discharger may be subject to enforcement action by the DEP or a WMD based upon a failure to implement these responsibilities.²⁰

Provisions of a BMAP must be included in subsequent NPDES permits. The DEP is prohibited from imposing limits or conditions associated with an adopted TMDL in a NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted BMAP.²¹

NPDES permits issued between the time a TMDL is established and a BMAP is adopted contain a compliance schedule allowing time for the BMAP to be developed. Once the BMAP is developed, a permit will be reopened and individual allocations consistent with the BMAP will be established in the permit. The timeframe for this to occur cannot exceed five years. NPDES permittees may request an individual allocation during the interim, and the DEP may include an individual allocation in the permit.²²

For an individual point source, reducing pollutant loads established under the TMDL and water quality based effluent limitation regulatory programs can be difficult to accomplish. It may require investment in expensive technology or other costly measures to reduce pollutant loads.²³

¹⁶ Section 403.067(7), F.S.

¹⁷ DEP, *Basin Management Action Plans (BMAPs)*, <http://www.dep.state.fl.us/central/Home/Watershed/BMAP.htm> (last visited Mar. 10, 2014).

¹⁸ Section 403.067(7)(a)5., F.S.

¹⁹ BMPs for agriculture, for example, include activities such as managing irrigation water to minimize losses, limiting the use of fertilizers, and waste management.

²⁰ Section 403.067(7)(b)1.h., F.S.

²¹ Florida Senate Committee on Environmental Preservation and Conservation, *CS/SB 754 Analysis* (Mar. 14, 2013), available at <http://flsenate.gov/Session/Bill/2013/0754/Analyses/2013s0754.pre.ep.PDF> (last visited Mar. 10, 2014).

²² *Id.*

²³ *Id.*

Agricultural Operations

Only lands that are used primarily for bona fide agricultural purposes are classified as agricultural in Florida.²⁴ The term “bona fide agricultural purposes” means good faith commercial agricultural use of the land. Certain factors may be taken into account in determining whether an agricultural operation is bona fide:

- The length of time the land has been used for agriculture;
- Whether the use has been continuous;
- The purchase price paid;
- Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment;
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices;
- Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease; and
- Other factors as may be applicable.²⁵

Concentrated Animal Feeding Operations (CAFOs)

In 2012, the EPA estimated there were slightly more than one million farms with livestock in the United States.²⁶ The EPA further estimated that 212,000 of those farms were likely to be animal feeding operations (AFOs) - operations where animals are kept and raised in confinement. Of those 212,000 farms, approximately 20,000 of those farms are CAFOs²⁷

In order for a farm to be classified as a CAFO, the farm must first meet the definition of an AFO. Generally, AFOs are facilities with large numbers of animals in a confined area.²⁸ Federal regulations define AFOs as operations where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period and where vegetation is not sustained in the confinement area during the normal growing season.²⁹

CAFOs are classified under federal regulations as either large, medium, or small depending on the number of animals stabled or confined on an AFO. For example, operations with 700 or more mature dairy cows, 2,500 swine each weighing 55 pounds or more, 10,000 swine, each weighing less than 55 pounds, or 125,000 chickens, if the operation uses a non-liquid manure handling system, are considered large CAFOs.³⁰

Using the same types of animals for comparison, an AFO would be considered a medium CAFO if it has 200 to 699 mature dairy cows, 750 to 2,499 swine each weighing 55 pounds or more,

²⁴ Section 193.461(3)(b), F.S.

²⁵ *Id.*

²⁶ The term “livestock” does not include poultry. See s. 212.02(29), F.S.

²⁷ EPA, *NPDES Permit Writers’ Manual for Concentrated Animal Feeding Operations*, Report No. 833-F-12-001, 1-2 (Feb. 2012), available at http://www.epa.gov/npdes/pubs/cafo_permitmanual_entire.pdf (last visited Mar. 23, 2014).

²⁸ DEP, *Animal Feeding Operations (AFOs)*, <http://www.dep.state.fl.us/water/wastewater/iw/afo.htm> (last accessed Mar. 22, 2014).

²⁹ 40 C.F.R. s. 122.23 (2013).

³⁰ *Id.*

3,000 to 9,999 swine, each weighing less than 55 pounds, or 37,500 to 124,999 chickens, if using a non-liquid manure handling system. Further, in order to be classified as a medium CAFO, pollutants from the AFO must be discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device, or pollutants are discharged directly into waters of the United States that pass over, across, or through a facility or otherwise come into direct contact with the animals confined in the operation.³¹

Small CAFOs are determined on a case by case basis when they do not rise to the level of large or medium CAFOs. AFOs regulated under the DEP's industrial wastewater program include dairies, poultry, horse, and swine operations. CAFOs are regulated under the federal NPDES program.³²

Lot Feeding

Lot feeding and intensive finishing are intensive forms of animal production where groups of animals are placed in yards or enclosures of a minimum. These animals are fed scientifically formulated feed to achieve optimal weight gain, usually 2.5 to 4 pounds per day. Based on such a diet, cattle can gain one pound for every six pounds of feed they consume.³³ Advantages include the ability to finish animals more quickly than those raised on pastures, and the production of a more consistent product. Disadvantages include regular health monitoring, death averaging 1.5 percent of the animals, and pollution controls.³⁴ With large numbers of animals in a small area, waste becomes a problem for producers and requires careful management.³⁵

Best Management Practices on Agricultural Lands

Agricultural BMPs are guidelines advising producers how to manage the water, nutrients, and pesticides they use to minimize agricultural impacts on Florida's natural resources. Agricultural activity is dependent on the application of fertilizer and pesticides and is linked to the contamination of watersheds with nutrients such as nitrogen and phosphorus. BMPs tend to cover four major areas, which overlap: nutrient management, or how producers use fertilizers; pest management, or how they use pesticides; water management, or how they use and discard water; and sediment management, or how they affect the sediments on and around their properties.³⁶

BMPs reduce the amount of nutrients, sediments, and pesticides that enter the water system, and help reduce water use. Because much of the state is built on limestone, which allows water to return relatively unfiltered to the aquifer, pollutants can enter the water supply quickly, endangering humans and ecosystems.³⁷

³¹ *Id.*

³² *Supra* note 28.

³³ See Beef USA, National Cattlemen's Beef Assoc., *Fact Sheet: Feedlot Finishing Cattle*, available at http://www.beefusa.org/uDocs/Feedlot%20finishing%20fact%20sheet%20FINAL_4%2026%2006.pdf (last visited Mar. 23, 2014).

³⁴ *Id.*

³⁵ *Id.*

³⁶ University of Florida Institute of Food and Agricultural Sciences, *Best Management Practices*, http://solutionsforyourlife.ufl.edu/hot_topics/agriculture/bmps.html (last visited Mar. 7, 2013).

³⁷ *Id.*

The Office of Agricultural Water Policy, a division of the DACS, is actively involved in developing BMPs. The DACS works cooperatively with agricultural producers, industry groups, the DEP, the university system, the WMDs, and other interested parties to develop and implement BMP programs that are economically and technically feasible.³⁸

Onsite Sewage Treatment and Disposal Systems

In Florida, septic systems are referred to as onsite sewage treatment and disposal systems. An OSTDS can contain any one of the following components: a septic tank; a subsurface drainfield; an aerobic treatment unit (ATU); a graywater tank; a laundry wastewater tank; a grease interceptor; a pump tank; a waterless, incinerating or organic waste-composting toilet; and a sanitary pit privy.³⁹ Septic systems are located underground and treat sewage without the presence of oxygen. Sewage flows from a home or business through a pipe into the first chamber, where solids settle out. The liquid then flows into the second chamber where anaerobic bacteria in the sewage break down the organic matter, allowing cleaner water to flow out of the second chamber into a drainfield.⁴⁰ Engineers licensed in Florida may specially design OSTDSs to meet the needs of individual property owners. Engineer-designed OSTDS plans are subject to review by the local county health department and must be certified by the engineer as complying with all requirements pertaining to such system.⁴¹

Onsite Sewage Programs, part of the DOH, develops statewide rules and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of OSTDSs within the state.⁴² The Bureau also licenses over 700 septic tank contractors and oversees 2.6 million onsite wastewater systems in Florida.⁴³

The EPA concluded in its 1997 Report to Congress that “adequately managed decentralized wastewater systems are a cost-effective and long-term option for meeting public health and water quality goals, particularly in less densely populated areas.” In Florida, development is dependent on OSTDSs due to the cost and time it takes to install central sewer. In rural areas and low-density developments, central sewer is not cost effective. Less than one percent of Florida systems are actively managed. The remainder generally only receive maintenance when they fail,

³⁸ DACS, Office of Agricultural Water Policy, *Home Page* (Jan. 8, 2014), <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Water-Policy> (last visited Mar. 9, 2014).

³⁹ DEP, *Wastewater: Septic Systems*, <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm> (last visited Mar. 9, 2014).

⁴⁰ EPA, *Primer for Municipal Wastewater Treatment Systems*, 22 (2004), available at http://water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf (last visited Mar. 9, 2014).

⁴¹ See Rules 64E-6.003 and 6.004, F.A.C.

⁴² The DOH does not permit the use of onsite sewage treatment and disposal systems where the estimated domestic sewage flow from the establishment is over 10,000 gallons per day (gpd) or the commercial sewage flow is over 5,000 gpd; where there is a likelihood that the system will receive toxic, hazardous or industrial wastes; where a sewer system is available; or of any system or flow from the establishment is currently regulated by the DEP. The DEP issues the permits for systems that discharge more than 10,000 gpd.

⁴³ Hall, P. and Clancy, S.J., *Statewide Inventory of Onsite Sewage Treatment and Disposal Systems in Florida, Final Report*, 6 (June 29, 2009), available at <http://www.floridahealth.gov/healthy-environments/onsite-sewage/research/documents/research-reports/documents/inventory-report.pdf> (last visited Mar. 9, 2014).

often leading to costly repairs that could have been avoided with routine tank pump outs and service.⁴⁴

Land Spreading of Septage

Septage is defined as a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an OSTDS.⁴⁵ Approximately 100,000 septic tanks are pumped each year, generating 100 million gallons of septage requiring treatment and disposal.⁴⁶ The septage is treated and disposed of at a number of septage treatment facilities regulated by the DOH. When used for land application, the septage is stabilized by raising the pH to 12 for at least two hours or to a pH of 12.5 for 30 minutes.⁴⁷ The treated septage is then spread over the land at DOH-regulated land application sites.⁴⁸ In addition to septage, onsite systems serving restaurants include tanks that separate grease from the sewage stream. The grease is collected, hauled, treated, and land applied similarly to septage. There are currently 92 DOH-regulated land application sites that receive treated septage from 108 DOH-regulated septage treatment facilities. Approximately 40 percent of septage removed from septic tanks is treated at septage treatment facilities and then land applied.⁴⁹

In 2010, the Legislature enacted a law prohibiting the land application of septage from septic tanks effective January 1, 2016.⁵⁰ In addition, the bill required the DOH, in consultation with the DEP, to provide a report to the Governor and the Legislature recommending alternative methods to establish enhanced treatment levels for the land application of septage by February 1, 2011. The report provided several alternatives to the land application of septage as it is currently performed.⁵¹

Treatment of septage at domestic wastewater treatment facilities

Treating septage takes advantage of available wastewater treatment facilities' capacity while at the same time centralizing waste treatment operations. However, not all wastewater treatment facilities accept septage because it is a high strength waste, which has the potential to upset facilities' processes and may result in increased operation and maintenance requirements and costs. Furthermore, the distance between central facilities with available treatment capacity and the locations where septage is collected in rural areas can make transport to such facilities cost prohibitive.⁵²

⁴⁴ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, 1 (Oct. 1, 2008), available at <http://www.noticeandcomment.com/Report-on-Range-of-Costs-to-Implement-a-Mandatory-Statewide-5-Year-Septic-Tank-Inspection-Program-October-fn-14050.aspx> (last visited Mar. 7, 2014).

⁴⁵ Section 381.0065(2)(n), F.S.

⁴⁶ DOH, *Report on Alternative Methods for the Treatment and Disposal of Septage*, 1 (Feb. 1, 2011), available at http://pk.b5z.net/i/u/6019781/f/FINAL_REPORT_ON_ALTERNATIVE_METHODS_FOR_THE_TREATMENT_AND_DISPOSAL_OF_SEPTAGE_03282011_2_.pdf (last visited Mar. 23, 2014).

⁴⁷ Rule 64E-6.010(7)(a), F.A.C.

⁴⁸ See Rule 64E-6.010, F.A.C.

⁴⁹ *Supra* note 46.

⁵⁰ Section 381.0065(6), F.S.

⁵¹ *Supra* note 46, at 2.

⁵² *Supra* note 46, at 2.

Disposal of septage at landfills

Acceptance of septage at Class I landfills has positive impacts to the landfills because it increases microbial activity within the landfills and results in increased waste decomposition and more rapid waste stabilization. However, landfill instability may result due to disposal of the wet waste stream. Increased difficulty in operating compaction equipment may result due to creation of a slick working surface. Many landfills choose not to accept loads of septage, making land application sites one of the only available options for the disposal of septage.⁵³

Advanced Treatment

While most of Florida's OSTDSs are conventional OSTDSs, or passive septic systems, there are other advanced systems capable of providing additional or advanced treatment of wastewater prior to disposal in the drainfield. Advanced OSTDSs can utilize various approaches to improve treatment before discharge to a drainfield, or the drainfield itself can be modified. On occasion, engineers have included the drainfield as part of the treatment process, usually as a means to achieve fecal coliform reduction.⁵⁴

Advanced systems differ in three respects from conventional treatment systems that consist of a septic tank with drainfield. First, the design of advanced systems is more variable than the approach for conventional systems. Second, they need more frequent checkups and maintenance, which is the reason they require operating permits. Third, the performance expectations are more specific, while failures for advanced systems are less defined.⁵⁵ Advanced systems are significantly more expensive to purchase, install, and operate.

Aerobic Treatment Units (ATUs) offer advanced treatment for wastewater. ATUs force compressed air through the liquid effluent in the tank to create a highly oxygenated (aerobic) environment for bacteria. Bacteria that thrive in oxygen-rich environments work to break down and digest the wastewater inside the aerobic treatment unit. Aerobic units come in a variety of sizes and shapes and can be made of concrete, fiberglass or polyurethane. They are designed to collect and treat all the water from a home, including water from toilets, showers, bathtubs, sinks, and laundry. There are as many as three stages that ATUS take wastewater through before the effluent is dispersed into the drainfield.⁵⁶

Responsible Management Entities

RMEs are entities that have responsibilities for local OSTDS operation and maintenance, typically in environmentally sensitive areas or areas with dense clusters of OSTDSs. The EPA has described two types of RME models. In Model 4, referred to as the Operation and Maintenance Model, the RME is responsible for the operation and maintenance of the OSTDSs

⁵³ *Supra* note 46, at 3.

⁵⁴ DOH, Assessment of Water Quality Protection, *Advanced Onsite Sewage Treatment and Disposal Systems: Performance, Management, Monitoring, Draft Final Report*, 14 (August 19, 2013), available at <http://www.floridahealth.gov/healthy-environments/onsite-sewage/research/advancedostdsfinalreportdraft.pdf> (last visited Mar. 7, 2014).

⁵⁵ Prepared for DEP by DOH, Bureau of Onsite Sewage Programs, *Revised Quality Assurance Project Plan Assessment of Water Quality Protection by Advanced Onsite Sewage Treatment and Disposal Systems (OSTDS): Performance, Management, Monitoring*, 8 (Aug. 22, 2011) available at <http://www.floridahealth.gov/healthy-environments/onsite-sewage/research/documents/final319qapp.pdf> (last visited Mar. 7, 2014).

⁵⁶ Florida Health, Lee County, *Aerobic Treatment Unit Homeowner Education*, <http://www.floridahealth.gov/chdlee/EH/OSTDSatu.html> (last visited Mar. 7, 2014).

within its jurisdiction. The RME, instead of the owner, receives the permit for the OSTDS with the intent of providing greater assurance of control over performance compliance. The owner of the OSTDS pays a fee for the RME to regularly inspect and maintain the owner's OSTDS.⁵⁷

In Model 5, referred to as the Ownership Model, the RME owns, operates, and manages the OSTDSs in a manner similar to central sewer. One advantage of this model is that it allows the RME to more easily replace existing systems with higher-performance units or clustered systems when necessary.⁵⁸ The RME Ownership Model relieves the property owner of responsibility for the system and it provides the greatest assurance of system performance in sensitive environments.⁵⁹ This model is more expensive for the property owner.

Water Pollution Management

Urban Stormwater Management

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface waters and groundwaters. Factors that exacerbate unmanaged runoff include:

- Compaction of soil;
- Addition of impervious surfaces such as roads and parking lots;
- Alteration of natural landscape features such as natural depression areas that hold water, floodplains, and wetlands;
- Construction of highly efficient drainage systems that alter the ability of the land to assimilate precipitation; and
- Pollutant loading of receiving water bodies from stormwater discharge.⁶⁰

Urbanization within a watershed decreases the amount of rainwater that seeps into the soil. Rainwater is critical for recharging aquifers, maintaining water levels in lakes and wetlands, and maintaining spring and stream flows. The increased volume, speed, and pollutant loading in stormwater discharged from developed areas leads to flooding, water quality problems, and loss of habitat.⁶¹

In 1982, to manage urban stormwater and minimize impacts to natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for new development. The rule included a performance standard for the minimum level of treatment and design criteria for BMPs to achieve the performance standard. It also included a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria would meet WQSs.⁶² The performance

⁵⁷ EPA, *Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems*, Report No. 832-B-03-001, 20 (Mar. 2003), available at http://water.epa.gov/scitech/wastetech/upload/septic_guidelines.pdf (last visited Mar. 9, 2014).

⁵⁸ *Id.*

⁵⁹ *Id.* at 5.

⁶⁰ DEP, *State Stormwater Treatment Rule Development Background*, <http://www.dep.state.fl.us/water/wetlands/erp/rules/stormwater/background.htm> (last visited Mar. 8, 2014).

⁶¹ *Id.*

⁶² *Id.*

standard was to reduce post-development stormwater pollutant loading of total suspended solids⁶³ by 80 percent, or by 95 percent for Outstanding Florida Waters.⁶⁴

In 1990, the DEP developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).⁶⁵ This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of the DEP, the WMDs, and local governments. One of the primary goals of the program is to maintain the predevelopment stormwater characteristics of a site. The rule sets a minimum performance standard for stormwater treatment systems to remove 80 percent of the post-development stormwater pollutants "that cause or contribute to violations of WQSs."⁶⁶

The DEP and the WMDs jointly administer the Environmental Resource Permitting (ERP) program for activities that alter surface water flows.⁶⁷ Alteration or construction of new stormwater management systems in urban redevelopment areas is regulated by the ERP program pursuant to s. 373.413, F.S., and must comply with all other relevant sections of ch. 373, Part IV, F.S.

Wastewater Treatment Plants

Wastewater treatment is one of the most common forms of pollution control in the United States. Sewerage system components include collection sewers, pumping stations, and treatment plants. Sewage is collected and sent to a treatment plant to remove solids and biological contaminants. Once sewage has been treated, it is typically discharged into streams and other receiving waters, or reused.⁶⁸

The basic function of wastewater treatment is to speed up natural processes by which water is purified. Typically, sewage is treated by primary and secondary processes. In the primary stage, solids are allowed to settle and are removed from the wastewater. The secondary stage uses biological processes to further purify wastewater.⁶⁹

Limits in Florida for effluent to surface water from wastewater treatment plants are required to contain no more than 20 mg/L carbonaceous biochemical oxygen demand (CBOD5)⁷⁰ and 20 mg/L total suspended solids (TSS)⁷¹, or 90 percent removal of each from the wastewater influent,

⁶³ Total Suspended Solids is listed as a conventional pollutant under s. 304(a)(4) of the CWA. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

⁶⁴ Rule 62-302.700, F.A.C., provides that an Outstanding Florida Water is a designated water body worthy of special protection because of its natural attributes. This special designation is applied to certain water bodies, and is intended to protect and preserve their existing states.

⁶⁵ *Supra* note 60. See also Rule. 62-40, F.A.C.

⁶⁶ *Supra* note 60.

⁶⁷ Chapter 373, Part IV, F.S. See also DEP, *Environmental Resource Permitting (ERP) Program*, <http://www.dep.state.fl.us/water/wetlands/erp/index.htm> (last visited Mar. 8, 2014).

⁶⁸ U.S. Environmental Protection Agency, Office of Water, *How Wastewater Treatment Works: The Basics*, Report no. 833-F-98-002, 1 (May 1998), available at <http://www.epa.gov/npdes/pubs/bastre.pdf> (last visited Mar. 9, 2014).

⁶⁹ *Id.*

⁷⁰ For more information on CBOD5, see Rule 62-601.200(6), F.A.C.

⁷¹ For more information on TSS, see Rule 62-601.200(54), F.A.C.

whichever is more stringent.⁷² There are other limits depending on where the effluent is being discharged.

Advanced Wastewater Treatment

Advanced wastewater treatment (AWT) systems perform additional treatment beyond secondary treatment. AWT can remove more than 99 percent of all impurities from sewage, producing an effluent that may be drinking-water quality. The related technology can be expensive, requiring a high level of technical expertise and well trained treatment plant operators, a steady energy supply, chemicals, and specific equipment that may not be readily available. An example of an AWT process is the modification of a conventional secondary treatment plant to remove additional phosphorus and nitrogen. The effluent standards for AWT on an annual average basis are:

- CBOD5 – 5 mg/L;
- Suspended solids – 5 mg/L;
- Total Nitrogen – 3 mg/L;
- Total Phosphorus – 1 mg/L; and
- High levels of disinfection.⁷³

Residuals

Biosolids are the solid, semisolid, or liquid residue generated during the biological wastewater treatment process. Florida generates approximately 320,000 dry tons of biosolids annually. Biosolids are normally high in organic content and contain moderate amounts of nutrients such as nitrogen and phosphorus, making them valuable as a fertilizer or soil amendment.⁷⁴ They may be used beneficially or disposed of in landfills.⁷⁵

Biosolids are classified as AA, A, or B. AA biosolids are considered the highest quality biosolids. They must be treated to a level that essentially eliminates pathogens and meets strict concentration limits for heavy metals. They may be used as fertilizer through commercial distribution and marketing.⁷⁶ Class A biosolids are biosolids that meet the same pathogen reduction requirements as Class AA biosolids, meet the same vector attraction (meaning the attraction of disease spreading animals) requirements as Class B biosolids, and meet a series of concentration limits for nine different elements.⁷⁷ Class B biosolids must be treated to significantly reduce pathogens and must meet certain concentration limits for heavy metals. Application rates are limited to crop nutrient needs. They are subject to site application restrictions and restrictions on harvesting, grazing, and public access. Also, cumulative heavy metals must be tracked for Class A and B biosolids; however, in Florida, land applied biosolids are almost exclusively Class B. In 2012, approximately 108,272 dry tons of Class B biosolids were land applied.⁷⁸

⁷² Rule 62-600.420, F.A.C.

⁷³ Section 403.086(4), F.S.

⁷⁴ DEP, *Biosolids in Florida: 2012 Summary*, 1 (Dec. 2013), available at <http://www.dep.state.fl.us/water/wastewater/dom/docs/BiosolidsFlorida-2012-Summary.pdf> (last accessed Mar. 23, 2014).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Rule 62-640.200(9), F.A.C.

⁷⁸ *Supra* note 74.

Total Maximum Daily Load Restoration Grants Program

The TMDL Water Quality Restoration Grants program was developed to provide grants to fund the implementation of BMPs to reduce pollutant loads to impaired waters from urban stormwater discharges.⁷⁹ The DEP funds research into BMPs to reduce pollutant loads from urban nonpoint sources of pollution.

The eligibility criteria for TMDL Water Quality Restoration Grants are:

- Projects that reduce stormwater pollutant loadings from urban areas that discharge to water bodies on the state's verified list of impaired waters;
- The project is at least at the 60 percent design phase;
- The project is permitted or the permit has been scheduled for approval at the next meeting of the WMD governing board or the DEP;
- The project includes storm event monitoring to determine the actual load reduction;
- The construction will be completed within three years of appropriation of the funds by the Legislature in order to ensure funds remain available;
- The applicant provides a minimum of 50 percent of the total project cost in matching funds, of which at least 25 percent are provided by the local government; and
- The grant funds are used for construction of BMPs, monitoring to determine pollutant load reductions, or public education activities specifically associated with the project and may only occur after the date of contract. Funds spent in advance of contract may be used for match, such as design, land acquisition, and other costs incurred by the applicant.⁸⁰

The submitted projects are then evaluated and ranked. The criteria include:

- Impairment status of the receiving waterbody;
- Estimated load reduction of the pollutants of concern;
- Percentage of local matching funds;
- Cost effectiveness based on the cost per pound of Total Nitrogen and/or Total Phosphorus removed per acre treated;
- Inclusion of a robust educational component; and
- Whether the local government sponsor has implemented a dedicated funding source for stormwater management, such as a stormwater utility fee.⁸¹

Grant applications may be submitted throughout the year. The DEP reviews and ranks projects in March, July, and November.⁸² Projects selected for grant funding are based on ranking and availability of funds. Projects that are not selected for funding remain in the pool of projects for one year from the date of submittal.⁸³

⁷⁹ Rule 305.100(1), F.A.C.

⁸⁰ DEP, *TMDL Water Quality Restoration Grants*, http://www.dep.state.fl.us/water/watersheds/tmdl_grant.htm (last visited Mar. 20, 2014).

⁸¹ *Id.* See also rule 305.400, F.A.C. (Project Selection Criteria).

⁸² Rule 62-305.300(2), F.A.C.

⁸³ *Supra* note 80.

Minimum Flows and Levels

MFLs are established for water bodies in order to prevent significant harm as a result of withdrawals. MFLs are typically determined based on evaluations of topography, soils, and vegetation data collected within plant communities and other pertinent information associated with the water resource. MFLs take into account the ability of wetlands and aquatic communities to adjust to changes in hydrologic conditions and allow for an acceptable level of hydrologic change to occur. When uses of water resources shifts the hydrologic conditions below levels defined by MFLs, significant ecological harm can occur.⁸⁴ The goal of establishing an MFL is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource.⁸⁵ Consumptive uses of water draw down water levels and reduce pressure in the aquifer.⁸⁶ By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating a new consumptive use permit (CUP) application.⁸⁷

Section 373.042, F.S., requires the DEP or WMDs to establish MFLs for priority water bodies to prevent significant harm from water withdrawals. While the DEP has the authority to adopt MFLs under ch. 373, F.S., the WMDs have the primary responsibility for MFL adoption. The WMDs submit annual MFL priority lists and schedules to the DEP for review and approval. MFLs are considered rules by the WMDs and are subject to ch. 120, F.S., challenges. MFLs are established using the best available data and are subject to independent scientific peer review at the election of the WMD, or, if requested, by a third party.⁸⁸

MFLs apply to decisions affecting permit applications, declarations of water shortages and assessments of water supply sources. Computer water budget models for surface waters and groundwater are used to evaluate the effects of existing and/or proposed consumptive uses and the likelihood they might cause significant harm. The WMD Governing Boards are required to develop recovery or prevention strategies in those cases where a water body or watercourse currently does not or is anticipated to not meet an established MFL. Water uses cannot be permitted that cause any MFL to be violated.⁸⁹

Consumptive Use Permits

A CUP establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the DEP and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use must:

⁸⁴ St. Johns River Water Management District, *Water Supply: An Overview of Minimum Flows and Levels*, <http://www.sjrwmd.com/minimumflowsandlevels/> (last visited Mar. 8, 2014).

⁸⁵ DEP, *Minimum Flows and Levels*, <http://www.dep.state.fl.us/water/waterpolicy/mfl.htm> (last visited Mar. 6, 2014).

⁸⁶ *Supra* note 1, at 3-5.

⁸⁷ Florida Senate Committee on Environmental Preservation and Conservation, *SB 244 Analysis*, 2 (Feb. 22, 2013), available at <http://flsenate.gov/Session/Bill/2013/0244/Analyses/2013s0244.ep.PDF> (last visited Mar. 7, 2014).

⁸⁸ *Id.*

⁸⁹ *Supra* note 84.

- Be a “reasonable-beneficial use” as defined in s. 373.019(16), F.S.;
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.

Documentary Stamp Tax

Florida’s documentary stamp tax was first enacted in 1931, at the rate of \$0.10 per \$100 of consideration.⁹⁰ The tax is now levied at the rate of \$0.70 per \$100 (or portion thereof) on documents that transfer interest in Florida real property, such as warranty deeds and quit claim deeds. However, the Miami-Dade County rate is \$0.60 on all documents plus \$0.45 surtax on documents transferring anything other than a single-family residence. This tax is usually paid to the Clerk of Court when the document is recorded. The Clerks of Court send the funds to the Department of Revenue, which distributes the funds according to law.⁹¹

The documentary stamp tax is also levied at the rate of \$0.35 per \$100 on documents that are executed or delivered in Florida including notes and other written obligations to pay mortgages and liens.⁹²

The latest Florida Tax Handbook estimates that revenue from the documentary stamp tax for the 2013-14 fiscal year is estimated to be approximately \$1,627,700,000.⁹³ Before the funds may be distributed, eight percent of total collections are deducted as a service charge, the costs of collection and enforcement of the tax are deducted, and debt service for Preservation 2000, Florida Forever, and Everglades Restoration must be paid. The remainder is distributed pursuant to s. 201.15, F.S.

Ecosystem Management and Restoration Trust Fund

The Ecosystem Management and Restoration Trust Fund was created to fund:

- Detailed planning for implementation of programs for the management and restoration of ecosystems;
- The development and implementation of surface water improvement and management plans and programs;
- Activities to restore polluted areas of the state, as defined by the DEP, to their condition before pollution occurred or to otherwise enhance pollution control activities;
- Activities to restore or rehabilitate injured or destroyed coral reefs;
- Activities by the DEP to recover funds as a result of actions against any person for a violation of ch. 373, F.S.;
- Activities authorized for the implementation of the Leah Schad Memorial Ocean Outfall Program; and

⁹⁰ Office of Economic and Demographic Research, The Florida Legislature et al., *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 73 (2013), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2013.pdf> (last visited Mar. 6, 2014).

⁹¹ Florida Department of Revenue, *Documentary Stamp Tax*, http://dor.myflorida.com/dor/taxes/doc_stamp.html (last visited Mar. 6, 2014).

⁹² *Id.*

⁹³ *Supra* note 90, at 71.

- Activities to preserve and repair the state's beaches.⁹⁴

Yearly, the trust fund receives the lesser of 2.12 percent or \$30 million of remaining documentary stamp revenues.

III. Effect of Proposed Changes:

Section 1 amends s. 201.15, F.S., providing that the provisions of the bill will be paid for by a portion of documentary stamp revenues distributed to the Ecosystem Management and Restoration Fund.

The bill directs 36.9 percent of the remainder of the collected documentary stamp funds be distributed to the Ecosystem Management and Restoration Trust Fund, after the service charge and costs of collection have been paid from total revenues and after the debt service has been paid out of the 63.31 percent of the remainder of documentary stamp revenues. The revenues distributed to the Ecosystem Management and Restoration Trust Fund will be used for restoration and protection of OFSs, and for the acquisition of lands that protect essential parcels necessary for projects designed to improve water quality or conserve water in spring protection and management zones

of OFSs. Projects are chosen from the most current Board of Trustees Florida Forever Priority List or projects requested by WMDs. The 36.9 percent distributed for Florida springs protection is approximately 20 percent of net documentary stamp revenues per fiscal year. In FY 2014-2015, this will be approximately \$378.8 million. While existing distributions in s. 201.15, F.S., will not be affected, the remainder that would have gone to the general revenue fund will be nearly eliminated.

Sections 2 and 3 amend ss. 373.042 and 373.0421, F.S., respectively, requiring the standard of "harm" to be applied when determining the MFL of an OFS, and makes a conforming change.

Section 4 creates Part VIII of ch. 373, F.S., consisting of ss. 373.801, 373.802, 373.803, 373.805, 373.807, 373.808, 373.809, 373.811, and 373.813, F.S., and provides the title, "Florida Springs and Aquifer Protection Act." The requirements of this act are discussed in Sections 6-13 of this section of the analysis.

Section 5 creates s. 373.801, F.S., providing legislative intent:

- Detailing the importance of Florida's springs, and various benefits they provide to the state including providing critical habitat for plants and animals. They provide immeasurable natural, recreational, economic, and inherent value. They are indicators of the health of the Floridan aquifer. They also provide recreational opportunities for Floridians and visitors to the state;
- Stating that water quantity and water quality in springs are directly related. It also specifies the primary responsibilities of the DEP, WMDs, DACS, and local governments;
- Recognizing that springs are only as healthy as their springsheds and identifies several of the problems affecting springs, including pollution runoff from urban and agricultural lands,

⁹⁴ Section 403.1651, F.S.

stormwater runoff, and reduced water levels of the Floridan Aquifer, which have led to the degradation of many of Florida's springs;

- Recognizing that without significant action, the quality of Florida's springs will continue to degrade;
- Stating that springshed boundaries need to be delineated using the best available data;
- Recognizing that springsheds often cross local government jurisdictional boundaries, which requires a coordinated response;
- Recognizing that aquifers and springs are complex systems affected by many variables and influences; and
- Recognizing that while research is still being done, there is enough information to proceed with protective actions that can be adjusted as new information is gathered. It directs state agencies, WMDs, and local governments to work together to delineate springsheds, and spring protection and management zones, and to develop comprehensive plans and development regulations that protect Florida's springs.

Section 6 creates s. 373.802, F.S., providing definitions for "department," "local government," "onsite sewage and treatment disposal system," "spring run," "springshed," and "spring vent."

The bill also defines:

- "Outstanding Florida Spring," meaning all historic first magnitude springs, as determined by the department using the most recent version of the Florida Geological Survey's springs bulletin. The following springs are also considered OFSs: Deleon Spring, Peacock Spring, Rock Spring, Wekiwa Spring, and Gemini Spring;
- "Responsible Management Entity," meaning a legal entity established for the purpose of providing localized management services with the requisite managerial, financial, and technical capacity to ensure long-term management of OSTDSs within its jurisdiction; and
- "Spring protection and management zone," meaning the areas of a springshed where the Floridan Aquifer is vulnerable to surface sources of contamination or reduced levels, as determined by the DEP in consultation with the appropriate WMD.

Section 7 creates s. 373.803, F.S., directing the DEP, in consultation with the WMDs, to delineate spring protection and management zones for each OFS, using the best available data. The bill requires the delineation of the zones to be completed by July 1, 2015. It directs the DEP to consider groundwater travel time, hydrogeology, and nutrient load when delineating spring protection zones. Additionally, the bill directs each WMD to adopt, by rule, maps that delineate spring protection and management zones for each OFS within its jurisdiction.

Section 8 creates s. 373.805, F.S., directing each WMD to establish an MFL for each OFS located within its jurisdiction by July 1, 2015. The bill provides for yearly extensions until July 1, 2020, if the WMD provides sufficient evidence to the DEP that an extension is in the best interest of the public. It provides that an MFL adopted for an OFS prior to July 1, 2014, does not have to be changed until it is revised or otherwise amended.

If there is not enough water to meet an adopted MFL, the WMD shall implement a recovery or prevention strategy for the OFS by July 1, 2017. The strategy, at a minimum, must include:

- A listing of all specific projects identified for implementation to achieve the recovery or prevention strategy;
- A priority listing of each project;
- The estimated cost for each listed project; and
- The source and amount of financial assistance from the WMD for each project, which may not be less than 25 percent of the total cost of the project, unless another funding source will provide more than 75 percent of the total project cost. The bill exempts the Northwest Florida and Suwannee River WMDs from the requirement to provide 25 percent of the total project cost.

Section 9 creates s. 373.807, F.S., providing a deadline of July 1, 2015, for the DEP to assess any OFS for which a determination of impairment has not been made and assess them under the numeric nutrient standards for spring vents. In addition, the bill addresses BMAPS, spring action plans, and requirements. It provides a deadline of July 1, 2017, for the DEP to develop BMAPs for OFSs impaired by nutrients.

Spring Action Plans

The bill creates the concept of spring action plans to be prepared for each OFS that:

- Has a basin management action plan adopted pursuant to s. 403.067(7), F.S., which concerns BMAPs, TMDLs, and BMPs;
- Has a recovery or prevention strategy implemented pursuant to s. 373.042, F.S., concerning MFLs, and s. 373.0421, F.S., concerning the establishment of MFLs; or
- Is projected to be impaired by nutrients within 20 years.

Spring action plans must include:

- All projects in a BMAP, a regional water supply plan, or a recovery and prevention strategy that are located in a spring protection and management zone.
- All projects proposed by the DEP which will prevent or stop potential nutrient impairment;
- An estimate of a listed project's reduction of nutrient loading;
- A map and legal description depicting the spring protection and management zones;
- Identification of each point source or category of nonpoint sources and a detailed allocation for those sources.

Requirements

The bill requires that within six months of the delineation of a spring protection and management zone or zone, any local government within the zone must develop, enact, and implement an ordinance that meets or exceeds the requirements of the DEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. The bill also requires that the ordinance limit the nitrogen content of any fertilizer applied to turf or landscape plants to the lowest, basic maintenance rate of the most recent recommendations by the University of Florida Institute of Food and Agricultural Sciences (IFAS). The bill directs the DEP to develop rules to implement these requirements.

The bill requires certain remedial actions, unless there is not adequate funding. Nevertheless, the bill clarifies that remedial actions included in an adopted BMAP are still required regardless of funding under Part VIII of ch. 373, F.S. Those actions specified by the bill are:

- By July 1, 2021, each wastewater treatment facility in a spring protection and management zone must meet an effluent standard of no more than 3 mg/L, unless granted a variance;
- By July 1, 2016, the owner or operator of each wastewater treatment facility in a spring protection and management zone must file a plan to achieve the above requirement with the DEP. If it is shown that a delay is in the best interest of the public, implementation of the plan may be extended by two years. The owner or operator of a wastewater treatment facility must submit a proposal for funding at least once every two years until the plan is fully implemented;
- By July 1, 2019, each agricultural producer in a spring protection and management zone must implement BMPs or other pollution reduction measures. The bill gives the DACS authority to adopt rules to implement this requirement; and
- By July 1, 2016, OSTDSs serving single-family properties of less than one acre, as well as multi-family residential, commercial, and industrial properties served by an OSTDS within a spring protection and management zone must be identified. Within one year of identifying those systems, the local government must develop an OSTDS remediation plan. For each system, the plan must note whether the system requires upgrading, connection to a central sewerage system, or no action. It must also include a prioritized ranking of those systems that require remediation. After approval of the plan by the DEP, the local government must begin implementation. Costs to hook up to central sewerage system or upgrading the OSTDS may not be imposed on the property owner. Lastly, the local government must submit a funding proposal at least every two years until the plan is fully implemented.

Section 10 creates s. 373.808 F.S., providing for funding for the restoration of OFSs. In order to satisfy the requirements of the bill, project proposals may be submitted to the DEP by:

- State agencies;
- WMDs;
- Local governments;
- Special districts;
- Utilities;
- RMEs; and
- Any of the above entities in cooperation with agricultural producers and property owners.

Approved projects may be funded up to 75 percent of the total project cost, except in the case of a project for upgrading OSTDSs or connecting an OSTDS to a central sewerage system. Projects submitted by fiscally constrained counties or municipalities in fiscally constrained counties are eligible for funding of up to 100 percent of the total project cost.

The bill authorizes the DEP to distribute funds deposited into the Ecosystem Management and Restoration Trust Fund for projects approved by the DEP. The funds may be distributed for administrative costs associated with the act to state agencies and WMDs. It authorizes the Legislature to use other sources of revenue to fund projects. The DEP may distribute funds from the Ecosystem Management and Restoration Trust Fund for any project that has been approved.

The DEP may adopt rules to develop grant application procedures to cover reasonable administrative costs for fiscally constrained counties or municipalities within those counties.

The bill specifies if there are any funds available after all obligations under this section have been met, they are to be deposited to the credit of the Ecosystem Management and Restoration Trust Fund. Funds may be invested and interest received shall be credited back to the fund for springs protection and restoration.

It directs the DEP to adopt rules to fund at least two pilot projects each project selection cycle that test the effectiveness of technologies designed to minimize nutrient pollution or conserve water in Florida springs by December 31, 2014. It also directs the DEP to develop rules to evaluate, select, and rank projects eligible for funding. The rules must give preference to projects that will result in the greatest improvement to water quality and water quantity for the funds expended. The bill specifies that the DEP must consider, at a minimum:

- Whether the project is within a spring protection and management zone of an OFS impaired by nutrients;
- The level of nutrient impairment of the OFS in which the project is located;
- The quantity of pollutants the project is estimated to remove from a spring protection and management zone;
- Whether the project is within a spring protection and management zone of an OFS that is not meeting its adopted MFL;
- The flow necessary for the OFS to meet its adopted MFL;
- The anticipated impact the project will have on restoring or increasing water flow or water level;
- Whether the project facilitates or enhances an existing BMAP adopted by the DEP to address pollutant loading;
- Whether the project is identified and prioritized in an adopted regional water supply plan;
- The percentage by which the amount of matching funds provided by the applicant exceed the statutory minimum required;
- For multi-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project;
- The cost of the project and the length of time it will take to complete relative to its expected benefits; and
- Whether the applicant has used its own funds for projects to improve water quality or conserve water use within a spring protection and management zone of an OFS since July 1, 2009.

The bill also specifies that a project may not be funded under Part VIII of ch. 373, F.S., if it is not listed on a spring action plan.

Section 11 creates s. 373.809, F.S., detailing prohibited activities within a spring protection and management zone of an OFS. Prohibited activities are:

- Construction of wastewater disposal system unless the system meets a treatment standard of 3 mg/L Total Nitrogen on an annual permitted basis, unless the DEP determines a higher standard is necessary;

- Construction of OSTDSs on lots less than one acre, except for active or passive nitrogen removing systems approved by the DOH;
- Construction of facilities for disposal of hazardous waste;
- Land spreading, dumping, or disposal of all domestic wastewater residuals or septage; and
- Concentrated animal feeding operations or intense cattle finishing and slaughter operations unless the operation was permitted by July 1, 2014, or it is an expansion of operations that were in the occupation of bona fide agriculture as of July 1, 2014.

Section 12 creates s. 373.811, F.S., directing the DEP to adopt rules to create a program to improve water quantity and water quality based on the TMDL Water Quality Restoration Grants rule. It allows the DOH, the DACS, the WMDs, and RMEs to adopt rules to administer Part VIII of ch. 373, F.S.

The bill specifies the DACS is the lead agency for coordinating the reduction of agricultural nonpoint sources of pollution for the protection of OFSs. The DACS and the DEP will study and, if necessary, initiate rulemaking to implement new or revised BMPs, in cooperation with applicable county and municipal governments, and stakeholders. The purpose of the rules is to implement new or revised BMPs for improving and protecting OFSs and to require the implementation of such practices within a reasonable time, as specified by rule.

The bill directs the DEP, DACS, and IFAS to conduct research into improved or additional nutrient management tools, with a sensitivity to the necessary balance between water quality improvements and agricultural productivity. If necessary, the tools must be incorporated into revised BMPs adopted by rule by the DACS.

Section 13 creates s. 373.813, F.S., providing for variances and exceptions. The bill specifies variances or exceptions may be granted by agencies or the DACS if the person applying for the variance can provide reasonable assurance that the person's proposed activity, either individually or as part of cumulative impacts, will not cause or contribute to violations of WQs or MFLs.

Section 14 amends s. 381.0065, F.S., defining "responsible management entity" for use in ss. 381.0065 to 381.0067, F.S., and requiring a study to be performed by the DOH and DEP.

The bill requires the DOH and DEP to perform a study of RMEs within spring protection and management zones of OFSs impaired by nutrients. The report is required to focus on the feasibility of different management models to prevent, reduce, and control nutrient pollution from OSTDSs. In addition, the report must examine the results of different management models and how they well they address mandatory OSTDS evaluation and assessment programs, or any other options that may accomplish similar nutrient pollution reductions, both in the short and long term. The report and recommendations must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2015.

It provides that local governments may not establish RMEs without prior approval of the DOH and the DEP. When a local government seeks to establish an RME, it must demonstrate that it has the management skills, personnel, financial capacity, and technical expertise to operate and maintain an RME. The bill directs the DOH to ensure that RMEs adopt rules and policies that are at least as restrictive as state law.

Section 15 repeals s. 381.00651, F.S. The section of law being repealed mandated the creation of an OSTDS evaluation and assessment program in counties or municipalities that contain first magnitude springs. The repealed section contains preemption language that will likely conflict with other requirements in the bill.

Section 16 creates an unnumbered section of Florida law that requires a comprehensive study on nutrient reduction improvement the beneficial use of reclaimed water, stormwater, and excess surface water. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2015. The study must:

- Describe factors that currently prohibit or otherwise complicate the expansion of the beneficial use of reclaimed water and provide recommendations for mitigating those factors;
- Identify factors that affect potable and reclaimed water, including environmental, public health, public perception, engineering, and fiscal issues, as well as user fees.
- Identify areas where reclaimed water needs to be used to accommodate constraints on the use of traditional water supplies;
- Evaluate the costs to users of reclaimed water compared to traditional water sources, including an examination of the nutrient concentrations in reclaimed water and the necessity for additional fertilizer supplementation;
- Evaluate permitting incentives that encourage switching from traditional water supplies to reclaimed water, and to allow users to switch to traditional water supplies if reclaimed water becomes unavailable or cost prohibitive;
- Describe the basic feasibility, benefit, and cost to construct regional water features on public or private lands for reclaimed water, stormwater, or excess surface water. The study must also address delivery mechanisms for beneficial uses rather than discharge to tide;
- Describe any other alternative processes, systems, or technology that may be comparable or preferable to a regional storage system or that may complement or substitute for a regional storage system; and
- Evaluate the impact of implementation of a comprehensive reclaimed water plan on traditional water sources and aquifer levels.

The bill requires DACS and DEP to hold a joint public meeting to get input on the design of the comprehensive study and to provide a chance for public comment before publishing the final report. The bill specifies this section expires on December 1, 2015.

Section 17 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Existing regulatory programs require local governments to expend funds to comply with MFLs, WQSS, and BMAPs. This bill requires additional expenditures but also provides significant funding for projects required under existing law; therefore, it is not clear whether this bill will constitute a mandate. A comprehensive fiscal analysis is required to determine the total impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill would require the distribution of 36.9 percent of the remainder of documentary stamp tax revenues on a yearly basis for springs protection.

B. Private Sector Impact:

The exact impact of the bill on the private sector and individuals cannot be calculated because many of the costs are dependent on activities, such as delineation of spring protection and management zones that have not occurred. Below are some examples of potential private sector impacts.

The bill contains provisions that will require some property owners in spring protection zones to upgrade their OSTDSs or connect to a central sewerage system. This could result in higher rates for sewage disposal compared to the costs of using an OSTDS. ATUs are also more costly to operate than conventional OSTDSs.

Agricultural producers will pay as little as 25 percent of costs for project proposals, but those costs may be offset by savings or increased productivity.

Rate payers may pay for ongoing operation and maintenance for AWT plants and 25 percent of upgrade costs, through rate increases, in addition to costs associated with disposal of Class B biosolids in landfills.

Property owners may have to pay for more expensive OSTDSs to install in new developments with lots of less than one acre. They may also face more expensive pump out costs as a result of more expensive disposal options.

Urban fertilizer use may decrease because of ordinances causing a reduction in revenue for fertilizer companies.

Septic tank contractors may benefit due to increased scrutiny and required upgrades to OSTDSs.

C. Government Sector Impact:

The exact impact on the government sector cannot be calculated because many of the costs are dependent on activities, such as delineation of spring protection and

management zones, research, reduced timelines to complete existing requirements, preparation of reports, and adoption of rules. It is likely the governmental entities required to act under this bill will have significant compliance costs; however, none of those entities has submitted a preliminary or estimated fiscal impact.

Preventing the land spreading, dumping, or disposal of all domestic wastewater residuals in spring protection and management zones could make disposing of those materials difficult and expensive if it has to be sent to a landfill outside of these zones. In addition, domestic wastewater treatment plants may have to build capacity or other infrastructure to begin accepting septage.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines OFSs as all first magnitude springs in Florida, as defined in the most recent version of the Florida Geological Survey's springs bulletin. A future bulletin could remove one of the first magnitude springs from its list, creating problems for ongoing projects by removing the regulatory structure established in this bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 201.15, 373.042, 373.0421, and 381.0065.

This bill creates the following sections of the Florida Statutes: 373.801, 373.802, 373.803, 373.805, 373.807, 373.808, 373.809, 373.811, and 373.813.

This bill repeals section 381.00651 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS by Environmental Preservation and Conservation on March 20, 2014:

- Removes provisions concerning the Acquisition and Restoration Council;
- Renames the act, calling it the “Florida Springs and Aquifer Protection Act;”
- Removing legislative intent provision stating that a precautionary approach should be taken in addressing spring protection, and that the DEP or the WMDs should take common sense actions to protect springs;
- Adds legislative recognition that aquifers and springs are complex systems affected by many variable and influences;
- Removes the definition of “bedroom”;

- Directs the DEP to consider groundwater travel time, hydrogeology, and nutrient load when delineating spring protection and management zones;
- Removes a one-year extension for the DEP to delineate spring protection and management zones by July 1, 2015;
- Provides a yearly extension until July 1, 2020, for each WMD to establish MFLs for all OFSs within its jurisdiction;
- Provides that an MFL adopted for an OFS prior to July 1, 2014, does not have to be changed until it is revised or amended, rather than directing it to be revised by July 1, 2014;
- Provides that land spreading, dumping, or disposal of all domestic wastewater residuals or septage is not allowed in spring protection and management zones;
- Removes a provision stating that a WMD may not issue new CUPs unless the entity requesting the CUP provides reasonable assurance that the withdrawal will not cause harm to the OFS. It was a restatement of existing law;
- Provides that WMDs may provide less than 25 percent of total project cost if there is another funding source that provides more than 75 percent of the funding costs, and exempts the Northwest Florida and Suwannee River WMDs from the requirement to provide 25 percent of total project costs;
- Shortens a deadline from July 1, 2017, to July 1, 2015, for the DEP to assess any OFS that does not have an impairment determination;
- Clarifies that detailed allocations have to be listed for categories of nonpoint sources rather than each one;
- Creates and describes the concept of a spring action plan;
- Removes a provision requiring that fertilizer ordinances mandate the use of 50 percent slow release nitrogen;
- Removes a provision regarding revision of stormwater management plans;
- Changes a deadline from July 1, 2019, to July 1, 2021, for wastewater treatment facilities to upgrade to a standard of 3mg/L Total Nitrogen;
- Provides a deadline of July 1, 2016, for wastewater treatment facilities to file a plan for complying with requirement of 3 mg/L Total Nitrogen;
- Provides that required remedial actions do not have to be taken if funding is not available unless those actions are required as part of a BMAP;
- Provides a deadline of July 1, 2019, for agricultural producers within a spring protection and management zones to implement BMPs;
- Provides a deadline of July 1, 2016, for local governments to develop an OSTDS remediation plan;
- Directs the DEP to provide rules for funding water conservation pilot projects and provides considerations;
- Directs the DEP to create a program to evaluate and rank submitted projects based on the TMDL Water Quality Restoration Grants program;
- Provides conditions for establishing RMEs; and
- Removes a provision requiring the study of nutrient loading from row crops.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2014	.	
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The Committee on Environmental Preservation and Conservation
(Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (c) of subsection (1) of section
201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.—All taxes collected
under this chapter are subject to the service charge imposed in
s. 215.20(1). Prior to distribution under this section, the
Department of Revenue shall deduct amounts necessary to pay the



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costs of the collection and enforcement of the tax levied by this chapter. Such costs and the service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. After distributions are made pursuant to subsection (1), all of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2013, secured by revenues distributed pursuant to subsection (1). All taxes remaining after deduction of costs and the service charge shall be distributed as follows:

(1) Sixty-three and thirty-one hundredths percent of the remaining taxes shall be used for the following purposes:

(c) After the required payments under paragraphs (a) and (b), the remainder shall be paid into the State Treasury to the credit of:

1. The State Transportation Trust Fund in the Department of Transportation in the amount of the lesser of 38.2 percent of the remainder or \$541.75 million in each fiscal year. Out of such funds, the first \$50 million for the 2012-2013 fiscal year; \$65 million for the 2013-2014 fiscal year; and \$75 million for the 2014-2015 fiscal year and all subsequent years, shall be transferred to the State Economic Enhancement and Development Trust Fund within the Department of Economic Opportunity. The remainder shall ~~is to~~ be used for the following specified purposes, notwithstanding any other law ~~to the contrary~~:

a. For the purposes of capital funding for the New Starts



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Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, 10 percent of these funds;

b. For the purposes of the Small County Outreach Program specified in s. 339.2818, 5 percent of these funds. Effective July 1, 2014, the percentage allocated under this sub-subparagraph shall be increased to 10 percent;

c. For the purposes of the Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, 75 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b.; and

d. For the purposes of the Transportation Regional Incentive Program specified in s. 339.2819, 25 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b. Effective July 1, 2014, the first \$60 million of the funds allocated pursuant to this sub-subparagraph shall be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5).

2. The Grants and Donations Trust Fund in the Department of Economic Opportunity in the amount of the lesser of 0.23 ~~23~~ percent of the remainder or \$3.25 million in each fiscal year to fund technical assistance to local governments.

3. The Ecosystem Management and Restoration Trust Fund in the amount of:

a. The lesser of 2.12 percent of the remainder or \$30 million in each fiscal year, to be used for the preservation and repair of the state's beaches as provided in ss. 161.091-161.212; and



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b. Thirty-six and nine-tenths percent of the remainder in each fiscal year to be used for restoration and protection of Outstanding Florida Springs pursuant to part VIII of chapter 373, and for the acquisition of lands identified on the most current Board of Trustees Florida Forever Priority List, or by a water management district, which protect the essential parcels of the named spring projects that improve water quality or conserve water use and are located partially or fully within a spring protection and management zone of an Outstanding Florida Spring.

4. General Inspection Trust Fund in the amount of the lesser of 0.02 ~~0.02~~ percent of the remainder or \$300,000 in each fiscal year to be used to fund oyster management and restoration programs as provided in s. 379.362(3).

Moneys distributed pursuant to this paragraph may not be pledged for debt service unless such pledge is approved by referendum of the voters.

Section 2. Subsection (1) of section 373.042, Florida Statutes, is amended to read:

373.042 Minimum flows and levels.—

(1) Within each section, or within the water management district as a whole, the department or the governing board shall establish the following:

(a) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse is ~~shall be~~ the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

(b) Minimum water level. The minimum water level is ~~shall~~



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be the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.

(c) Minimum flow and minimum water level for an Outstanding Florida Spring, as defined in s. 373.802. The minimum flow and minimum water level are the limit and level, respectively, at which further withdrawals would be harmful to the water resources or ecology of the area.

The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and minimum water levels may be calculated to reflect seasonal variations. The department and the governing board shall ~~also~~ consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and minimum water levels.

Section 3. Paragraph (a) of subsection (1) of section 373.0421, Florida Statutes, is amended to read:

373.0421 Establishment and implementation of minimum flows and levels.—

(1) ESTABLISHMENT.—

(a) Considerations.—When establishing minimum flows and minimum water levels pursuant to s. 373.042, the department or governing board shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer,



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provided that nothing in this paragraph shall allow significant harm as provided by s. 373.042(1)(a) and (b), or harm as provided by s. 373.042(1)(c), caused by withdrawals.

Section 4. Part VIII of chapter 373, Florida Statutes, consisting of sections 373.801, 373.802, 373.803, 373.805, 373.807, 373.808, 373.809, 373.811, and 373.813, Florida Statutes, is created and entitled the "Florida Springs and Aquifer Protection Act."

Section 5. Section 373.801, Florida Statutes, is created to read:

373.801 Legislative findings and intent.—

(1) The Legislature finds that springs are a unique part of this state's scenic beauty, deserving the highest level of protection under s. 7., Art. II of the State Constitution. Springs provide critical habitat for plants and animals, including many endangered or threatened species. Springs also provide immeasurable natural, recreational, economic, and inherent value. Flow level and water quality of springs are indicators of local conditions of the Floridan Aquifer, which is the source of drinking water for many residents of this state. Springs are of great scientific importance in understanding the diverse functions of aquatic ecosystems. In addition, springs provide recreational opportunities for swimming, canoeing, wildlife watching, fishing, cave diving, and many other activities in this state. Because of such recreational opportunities and the accompanying tourism, state and local economies benefit from many of the springs in this state.

(2) Water quantity and water quality in springs are directly related. For regulatory purposes, the department has



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primary responsibility for water quality; the water management districts have primary responsibility for water quantity; the Department of Agriculture and Consumer Services has primary responsibility for the development and implementation of best management practices; and local governments have primary responsibility for providing wastewater and stormwater management. The foregoing responsible entities must work together in a coordinated manner to restore and maintain the water quantity and water quality for Outstanding Florida Springs.

(3) The Legislature recognizes that:

(a) Springs are only as healthy as their springsheds. The groundwater that supplies springs is derived from water that recharges the aquifer system in the form of seepage from the land surface and through direct conduits such as sinkholes. Springs are adversely affected by polluted runoff from urban and agricultural lands; discharge resulting from inadequate wastewater and stormwater management practices; stormwater runoff; and the reduced water levels of the Floridan Aquifer. As a result, the hydrologic and environmental conditions of a spring or spring run are directly influenced by activities and land uses within a springshed and by water withdrawals from the Floridan Aquifer.

(b) Springs, whether found in urban or rural settings, or on public or private lands, are threatened by actual or potential flow reductions and declining water quality. Many of this state's springs are demonstrating signs of significant ecological imbalance, increased nutrient loading, and declining water flow. Without effective remedial actions, further declines



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in water quality and water quantity will occur.

(c) The state standards regulating both water quality and quantity, including minimum criteria relating to nutrient concentrations in groundwater, need to protect both human health and the complex biological and ecological systems that contribute to the integrity of springs.

(d) Springshed boundaries and areas of high vulnerability within a springshed need to be identified and delineated using the best available data.

(e) Because springsheds cross water management district and local government jurisdictional boundaries, a coordinated statewide springs protection plan is needed.

(f) The aquifers and springs of this state are complex systems affected by many variables and influences.

(4) The Legislature recognizes that sufficient information exists to act, action is urgently needed, and action can be continually modified as additional data is acquired. Therefore, state agencies and water management districts shall work together with local governments to delineate springsheds and spring protection and management zones and develop comprehensive plans and land development regulations that protect the springs of this state for future generations.

(5) The Legislature intends to establish a spring and aquifer protection program to be administered by the department.

Section 6. Section 373.802, Florida Statutes, is created to read:

373.802 Definitions.—As used in this part, the term:

(1) "Department" means the Department of Environmental Protection, which includes the Florida Geological Survey or its



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successor agency or agencies.

(2) "Local government" means a county or municipal government the jurisdictional boundaries of which include an Outstanding Florida Spring, or any part of a delineated springshed or spring protection and management zone for an Outstanding Florida Spring.

(3) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(4) "Outstanding Florida Spring" includes all historic first magnitude springs, as determined by the department using the most recent Florida Geological Survey springs bulletin, and the following springs and their associated spring runs:

- (a) DeLeon Spring;
- (b) Peacock Spring;
- (c) Rock Springs;
- (d) Wekiwa Spring; and
- (e) Gemini Spring.

(5) "Responsible management entity" means a legal entity



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established for the purpose of providing localized nutrient management services with the requisite managerial, financial, and technical capacity to ensure long-term management of onsite sewage treatment and disposal systems and other local nutrient sources at the option of the local government within its jurisdiction.

(6) "Spring protection and management zone" means the area or areas of a springshed where the Floridan Aquifer is vulnerable to surface sources of contamination or reduced levels, as determined by the department in consultation with the appropriate water management districts.

(7) "Spring run" means a body of flowing water that originates from a spring or whose primary source of water is a spring or springs under average rainfall conditions.

(8) "Springshed" means the areas within the groundwater and surface water basins which have historically contributed to the discharge of a spring as defined by potentiometric surface maps and surface watershed boundaries.

(9) "Spring vent" means a location where groundwater flows out of a natural, discernable opening in the ground onto the land surface or into a predominantly fresh surface waterbody.

Section 7. Section 373.803, Florida Statutes, is created to read:

373.803 Delineation of spring protection and management zones for Outstanding Florida Springs.—Using the best data available from the water management districts and other credible sources, the department, in consultation with the water management districts, shall delineate one or more spring protection and management zones for each Outstanding Florida



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Spring. In delineating spring protection and management zones,
the department shall consider groundwater travel time to the
spring, hydrogeology, and nutrient load. The delineation of
spring protection and management zones must be completed by July
1, 2015. In conjunction with delineating a spring protection and
management zone for an Outstanding Florida Spring, the
department shall adopt by rule, pursuant to ss. 120.536(1) and
120.54, maps and legal descriptions that depict the delineated
spring protection and management zone or zones for that spring.

Section 8. Section 373.805, Florida Statutes, is created to read:

373.805 Minimum flow and minimum water level for
Outstanding Florida Springs.—

(1) Each water management district shall establish a
minimum flow and minimum water level for each Outstanding
Florida Spring within its jurisdiction by July 1, 2015, in
accordance with ss. 373.042 and 373.0421. The deadline may be
extended each year until July 1, 2020, if a water management
district provides sufficient evidence to the department that an
extension is in the best interest of the public. This subsection
does not apply to minimum flows and minimum water levels adopted
prior to July 1, 2014, for a spring included in the definition
of Outstanding Florida Springs in s. 373.802, until such time as
the minimum flow or minimum water level is revised, or otherwise
amended.

(2) By July 1, 2017, each water management district shall
approve a recovery or prevention strategy, as required by ss.
373.042 and 373.0421, for each Outstanding Florida Spring in its
jurisdiction in which the existing flow or water level of the



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Outstanding Florida Spring is below, or is projected within the next 20 years to fall below, the applicable minimum flow or minimum water level established pursuant to s. 373.042. The recovery or prevention strategy for each Outstanding Florida Spring must include, at a minimum:

(a) A listing of all specific projects identified for implementation of a recovery or prevention strategy.

(b) A priority listing of each project.

(c) The estimated cost for each listed project.

(d) The source and amount of financial assistance to be made available by the water management district for each project, which may not be less than 25 percent of the total project cost unless a specific funding source is identified that will provide more than 75 percent of the total project cost. The Northwest Florida Water Management District and the Suwannee River Water Management District are not required to provide matching funds pursuant to this paragraph.

Section 9. Section 373.807, Florida Statutes, is created to read:

373.807 Protection of water quality in Outstanding Florida Springs.—By July 1, 2015, the department shall assess each Outstanding Florida Spring for which an impairment determination has not been made under the numeric nutrient standards in effect for spring vents.

(1) BASIN MANAGEMENT ACTION PLAN.—By July 1, 2017, the department shall develop basin management action plans, as specified in s. 403.067(7), for Outstanding Florida Springs impaired by nutrients.

(2) SPRING ACTION PLAN.—The department shall begin



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preparation of a spring action plan for each Outstanding Florida Spring that has an adopted basin management action plan or an implemented recovery or prevention strategy by July 1, 2014, or as soon as a basin management action plan is adopted or a recovery or prevention strategy is implemented.

(a) The department shall develop a spring action plan for each Outstanding Florida Spring that:

1. Has a basin management action plan adopted pursuant to s. 403.067(7);

2. Has a recovery or prevention strategy implemented pursuant to ss. 373.042 and 373.0421; or

3. Is projected to be impaired by nutrients within 20 years.

(b) A spring action plan must include all of the following:

1. All projects in the basin management action plan which are located within a spring protection and management zone.

2. All projects in the regional water supply plan which are located within a spring protection and management zone.

3. All projects included in a recovery or prevention strategy which are within a spring protection and management zone.

4. All projects proposed by the department which will prevent or stop potential nutrient impairment.

5. An estimate of a listed project's reduction of nutrient loading.

6. A map and legal descriptions depicting the spring protection and management zones established pursuant to s. 373.803.

7. Identification of each point source or category of



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nonpoint sources, including but not limited to, urban
fertilizer, turf fertilizer, agricultural fertilizer, onsite
treatment and disposal systems, wastewater treatment facilities,
animal wastes, and stormwater facilities. A detailed allocation
of the pollutant load shall be provided for each point source or
category of nonpoint sources.

(3) REQUIREMENTS.—

(a) Within 6 months of the delineation of a spring
protection and management zone or zones of an Outstanding
Florida Spring that is fully or partially within the
jurisdiction of a local government, a local government must
develop, enact, and implement an ordinance that meets or exceeds
the requirements of the department's Model Ordinance for
Florida-Friendly Fertilizer Use on Urban Landscapes. Such
ordinance must require that, within a spring protection and
management zone of an Outstanding Florida Spring impaired by
nutrients, the nitrogen content of any fertilizer applied to
turf or landscape plants may not exceed the lowest, basic
maintenance rate of the most recent recommendations by the
Institute of Food and Agricultural Sciences. The department
shall adopt rules to implement this paragraph which establish
reasonable minimum standards and reflect advancements or
improvements regarding nutrient load reductions.

(b) Until adequate funding becomes available pursuant to s.
373.808, or until the Legislature provides an additional
adequate funding source, remedial actions required under this
paragraph are not required, unless they are included in an
adopted basin management action plan.

1. The owner or operator of each existing wastewater



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treatment facility in a spring protection and management zone shall meet a standard of no more than 3 mg/L Total Nitrogen, expressed as N, on an annual permitted basis by July 1, 2021, unless granted a variance or exemption pursuant to s. 373.813.

2. By July 1, 2016, the owner or operator of each existing wastewater treatment facility in a spring protection and management zone shall file for approval by the department a plan for complying with this paragraph. Upon a showing to the department of inordinate expense or that a delay is in the best interest of the public, the department may grant a local government or wastewater treatment facility an extension of up to 2 years to implement the plan. The owner and operator shall submit a proposal for funding at least once every 2 years until the plan is fully implemented.

3. By July 1, 2019, each agricultural producer in a spring protection and management zone must implement best management practices or other measures necessary to achieve pollution reduction levels established by the department. The Department of Agriculture and Consumer Services, in consultation with the department, shall adopt rules to implement this subparagraph.

4. By July 1, 2016, the department, in consultation with the Department of Health and local governments, must identify onsite sewage treatment and disposal systems serving single-family residential properties of less than 1 acre and multi-family residential, commercial, and industrial properties located within a spring protection and management zone. Within 1 year of identification of these systems, and in consultation with the department, the local governments in which they are located shall develop an onsite sewage treatment and disposal



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system remediation plan. For each onsite sewage treatment and disposal system, the plan must include whether the system requires upgrading, connection to a central sewerage system, or no action. The plan must also include a priority ranking for each system or group of systems that requires remediation. Each remediation plan must be submitted to the department for approval. After approval of the remediation plan, the local government shall begin implementing the approved remediation plan. The costs of connection to a central sewerage system or upgrading the onsite sewage treatment and disposal systems may not be imposed on the property owner. The local government shall submit a proposal for funding at least every 2 years until the plan is fully implemented.

Section 10. Section 373.808, Florida Statutes, is created to read:

373.808 Funding for the restoration of Outstanding Florida Springs.—

(1) In order to satisfy the requirements under this part, state agencies, water management districts, local governments, special districts, utilities, and regional management entities, if applicable, shall cooperate with property owners and agricultural producers to submit project proposals to the department in order to receive funding for up to 75 percent of the total project cost. Project submittals for upgrades or connections of onsite sewage treatment and disposal systems, and those submitted by a fiscally constrained county as described in s. 218.67(1) or in a municipality located therein, are eligible for funding of up to 100 percent of the total project cost.

(2) Projects approved by the department shall be funded by



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moneys from documentary stamp tax revenues deposited into the Ecosystem Management and Restoration Trust Fund in accordance with s. 201.15(1)(c)3.b. The Legislature may use other sources of revenue to fund projects submitted to the department pursuant to this part.

(3) The department may distribute moneys deposited into the Ecosystem Management and Restoration Trust Fund pursuant to subsection (2) to any person who submits a project proposal application to the department for which funding is approved. The department shall distribute moneys to state agencies and water management districts for all reasonable administrative costs related to implementing this part. In addition, the department may adopt rules to develop grant application procedures to cover reasonable administrative costs of a fiscally constrained county as described in s. 218.67(1) or a municipality located therein.

(4) Moneys in the fund not needed in the current fiscal year to meet obligations incurred under this part shall be deposited to the credit of the fund and may be invested in the manner provided by law. Interest received on such investments shall be credited to the Ecosystem Management and Restoration Trust Fund for the purposes specified in s. 201.15(1)(c)3.b.

(5) By December 31, 2014, the department shall adopt rules to fund pilot projects that test the effectiveness of innovative or existing nutrient reduction or water conservation technologies designed to minimize nutrient pollution in the springs of this state. The department must approve funding for at least two pilot projects in each project selection cycle if the department determines that the project will not be harmful to the ecological resources in the study area.



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(6) By December 31, 2014, the department shall develop and recommend rules to competitively evaluate, select, and rank projects eligible for partial or complete funding under this section. In developing these rules, the department shall give preference to the projects that it estimates will result in the greatest improvement to water quality and water quantity for the dollars to be expended for the project. At a minimum, the department shall consider the following criteria:

(a) Whether the project is within a spring protection and management zone of an Outstanding Florida Spring impaired by nutrients.

(b) The level of nutrient impairment of the Outstanding Florida Spring in which the project is located.

(c) The quantity of pollutants, particularly total nitrogen, the project is estimated to remove from a spring protection and management zone.

(d) Whether the project is within a spring protection and management zone of an Outstanding Florida Spring that is not meeting its adopted minimum flow or minimum water level.

(e) The flow necessary to restore the Outstanding Florida Spring to its adopted minimum flow or minimum water level.

(f) The anticipated impact the project will have on restoring or increasing water flow or water level.

(g) Whether the project facilitates or enhances an existing basin management action plan adopted by the department to address pollutant loadings.

(h) Whether the project is identified and prioritized in an adopted regional water supply plan.

(i) The percentage by which the amount of matching funds



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provided by the applicant exceeds the statutory minimum required under s. 373.805 or s. 373.807.

(j) For multiple-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project.

(k) The cost of the project and the length of time it will take to complete relative to its expected benefits.

(l) Whether the applicant, since July 1, 2009, has used its own funds for projects to improve water quality or conserve water use within a springshed or spring protection and management zone of an Outstanding Florida Spring, with preference given to those applicants that have expended such funds.

(7) In addition to the criteria set forth in subsection (6), a project may not be funded by the department under this part unless it is listed on a spring action plan.

Section 11. Section 373.809, Florida Statutes, is created to read:

373.809 Prohibited activities within a spring protection and management zone of an Outstanding Florida Spring.—The following activities are prohibited within a spring protection and management zone of an Outstanding Florida Spring:

(1) New municipal or industrial wastewater disposal systems, including rapid infiltration basins, except those systems that meet an advanced wastewater treatment standard of no more than 3 mg/L Total Nitrogen, expressed as N, on an annual permitted basis, or a higher treatment standard if the department determines the higher standard is necessary to prevent impairment or aid in the recovery of an Outstanding



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Florida Spring.

(2) New onsite sewage treatment and disposal systems on lots less than 1 acre, except for active or passive nitrogen removing onsite sewage treatment and disposal systems approved by the Department of Health.

(3) New facilities for the disposal of hazardous waste.

(4) The land spreading, dumping, or disposal of all domestic wastewater residuals or septage.

(5) Concentrated animal feeding operations or intense cattle finishing and slaughter operations. This subsection does not apply to operations permitted by July 1, 2014, or the future expansion of livestock or poultry operations engaged in the occupation of bona fide agriculture as of July 1, 2014.

Section 12. Section 373.811, Florida Statutes, is created to read:

373.811 Rules.—

(1) The department shall adopt rules to create a program to improve water quantity and water quality pursuant to ss. 120.536(1) and 120.54 to administer this part, as applicable. In developing rules to administer s. 373.808, the department shall use the Total Maximum Daily Load Water Quality Restoration Grants rule as guidance to develop a comparable program for the restoration and protection of the water quality and water quantity for Outstanding Florida Springs.

(2) The Department of Health, the Department of Agriculture and Consumer Services, the water management districts, and responsible management entities may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this part, as applicable.



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(3) (a) The Department of Agriculture and Consumer Services is the lead agency coordinating the reduction of agricultural nonpoint sources of pollution for the protection of Outstanding Florida Springs. The Department of Agriculture and Consumer Services and the department, pursuant to s. 403.067(7)(c)4., shall study new or revised best management practices for improving and protecting Outstanding Florida Springs and, if necessary, in cooperation with applicable local governments and stakeholders, initiate rulemaking to require the implementation of such practices within a reasonable time period.

(b) The department, the Department of Agriculture and Consumer Services, and the University of Florida's Institute of Food and Agricultural Sciences shall cooperate in conducting the necessary research and demonstration projects to develop improved or additional nutrient management tools, including the use of controlled release fertilizer that can be used by agricultural producers as part of an agricultural best management practices program. The development of such tools must reflect a balance between water quality improvement and agricultural productivity and, when applicable, must be incorporated into the revised best management practices adopted by rule of the Department of Agriculture and Consumer Services.

Section 13. Section 373.813, Florida Statutes, is created to read:

373.813 Variances and exemptions.—A person may apply to the appropriate agency or a water management district for a variance or exemption from any requirement in this part. An agency or a water management district may approve the application upon receiving reasonable assurance that the applicant's proposed



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activity, evaluated individually and as part of cumulative impacts, will not cause or contribute to violations of water quality standards, minimum flows, or minimum water levels in an Outstanding Florida Spring.

Section 14. Present paragraphs (n) through (q) of subsection (2) of section 381.0065, Florida Statutes, are redesignated as paragraphs (o) through (r), respectively, a new paragraph (n) is added to that subsection, and subsection (7) is added to that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(n) "Responsible management entity" has the same meaning as in s. 373.802.

(7) RESPONSIBLE MANAGEMENT ENTITIES.—

(a) By March 1, 2015, the department and the Department of Environmental Protection shall submit a report and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the creation and operation of responsible management entities within spring protection and management zones of Outstanding Florida Springs, as defined in s. 373.802. The report must focus on the feasibility of different management models to prevent, reduce, and control nutrient pollution from onsite sewage treatment and disposal systems, including the costs associated with each model. In addition, the report must compare the results of the differing management models to a mandatory onsite sewage treatment and disposal system evaluation and assessment program



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or any other option that would achieve similar nutrient
pollution reductions in the short and long term.

(b) A local government may not create a responsible
management entity without the prior approval of the department,
in consultation with the Department of Environmental Protection.
In reviewing requests for the creation of a responsible
management entity, the local government must demonstrate to the
department, in consultation with the Department of Environmental
Protection, that it has the management skills, personnel,
financial capacity, and technical expertise to properly operate
and maintain such an entity.

(c) The department shall ensure that responsible management
entities adopt rules and policies that are at least as
restrictive as state law.

Section 15. Section 381.00651, Florida Statutes, is
repealed.

Section 16. Comprehensive study on nutrient reduction
improvements and the beneficial use of reclaimed water,
stormwater, and excess surface water.-

(1) The Department of Agriculture and Consumer Services and
the Department of Environmental Protection, in cooperation with
the five water management districts, shall conduct a
comprehensive study on the expansion of the beneficial use of
reclaimed water, stormwater, and excess surface water in this
state. The final report of the study must:

(a) Describe factors that currently prohibit or otherwise
complicate the expansion of the beneficial use of reclaimed
water and include recommendations for the mitigation or
elimination of such factors.



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(b) Identify environmental, public health, public perception, engineering, and fiscal issues, and user fee amounts, including utility rate structures for potable and reclaimed water.

(c) Identify areas in the state where making reclaimed water available for irrigation or other uses is necessary because the use of traditional water supply sources is constrained by limitations on availability.

(d) Evaluate the costs to users of reclaimed water compared to the cost associated with traditional water sources, including an examination of the nutrient concentrations in reclaimed water and the necessity for additional fertilizer supplementation.

(e) Evaluate permitting incentives, such as further extending current authorization for long-term consumptive use permits to all entities substituting reclaimed water for traditional water sources or including in such permits a provision that authorizes conversion to traditional water sources if reclaimed water becomes unavailable or cost prohibitive.

(f) Describe the basic feasibility, benefit, and cost estimates for the infrastructure needed to construct regional storage features on public or private lands for reclaimed water, stormwater, or excess surface water, including collection and delivery mechanisms for beneficial uses rather than discharge to tide, such as agricultural irrigation, power generation, public water supply, wetland restoration, groundwater recharge, and water body base flow augmentation.

(g) Describe any other alternative processes, systems, or technology that may be comparable or preferable to a regional



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storage system or that may effectively complement or be a
substitute for a regional storage system.

(h) Evaluate the impact of implementation of a
comprehensive reclaimed water plan on traditional water sources
and aquifer levels.

(2) The Department of Agriculture and Consumer Services and
the Department of Environmental Protection shall jointly hold a
public meeting to gather input on the design of the
comprehensive study and to provide an opportunity for public
comment before publishing the final report of the study.

(3) The final report shall be submitted to the Governor,
the President of the Senate, and the Speaker of the House of
Representatives by December 1, 2015.

(4) This section expires on December 1, 2015.

Section 17. This act shall take effect July 1, 2014.

===== 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 springs; amending s. 201.15, F.S.;
specifying distributions to the Ecosystem Management
and Restoration Trust Fund; amending s. 373.042, F.S.;
requiring the Department of Environmental Protection
or the governing board of a water management district
to establish the minimum flow and water level for an
Outstanding Florida Spring; specifying minimum flows
and water levels for an Outstanding Florida Spring;



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amending s. 373.0421, F.S.; conforming a cross-
reference; creating part VIII of chapter 373, F.S.,
entitled "Florida Springs and Aquifer Protection Act";
creating s. 373.801, F.S.; providing legislative
findings and intent; creating s. 373.802, F.S.;
defining terms; creating s. 373.803, F.S.; requiring
the Department of Environmental Protection to
delineate the spring protection and management zone
for each Outstanding Florida Spring; requiring the
department to adopt by rule maps that depict the
delineation of each spring protection and management
zone for each Outstanding Florida Spring; creating s.
373.805, F.S.; requiring the water management
districts to adopt minimum flows and levels for
Outstanding Florida Springs; requiring a water
management district to implement a recovery or
prevention strategy under certain circumstances;
authorizing the water management districts to adopt
rules; creating s. 373.807, F.S.; providing procedures
for improving water quality in Outstanding Florida
Springs; requiring the Department of Environmental
Protection to develop a spring action plan; providing
requirements; creating s. 373.808, F.S.; providing for
funding mechanisms for the restoration of Outstanding
Florida Springs; prohibiting a project from being
funded under this part unless it is listed on a spring
action plan; creating s. 373.809, F.S.; specifying
prohibited activities within a spring protection and
management zone of an Outstanding Florida Spring;



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creating s. 373.811, F.S.; providing rulemaking authority; creating s. 373.813, F.S.; providing for variances and exemptions under certain circumstances; amending s. 381.0065, F.S.; defining the term "responsible management entity"; requiring the Department of Health to submit a report to the Governor and the Legislature on responsible management entities; authorizing the establishment of responsible management entities; repealing s. 381.00651, F.S., relating to periodic evaluation and assessment of onsite sewage treatment and disposal systems; requiring the Department of Agriculture and Consumer Services and the Department of Environmental Protection to conduct a comprehensive study on nutrient reduction improvements and the expansion of the beneficial use of reclaimed water; requiring the departments to jointly hold a public meeting to gather input on the design of the comprehensive study and provide an opportunity for public comment; requiring the final report to be submitted to the Governor and the Legislature by a certain date; providing for future expiration; providing an effective date.

By Senator Dean

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1
2 A bill to be entitled
3 An act relating to springs; amending s. 201.15, F.S.;
4 specifying distributions to the Ecosystem Management
5 and Restoration Trust Fund; amending s. 259.035, F.S.;
6 adding a member to the Acquisition and Restoration
7 Council to be appointed by the Secretary of
8 Environmental Protection; expanding duties to include
9 the ranking of spring protection projects; requiring
10 the council to develop and recommend rules for the
11 competitive evaluation, selection, and ranking of
12 projects eligible for partial or complete funding to
13 protect the water quality of an Outstanding Florida
14 Spring; amending s. 373.042, F.S.; requiring the
15 Department of Environmental Protection or the
16 governing board of a water management district to
17 establish the minimum flow and water level for an
18 Outstanding Florida Spring; specifying minimum flows
19 and water levels for an Outstanding Florida Spring;
20 amending s. 373.0421, F.S.; conforming a cross-
21 reference; creating part VIII of chapter 373, F.S.;
22 entitled "Florida Springs and Aquifer Act"; creating
23 s. 373.801, F.S.; providing legislative findings and
24 intent; creating s. 373.802, F.S.; defining terms;
25 creating s. 373.803, F.S.; requiring the Department of
26 Environmental Protection to delineate the spring
27 protection and management zone for each Outstanding
28 Florida Spring; requiring each water management
29 district to adopt by rule maps that depict the

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delineation of each spring protection and management zone for each Outstanding Florida Spring within its jurisdiction; creating s. 373.805, F.S.; requiring the water management districts to adopt minimum flows and levels for Outstanding Florida Springs; requiring a water management district to implement a recovery or prevention strategy under certain circumstances; authorizing the water management districts to adopt rules; creating s. 373.807, F.S.; providing procedures for improving water quality in Outstanding Florida Springs; providing a funding mechanism; creating s. 373.809, F.S.; specifying prohibited activities within a spring protection and management zone of an Outstanding Florida Spring; requiring local governments to ensure that their comprehensive plans and ordinances reflect such prohibitions; creating s. 373.811, F.S.; providing rulemaking authority; creating s. 373.813, F.S.; providing for variances and exemptions under certain circumstances; amending s. 381.0065, F.S.; defining the term "responsible management entity"; requiring the Department of Health to submit a report to the Governor and the Legislature on responsible management entities; authorizing the establishment of responsible management entities; amending s. 403.067, F.S.; specifying criteria for development of a basin management action plan for an Outstanding Florida Spring; conforming provisions to changes made by the act; conforming cross-references; repealing s. 381.00651, F.S., relating to periodic

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59 evaluation and assessment of onsite sewage treatment
60 and disposal systems; requiring the Department of
61 Agriculture and Consumer Services and the Department
62 of Environmental Protection to conduct a comprehensive
63 study on nutrient reduction improvements and the
64 expansion of the beneficial use of reclaimed water;
65 requiring the departments to jointly hold a public
66 meeting to gather input on the design of the
67 comprehensive study and provide an opportunity for
68 public comment; requiring the final report to be
69 submitted to the Governor and the Legislature by a
70 certain date; providing an effective date.

71
72 Be It Enacted by the Legislature of the State of Florida:

73
74 Section 1. Paragraph (c) of subsection (1) of section
75 201.15, Florida Statutes, is amended to read:

76 201.15 Distribution of taxes collected.—All taxes collected
77 under this chapter are subject to the service charge imposed in
78 s. 215.20(1). Prior to distribution under this section, the
79 Department of Revenue shall deduct amounts necessary to pay the
80 costs of the collection and enforcement of the tax levied by
81 this chapter. Such costs and the service charge may not be
82 levied against any portion of taxes pledged to debt service on
83 bonds to the extent that the costs and service charge are
84 required to pay any amounts relating to the bonds. After
85 distributions are made pursuant to subsection (1), all of the
86 costs of the collection and enforcement of the tax levied by
87 this chapter and the service charge shall be available and

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transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2013, secured by revenues distributed pursuant to subsection (1). All taxes remaining after deduction of costs and the service charge shall be distributed as follows:

(1) Sixty-three and thirty-one hundredths percent of the remaining taxes shall be used for the following purposes:

(c) After the required payments under paragraphs (a) and (b), the remainder shall be paid into the State Treasury to the credit of:

1. The State Transportation Trust Fund in the Department of Transportation in the amount of the lesser of 38.2 percent of the remainder or \$541.75 million in each fiscal year. Out of such funds, the first \$50 million for the 2012-2013 fiscal year; \$65 million for the 2013-2014 fiscal year; and \$75 million for the 2014-2015 fiscal year and all subsequent years, shall be transferred to the State Economic Enhancement and Development Trust Fund within the Department of Economic Opportunity. The remainder shall ~~is to~~ be used for the following specified purposes, notwithstanding any other law ~~to the contrary~~:

a. For the purposes of capital funding for the New Starts Transit Program, authorized by Title 49, U.S.C. s. 5309 and specified in s. 341.051, 10 percent of these funds;

b. For the purposes of the Small County Outreach Program specified in s. 339.2818, 5 percent of these funds. Effective July 1, 2014, the percentage allocated under this subparagraph shall be increased to 10 percent;

c. For the purposes of the Strategic Intermodal System specified in ss. 339.61, 339.62, 339.63, and 339.64, 75 percent

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of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b.; and

d. For the purposes of the Transportation Regional Incentive Program specified in s. 339.2819, 25 percent of these funds after allocating for the New Starts Transit Program described in sub-subparagraph a. and the Small County Outreach Program described in sub-subparagraph b. Effective July 1, 2014, the first \$60 million of the funds allocated pursuant to this sub-subparagraph shall be allocated annually to the Florida Rail Enterprise for the purposes established in s. 341.303(5).

2. The Grants and Donations Trust Fund in the Department of Economic Opportunity in the amount of the lesser of 0.23 ~~.23~~ percent of the remainder or \$3.25 million in each fiscal year to fund technical assistance to local governments.

3. The Ecosystem Management and Restoration Trust Fund in the amount of:

a. The lesser of 2.12 percent of the remainder or \$30 million in each fiscal year, to be used for the preservation and repair of the state's beaches as provided in ss. 161.091-161.212; and

b. Thirty-six and nine-tenths percent of the remainder in each fiscal year to be used for restoration and protection of Outstanding Florida Springs, as defined in s. 373.802, and for the acquisition of lands identified on the most current Board of Trustees Florida Forever Priority List, or by a water management district, which protect the essential parcels of the named spring projects that improve water quality or conserve water use and are located partially or fully within a spring protection

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and management zone of an Outstanding Florida Spring.

4. General Inspection Trust Fund in the amount of the lesser of 0.02 ~~.02~~ percent of the remainder or \$300,000 in each fiscal year to be used to fund oyster management and restoration programs as provided in s. 379.362(3).

Moneys distributed pursuant to this paragraph may not be pledged for debt service unless such pledge is approved by referendum of the voters.

Section 2. Section 259.035, Florida Statutes, is amended to read:

259.035 Acquisition and Restoration Council.—

(1) ~~There is created~~ The Acquisition and Restoration Council is created and is composed of 11 voting members, as follows:—

(a) Four members ~~The council shall be composed of 10 voting members, 4 of whom~~ shall be appointed by the Governor to serve 4-year terms. Of these four appointees, three must ~~shall~~ be from scientific disciplines related to land, water, or environmental sciences and the fourth must ~~shall~~ have at least 5 years of experience in managing lands for both active and passive types of recreation. ~~They shall serve 4-year terms, except that, initially, to provide for staggered terms, two of the appointees shall serve 2-year terms. All subsequent appointments shall be for 4-year terms.~~ An appointee may not serve more than 6 years. The Governor may at any time fill a vacancy for the unexpired term of a member appointed under this paragraph.

(b) ~~The Four~~ members ~~remaining appointees~~ shall be ~~composed of~~ the Secretary of Environmental Protection, the director of

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the Florida Forest Service of the Department of Agriculture and Consumer Services, the executive director of the Fish and Wildlife Conservation Commission, and the director of the Division of Historical Resources of the Department of State, or their respective designees.

(c) One member shall be appointed by the Commissioner of Agriculture representing ~~with~~ a discipline related to agriculture, including silviculture; ~~one member shall be appointed by the Fish and Wildlife Conservation Commission representing with~~ a discipline related to wildlife management or wildlife ecology; and one member shall be appointed by the Secretary of Environmental Protection representing a discipline related to water quality management which includes the study of dissolved oxygen levels and nutrient pollution of groundwater and surface water.

(d) The Governor shall appoint the chair of the council, and a vice chair shall be elected from among the members.

(e) The council shall hold periodic meetings at the request of the chair.

(f) The Department of Environmental Protection shall provide primary staff support to the council and shall ensure that council meetings are electronically recorded. Such recording shall be preserved pursuant to chapters 119 and 257.

(g) The board of trustees may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this section.

(2) The four members of the council appointed pursuant to paragraph (a) and the three ~~two~~ members of the council appointed pursuant to paragraph (c) shall receive reimbursement for

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204 expenses and per diem for travel, to attend council meetings, as
205 provided in ~~allowed state officers and employees while in the~~
206 ~~performance of their duties, pursuant to~~ s. 112.061.

207 (3) The council shall provide assistance to the board of
208 trustees in reviewing the recommendations and plans for state-
209 owned lands required under ss. 253.034 and 259.032. The council
210 shall, in reviewing such recommendations and plans, consider the
211 optimization of multiple-use and conservation strategies to
212 accomplish the provisions funded pursuant to ss. 259.101(3)(a)
213 and 259.105(3)(b).

214 (4)(a) The council may use existing rules adopted by the
215 board of trustees, until it develops and recommends amendments
216 to those rules, to competitively evaluate, select, and rank
217 projects eligible for the Conservation and Recreation Lands list
218 pursuant to ss. 259.032(3) and 259.101(4).

219 (b) By December 1, 2009, the ~~Acquisition and Restoration~~
220 council shall develop rules defining specific criteria and
221 numeric performance measures needed for lands that are to be
222 acquired for public purpose under the Florida Forever program
223 pursuant to s. 259.105. Each recipient of Florida Forever funds
224 shall assist the council in the development of such rules. These
225 rules shall be reviewed and adopted by the board and, ~~then~~
226 submitted to the Legislature for consideration by February 1,
227 2010. The Legislature may reject, modify, or take no action
228 relative to the proposed rules. If no action is taken, the rules
229 shall be implemented. Subsequent to their approval, each
230 recipient of Florida Forever funds shall annually report to the
231 Division of State Lands on each of the numeric performance
232 measures accomplished during the previous fiscal year.

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233 (c) By December 31, 2014, the council shall develop and
234 recommend rules to fund pilot projects that test the
235 effectiveness of innovative or existing nutrient reduction
236 technologies designed to minimize nutrient pollution in the
237 springs of this state. The council must approve funding for at
238 least two pilot projects in each project selection cycle if the
239 department determines that there are at least two projects that
240 will not be harmful to the ecological resources in the study
241 area.

242 (d) By December 31, 2014, the council shall develop and
243 recommend rules to competitively evaluate, select, and rank
244 projects eligible for partial or complete funding under s.
245 373.807. In developing these rules, the council shall give
246 preference to the projects that it estimates will result in the
247 greatest improvement to water quality and quantity. At a
248 minimum, the council shall consider the following criteria:

249 1. Whether the project is within a spring protection and
250 management zone of an Outstanding Florida Spring impaired by
251 nutrients.

252 2. The level of nutrient impairment of the Outstanding
253 Florida Spring in which the project is located.

254 3. The quantity of pollutants, particularly total nitrogen,
255 the project is estimated to remove in a spring protection and
256 management zone.

257 4. Whether the project is within a spring protection and
258 management zone of an Outstanding Florida Spring that is not
259 meeting its adopted minimum flow or level.

260 5. The flow necessary to restore the Outstanding Florida
261 Spring to its adopted minimum flow or level.

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262 6. The anticipated impact the project will have on
263 restoring or increasing water flow or level.

264 7. Whether the project facilitates or enhances an existing
265 basin management action plan adopted by the Department of
266 Environmental Protection to address pollutant loadings.

267 8. Whether the project is identified and prioritized in an
268 adopted regional water supply plan.

269 9. The percentage by which the amount of matching funds
270 provided by the applicant exceeds the statutory minimum required
271 under s. 373.805 or s. 373.807.

272 10. For multiple-year projects, whether the project has
273 funding sources that are identified and assured through the
274 expected completion date of the project.

275 11. The cost of the project and the length of time it will
276 take to complete relative to its expected benefits.

277 12. Whether the applicant, since July 1, 2009, has used its
278 own funds for projects to improve water quality or conserve
279 water use within a springshed or spring protection and
280 management zone of an Outstanding Florida Spring, with
281 preference given to those applicants that have expended such
282 funds.

283 (e)-(e) In developing or amending rules, the council shall
284 give weight to the criteria included in s. 259.105(10). The
285 board of trustees shall review the recommendations and ~~shall~~
286 adopt rules necessary to administer this section.

287 (5) An affirmative vote of six ~~five~~ members of the council
288 is required in order to change a project boundary or to place a
289 proposed project on a list developed pursuant to subsection (4).
290 Any member of the council who by family or a business

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relationship has a connection with all or a portion of any proposed project shall declare the interest before voting on its inclusion on a list.

(6) The proposal for a project pursuant to this section, ~~or~~ s. 259.105(3)(b), or s. 373.807 may be implemented only if adopted by the council and approved by the board of trustees. The council shall consider and evaluate in writing the merits and demerits of each project that is proposed for Conservation and Recreation Lands, Florida Preservation 2000, ~~or~~ Florida Forever funding, or the protection of water quality in Outstanding Florida Springs and ~~shall~~ ensure that each proposed project meets ~~will meet~~ a stated public purpose for the restoration, conservation, or preservation of environmentally sensitive lands and water areas or for providing outdoor recreational opportunities. The council ~~also~~ shall determine whether the project conforms, if where applicable, with the comprehensive plan developed pursuant to s. 259.04(1)(a), the comprehensive multipurpose outdoor recreation plan developed pursuant to s. 375.021, the state lands management plan adopted pursuant to s. 253.03(7), the water resources work plans developed pursuant to s. 373.199, and ~~the provisions of s. 259.032, s. 259.101, or s. 259.105, or s. 373.807~~ whichever is applicable.

Section 3. Subsection (1) of section 373.042, Florida Statutes, is amended to read:

373.042 Minimum flows and levels.—

(1) Within each section, or within the water management district as a whole, the department or the governing board must ~~shall~~ establish the following:

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320 (a) Minimum flow for all surface watercourses in the area.
321 The minimum flow for a given watercourse is ~~shall be~~ the limit
322 at which further withdrawals would be significantly harmful to
323 the water resources or ecology of the area.

324 (b) Minimum water level. The minimum water level is ~~shall~~
325 ~~be~~ the level of groundwater in an aquifer and the level of
326 surface water at which further withdrawals would be
327 significantly harmful to the water resources of the area.

328 (c) Minimum flow and water level for an Outstanding Florida
329 Spring, as defined in s. 373.802. The minimum flow and water
330 level is the limit and level, respectively, at which further
331 withdrawals would be harmful to the water resources or ecology
332 of the area.

333
334 The minimum flow and minimum water level shall be calculated by
335 the department and the governing board using the best
336 information available. When appropriate, minimum flows and
337 levels may be calculated to reflect seasonal variations. The
338 department and the governing board shall ~~also~~ consider, and at
339 their discretion may provide for, the protection of
340 nonconsumptive uses in the establishment of minimum flows and
341 levels.

342 Section 4. Paragraph (a) of subsection (1) of section
343 373.0421, Florida Statutes, is amended to read:

344 373.0421 Establishment and implementation of minimum flows
345 and levels.—

346 (1) ESTABLISHMENT.—

347 (a) *Considerations.*—When establishing minimum flows and
348 levels pursuant to s. 373.042, the department or governing board

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shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer, provided that nothing in this paragraph shall allow significant harm as provided by s. 373.042(1) (a) and (b), or harm as provided by s. 373.042(1) (c), caused by withdrawals.

Section 5. Part VIII of chapter 373, Florida Statutes, consisting of sections 373.801, 373.802, 373.803, 373.805, 373.807, 373.809, 373.811, and 373.813, Florida Statutes, is created and entitled the "Florida Springs and Aquifer Act."

Section 6. Section 373.801, Florida Statutes, is created to read:

373.801 Legislative findings and intent.—

(1) Springs are a unique part of this state's scenic beauty, deserving the highest level of protection under Article II, Section 7, of the State Constitution. Springs provide critical habitat for plants and animals, including many endangered or threatened species. They provide immeasurable natural, recreational, economic, and inherent value. Flow level and water quality of springs are indicators of local conditions of the Floridan Aquifer, which is the source of drinking water for many residents of this state. Springs are of great scientific importance in understanding the diverse functions of aquatic ecosystems. In addition, springs provide recreational opportunities for swimming, canoeing, wildlife watching, fishing, cave diving, and many other activities in this state. Because of such recreational opportunities and the accompanying

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tourism, state and local economies benefit from many of the
springs in this state.

(2) Water quantity and water quality in springs are directly related. For regulatory purposes, the department has primary responsibility for water quality; the water management districts have primary responsibility for setting minimum flows and levels; the Department of Agriculture and Consumer Services has primary responsibility for the development and implementation of best management practices; and local governments have primary responsibility for providing wastewater and stormwater management. The foregoing responsible entities must work together in a coordinated manner to restore and maintain the water quantity and water quality for Outstanding Florida Springs.

(3) The Legislature recognizes that:

(a) Springs are only as healthy as their springsheds. The groundwater that supplies springs is derived from rainfall that recharges the aquifer system in the form of seepage from the land surface and through direct conduits such as sinkholes. Springs are adversely affected by polluted runoff from urban and agricultural lands; discharge resulting from poor wastewater and stormwater management practices; stormwater runoff; and the reduced water levels of the Floridan Aquifer. As a result, the hydrologic and environmental conditions of a spring or spring run are directly influenced by activities and land uses within a springshed and by water withdrawals from the Floridan Aquifer.

(b) Springs, whether found in urban or rural settings, or on public or private lands, are threatened by actual or potential flow reductions and declining water quality. Many of

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407 this state's springs are demonstrating signs of significant
408 ecological imbalance, increased nutrient loading, and declining
409 water flow. Without effective remedial action, a further decline
410 in water quality and quantity is expected.

411 (c) The state standards regulating both water quality and
412 quantity, including minimum criteria relating to nutrient
413 concentrations in groundwater, need to protect both human health
414 and the complex biological and ecological systems that
415 contribute to the integrity of springs.

416 (d) Springshed boundaries and areas of high vulnerability
417 within a springshed need to be identified and delineated using
418 the best available data.

419 (e) Because springsheds cross local government
420 jurisdictional boundaries, a coordinated statewide springs
421 protection plan is needed.

422 (f) The aquifers and springs of this state are complex
423 systems affected by many variables and influences and scientific
424 uncertainty exists regarding their present condition, the action
425 required to ensure their recovery and health, and the health and
426 vitality of the ecosystems they support. In implementing this
427 act, the department and the water management districts shall
428 take a precautionary approach to springs protection. Where the
429 possibility of significant or irreversible harm exists, the lack
430 of full scientific certainty may not be used as a reason for
431 postponing common-sense actions required to protect springs
432 under this part.

433 (4) The Legislature recognizes that sufficient information
434 exists to act, action is urgently needed, and action can be
435 continually modified as additional data is acquired. Therefore,

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436 state agencies and water management districts shall work
437 together with local governments to delineate springsheds and
438 spring protection and management zones and develop comprehensive
439 plans and land development regulations that protect the springs
440 of this state for future generations.

441 Section 7. Section 373.802, Florida Statutes, is created to
442 read:

443 373.802 Definitions.—As used in this part, the term:

444 (1) "Bedroom" means a room that can be used for sleeping
445 and that:

446 (a) For site-built dwellings, has a minimum of 70 square
447 feet of conditioned space;

448 (b) For manufactured homes, is constructed according to the
449 standards of the United States Department of Housing and Urban
450 Development and has a minimum of 50 square feet of floor area;

451 (c) Is located along an exterior wall;

452 (d) Has a closet and a door or an entrance where a door
453 could be reasonably installed; and

454 (e) Has an emergency means of escape and a rescue opening
455 in accordance with the Florida Building Code.

456
457 A room may not be considered a bedroom if it is used to access
458 another room except a bathroom or closet and the term does not
459 include a hallway, bathroom, kitchen, living room, family room,
460 dining room, den, breakfast nook, pantry, laundry room, sunroom,
461 recreation room, media/video room, or exercise room.

462 (2) "Department" means the Department of Environmental
463 Protection, which includes the Florida Geological Survey or its
464 successor agency or agencies.

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465 (3) "Local government" means a county or municipal
466 government the jurisdictional boundaries of which include an
467 Outstanding Florida Spring, or any part of a delineated
468 springshed or spring protection and management zone for an
469 Outstanding Florida Spring.

470 (4) "Onsite sewage treatment and disposal system" means a
471 system that contains a standard subsurface, filled, or mound
472 drainfield system; an aerobic treatment unit; a graywater system
473 tank; a laundry wastewater system tank; a septic tank; a grease
474 interceptor; a pump tank; a solids or effluent pump; a
475 waterless, incinerating, or organic waste-composting toilet; or
476 a sanitary pit privy that is installed or proposed to be
477 installed beyond the building sewer on land of the owner or on
478 other land to which the owner has the legal right to install a
479 system. The term includes any item placed within, or intended to
480 be used as a part of or in conjunction with, the system. The
481 term does not include package sewage treatment facilities and
482 other treatment works regulated under chapter 403.

483 (5) "Outstanding Florida Spring" includes all historic
484 first magnitude springs, as determined by the department using
485 the most recent version of the Florida Geological Survey's
486 springs bulletin, and the following springs and their associated
487 spring runs:

- 488 (a) DeLeon Spring;
489 (b) Peacock Spring;
490 (c) Rock Springs;
491 (d) Wekiwa Spring; and
492 (e) Gemini Spring.

493 (6) "Responsible management entity" means a legal entity

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established for the purpose of providing localized management services with the requisite managerial, financial, and technical capacity to ensure long-term management of an onsite sewage treatment and disposal system within its jurisdiction.

(7) "Spring protection and management zone" means the areas of a springshed where the Floridan Aquifer is vulnerable to surface sources of contamination or reduced levels, as determined by the department in consultation with the appropriate water management districts.

(8) "Spring run" means a body of flowing water that originates from a spring or whose primary source of water is from a spring or springs under average rainfall conditions.

(9) "Springshed" means the areas within the groundwater and surface water basins which have historically contributed to the discharge of a spring as defined by potentiometric surface maps and surface watershed boundaries.

(10) "Spring vent" means a location where groundwater flows out of a natural, discernable opening in the ground onto the land surface or into a predominantly fresh surface water.

Section 8. Section 373.803, Florida Statutes, is created to read:

373.803 Delineation of spring protection and management zones for Outstanding Florida Springs.—

(1) Using the best data available from the water management districts and other credible sources, the department, in consultation with the water management districts, shall delineate the spring protection and management zone for each Outstanding Florida Spring. The delineation of spring protection and management zones must be completed by July 1, 2015, unless a

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water management district provides sufficient and appropriate evidence to the department that it is in the best interest of the public to justify extending the deadline for up to 1 year.

(2) Each water management district shall adopt by rule, pursuant to ss. 120.536(1) and 120.54, maps that depict the delineated spring protection and management zones for each Outstanding Florida Spring within its jurisdiction.

Section 9. Section 373.805, Florida Statutes, is created to read:

373.805 Minimum flow and level for Outstanding Florida Springs.—

(1) By July 1, 2015, each water management district shall establish a minimum flow and a minimum water level for each Outstanding Florida Springs located partially or fully within its jurisdiction in accordance with ss. 373.042 and 373.0421. The deadline may be extended each year if a water management district provides sufficient evidence to the department that an extension is in the best interest of the public.

(2) If a minimum flow and a minimum water level have not been set for an Outstanding Florida Spring by July 1, 2015, a water management district may only approve a consumptive use permit application if the applicant provides reasonable assurance that the withdrawal will not cause harm to the Outstanding Florida Spring.

(3) If sufficient water is not available to meet an adopted minimum flow and water level, the water management district, pursuant to s. 373.0421(2), shall implement a recovery or prevention strategy for the Outstanding Florida Spring by July 1, 2017. The recovery or prevention strategy for each

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552 Outstanding Florida Spring must include, at a minimum:

553 (a) A listing of all specific projects identified for
554 implementation to achieve the recovery or prevention strategy;

555 (b) A priority listing of each project;

556 (c) The estimated cost for each listed project; and

557 (d) The source and amount of financial assistance from the
558 water management district for each project, which may not be
559 less than 25 percent of the total project cost.

560 (4) The water management districts may adopt rules to meet
561 the objectives of this subsection.

562 Section 10. Section 373.807, Florida Statutes, is created
563 to read:

564 373.807 Protection of water quality in Outstanding Florida
565 Springs.—By July 1, 2015, the department shall assess each
566 Outstanding Florida Spring for which an impairment determination
567 has not been made under the numeric nutrient standards in effect
568 for springs vents.

569 (1) BASIN MANAGEMENT ACTION PLAN.—

570 (a) By July 1, 2017, the department shall develop a basin
571 management action plan as specified in s. 403.067(7) for each
572 Outstanding Florida Spring impaired by nutrients. A plan for
573 such spring completed prior to July 1, 2014, must be revised to
574 meet the requirements of this section by July 1, 2017.

575 (b) Each basin management action plan required under this
576 subsection must consider the spring protection and management
577 zone delineations established pursuant to s. 373.803 and include
578 a detailed allocation of the pollutant load to each identified
579 point source or category of nonpoint sources, including, but not
580 limited to, agricultural fertilizer, onsite treatment and

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581 disposal systems, animal wastes, wastewater treatment
582 facilities, stormwater, and residential lawn fertilizer.

583 (2) REQUIREMENTS.—Each local government, wastewater
584 treatment facility, and agricultural producer located partially
585 or fully within a spring protection and management zone of an
586 Outstanding Florida Spring impaired by nutrients are required to
587 abide by the following provisions, as applicable:

588 (a) Within six months of the delineation of the spring
589 protection and management zone of an Outstanding Florida Spring
590 within its jurisdiction, a local government must:

591 1. Develop and implement an ordinance that meets the
592 minimum requirements of the department's Model Ordinance for
593 Florida-Friendly Fertilizer Use on Urban Landscapes. Such
594 ordinance must require that, within a spring protection and
595 management zone of an Outstanding Florida Spring impaired by
596 nutrients, the nitrogen content of any fertilizer applied to
597 turf or landscape plants must contain at least 50 percent slow-
598 release nitrogen per guaranteed analysis label and that annual
599 application rates of total nitrogen may not exceed the lowest,
600 basic maintenance rate recommended by the Institute of Food and
601 Agricultural Sciences as of August 2013. The department shall
602 adopt rules to implement this subparagraph which set reasonable
603 minimum standards that local governments must impose and reflect
604 advancements or improvements regarding best management
605 practices.

606 2. Create or revise its stormwater management plan to
607 address nutrient pollution from point sources and nonpoint
608 sources of stormwater in accordance with s. 403.0891.
609 Notwithstanding s. 403.0891(3)(b), a local government must

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610 consult with the appropriate water management district, the
611 Department of Transportation, and the department before adopting
612 or updating its local government comprehensive plan or public
613 facilities report, as applicable, as required under s. 189.415.

614 (b) Each wastewater treatment facility must meet a standard
615 of no more than 3 mg/L Total Nitrogen, expressed as N, on an
616 annual basis by July 1, 2019, unless granted a variance or an
617 exemption under s. 373.813.

618 (c) Each agricultural producer, within 2 years after the
619 adoption of a basin management action plan, must:

620 1. Implement the best management practices or other
621 measures necessary to achieve pollution reduction levels
622 established by the department pursuant to s. 403.067(7)(c); or
623 conduct water quality monitoring prescribed by the department or
624 the applicable water management district.

625 2. The Department of Agriculture and Consumer Services, in
626 consultation with the department, shall develop rules to
627 implement this paragraph.

628 (d) A local government or wastewater treatment facility
629 shall file a plan for achieving the goals required under this
630 subsection by July 1, 2015, with the department for approval.
631 Upon a showing to the department of inordinate expense or that a
632 delay is in the best interest of the public. The department may
633 grant a local government or wastewater treatment facility an
634 extension of up to two years.

635 (3) CENTRAL SEWERAGE SYSTEMS AND ONSITE SEWAGE TREATMENT
636 AND DISPOSAL SYSTEMS.—In developing a basin management action
637 plan for an Outstanding Florida Spring, the department, in
638 consultation with the Department of Health and local

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governments, must identify onsite sewage treatment and disposal systems serving single-family residential properties of less than 1 acre and multi-family residential, commercial, and industrial properties located within a spring protection and management zone. Within 1 year of identification of these systems, and in consultation with the department, the local governments in which they are located shall develop an onsite sewage treatment and disposal system remediation plan. For each onsite sewage treatment and disposal system, the plan must include whether the system requires upgrading, connection to a central sewerage system, or no action. The plan must also include a priority ranking for each system or group of systems that requires remediation. Each remediation plan must be submitted to the department for approval. Following approval of the remediation plan, the local government shall begin implementing the approved remediation plan. The costs of connection to or upgrading the onsite sewage treatment and disposal systems may not be imposed upon the property owner.

(4) FUNDING.—

(a) In order to satisfy the requirements under this section, state agencies, water management districts, local governments, special districts, utilities, regional management entities, and agricultural producers, in cooperation with property owners and agricultural producers, may submit a project proposal to the Acquisition and Restoration Council, pursuant to s. 259.035, in order to receive funding for up to 75 percent of the total project cost, except for projects to upgrade or connect onsite sewage treatment and disposal systems. Projects submitted by a fiscally constrained county, as described in s.

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218.67(1), or a municipality located therein, are eligible for funding for up to 100 percent of the total project cost.

(b) Projects approved by the Acquisition and Restoration Council shall be funded by moneys from documentary stamp tax revenues deposited into the Ecosystem Management and Restoration Trust Fund in accordance with s. 201.15(1)(c). The Legislature may use other sources of revenues to fund projects submitted to the Acquisition and Restoration Council pursuant to this part.

(c) The department may distribute moneys deposited into the Ecosystem Management and Restoration Trust Fund pursuant to paragraph (b) to any entity that submits a project proposal application to the Acquisition and Restoration Council for which funding is approved. The department shall distribute moneys to state agencies and water management districts for all reasonable administrative costs related to implementing this part.

(d) Moneys in the fund not needed to meet obligations incurred under this section shall be deposited to the credit of the fund and may be invested in the manner provided by law. Interest received on such investments shall be credited to the Ecosystem Management and Restoration Trust Fund for springs protection and restoration.

Section 11. Section 373.809, Florida Statutes, is created to read:

373.809 Prohibited activities within a spring protection and management zone of an Outstanding Florida Spring.—

(1) The issuance of new permits for the following activities is prohibited within a spring protection and management zone of an Outstanding Florida Spring:

(a) A municipal or industrial wastewater disposal system,

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697 including rapid infiltration basins, except systems that meet an
698 advanced wastewater treatment standard of no more than 3 mg/L
699 Total Nitrogen, expressed as N, on an annual permitted basis, or
700 a higher treatment standard if the department determines that
701 the higher standard is necessary to prevent impairment or aid in
702 the recovery of an Outstanding Florida Spring.

703 (b) An onsite sewage treatment and disposal system, except
704 a system on a lot with a ratio of one bedroom per acre or
705 greater or an active or passive performance-based onsite sewage
706 disposal and treatment system that can achieve 3 mg/L or less
707 total nitrogen at the property boundary.

708 (c) A facility for the transfer, storage, or disposal of
709 hazardous waste.

710 (2) Each local government shall ensure that its
711 comprehensive plan reflects such prohibitions and that they are
712 implemented through passage of local ordinances.

713 Section 12. Section 373.811, Florida Statutes, is created
714 to read:

715 373.811 Rules.—

716 (1) The department, the Department of Health, the
717 Department of Agriculture and Consumer Services, water
718 management districts, the Acquisition and Restoration Council,
719 and responsible management entities may adopt rules pursuant to
720 ss. 120.536(1) and 120.54 to administer this part, as
721 applicable.

722 (2) (a) The Department of Agriculture and Consumer Services
723 is the lead agency coordinating the reduction of agricultural
724 nonpoint sources of pollution for Outstanding Florida Springs
725 protection. The Department of Agriculture and Consumer Services

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and the department, pursuant to s. 403.067(7)(c)4., shall study and, if necessary, in cooperation with applicable county and municipal governments, and stakeholders, initiate rulemaking to implement new or revised best management practices for improving and protecting Outstanding Florida Springs and for requiring the implementation of such practices within a reasonable time period as specified by rule.

(b) The department, the Department of Agriculture and Consumer Services, and the University of Florida's Institute of Food and Agricultural Sciences shall cooperate in conducting the necessary research and demonstration projects to develop improved or additional nutrient management tools, including the use of controlled release fertilizer that can be used by agricultural producers as part of an agricultural best management practices program. The development of such tools must reflect a balance between water quality improvements and agricultural productivity and, when applicable, must be incorporated into the revised best management practices adopted by rule of the Department of Agriculture and Consumer Services.

Section 13. Section 373.813, Florida Statutes, is created to read:

373.813 Variances and exemptions.—

(1) A person may apply to the appropriate agency or a water management district for a variance or an exemption from any requirement in this part. An agency or a water management district may approve the application upon receiving reasonable assurance that the applicant's proposed activity, evaluated individually or as part of cumulative impacts, will not cause or contribute to violations of water quality standards or minimum

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flows or levels in an Outstanding Florida Spring.

(2) Until funding becomes available as provided for in s. 201.15(1)(c)3.b., or the Legislature provides another source of funding, remedial actions are not required under this part, unless required as a component in the development of or compliance with a basin management action plan.

Section 14. Present paragraphs (n) through (q) of subsection (2) of section 381.0065, Florida Statutes, are redesignated as paragraphs (o) through (r), respectively, a new paragraph (n) is added to that subsection, and subsection (7) is added to that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(n) "Responsible management entity" means a legal entity established to be responsible for providing localized management services that have the requisite managerial, financial, and technical capacity to ensure long-term management of onsite sewage treatment and disposal systems within its jurisdiction.

(7) RESPONSIBLE MANAGEMENT ENTITIES.—

(a) By March 1, 2015, the department and the Department of Environmental Protection shall submit a report and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the creation and operation of responsible management entities within spring protection and management zones of Outstanding Florida Springs, as defined in s. 373.802, which are impaired by nutrients. The report must focus on the feasibility of different management

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models to prevent, reduce, and control nutrient pollution from onsite sewage treatment and disposal systems, including the costs associated with each model. In addition, the report must compare the results of the differing management models to a mandatory onsite sewage treatment and disposal system evaluation and assessment program or any other option that would achieve similar nutrient pollution reductions in the short and long term.

(b) Notwithstanding paragraph (a), a municipality, county, or appointed regional entity may establish, upon approval by the department, a responsible management entity for the prevention, reduction, and control of nutrient pollution caused by discharges from onsite sewage treatment and disposal systems. Responsible management entities may implement rules and maintenance programs in coordination with the department. The authority of the responsible management entity includes, but is not limited to, permitting development of system performance standards; development of standards for construction, operation, and inspections; maintenance programs for onsite sewage treatment and disposal systems; coordinated planning with other local wastewater service providers for nutrient reduction; and consolidation of multiple, smaller individual projects into a single project proposal for submission to the Acquisition and Restoration Council pursuant to s. 373.807.

(c) The department shall ensure that responsible management entities adopt rules and policies that are at least as restrictive as state law.

Section 15. Paragraphs (a) and (c) of subsection (7) of section 403.067, Florida Statutes, are amended to read:

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403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. ~~In developing and implementing the total maximum daily load for a water body,~~ The department, or the department in conjunction with a water management district, if not otherwise required to do so under applicable law, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve compliance or to prevent noncompliance with water quality standards ~~the total maximum daily loads~~ and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, where appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. If the

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842 water body is an Outstanding Florida Spring, the plan must
843 allocate pollutant reductions, including loads to groundwater,
844 to each identified point source or category of nonpoint sources
845 within a spring protection and management zone delineated
846 pursuant to s. 373.803. For nonpoint sources for which best
847 management practices have been adopted, the initial requirement
848 specified by the plan must be those practices developed pursuant
849 to paragraph (c). If ~~Where~~ appropriate, the plan may take into
850 account the benefits of pollutant load reduction achieved by
851 point or nonpoint sources that have implemented management
852 strategies to reduce pollutant loads, including best management
853 practices, before the development of the basin management action
854 plan. The plan must also identify the mechanisms that will
855 prevent ~~address~~ potential future increases in pollutant loading.

856 3. The basin management action planning process is intended
857 to involve the broadest possible range of interested parties,
858 with the objective of encouraging the greatest amount of
859 cooperation and consensus possible. In developing a basin
860 management action plan, the department shall assure that key
861 stakeholders, including, but not limited to, applicable local
862 governments, water management districts, the Department of
863 Agriculture and Consumer Services, other appropriate state
864 agencies, local soil and water conservation districts,
865 environmental groups, regulated interests, and affected
866 pollution sources, are invited to participate in the process.
867 The department shall hold at least one public meeting in the
868 vicinity of the watershed or basin to discuss and receive
869 comments during the planning process and shall otherwise
870 encourage public participation to the greatest practicable

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871 extent. Notice of the public meeting must be published in a
872 newspaper of general circulation in each county in which the
873 watershed or basin lies not less than 5 days nor more than 15
874 days before the public meeting. A basin management action plan
875 does not supplant or otherwise alter any assessment made under
876 subsection (3) or subsection (4) or any calculation or initial
877 allocation.

878 4. The department shall adopt all or any part of a basin
879 management action plan and any amendment to such plan by
880 secretarial order pursuant to chapter 120 to implement ~~the~~
881 ~~provisions of~~ this section.

882 5. The basin management action plan must include milestones
883 for implementation and water quality improvement, and an
884 associated water quality monitoring component sufficient to
885 evaluate whether reasonable progress in pollutant load
886 reductions is being achieved over time. An assessment of
887 progress toward these milestones shall be conducted every 5
888 years, and revisions to the plan shall be made as appropriate.
889 Revisions to the basin management action plan shall be made by
890 the department in cooperation with basin stakeholders. Revisions
891 to the management strategies required for nonpoint sources must
892 follow the procedures set forth in subparagraph (c)4. Revised
893 basin management action plans must be adopted pursuant to
894 subparagraph 4.

895 6. In accordance with procedures adopted by rule under
896 paragraph (9)(c), basin management action plans, and other
897 pollution control programs under local, state, or federal
898 authority as provided in subsection (4), may allow point or
899 nonpoint sources that will achieve greater pollutant reductions

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than required by an adopted total maximum load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

7. ~~The provisions of~~ The department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, if ~~where~~ adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

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929 2. The Department of Agriculture and Consumer Services may
930 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
931 suitable interim measures, best management practices, or other
932 measures necessary to achieve the level of pollution reduction
933 established by the department for agricultural pollutant sources
934 in allocations developed pursuant to subsection (6) and this
935 subsection or for programs implemented pursuant to paragraph
936 (12) (b) ~~(13) (b)~~. These practices and measures may be implemented
937 by those parties responsible for agricultural pollutant sources
938 and the department, the water management districts, and the
939 Department of Agriculture and Consumer Services shall assist
940 with implementation. In the process of developing and adopting
941 rules for interim measures, best management practices, or other
942 measures, the Department of Agriculture and Consumer Services
943 shall consult with the department, the Department of Health, the
944 water management districts, representatives from affected
945 farming groups, and environmental group representatives. Such
946 rules must also incorporate provisions for a notice of intent to
947 implement the practices and a system to assure the
948 implementation of the practices, including recordkeeping
949 requirements.

950 3. Where interim measures, best management practices, or
951 other measures are adopted by rule, the effectiveness of such
952 practices in achieving the levels of pollution reduction
953 established in allocations developed by the department pursuant
954 to subsection (6) and this subsection or in programs implemented
955 pursuant to paragraph (12) (b) ~~(13) (b)~~ must be verified at
956 representative sites by the department. The department shall use
957 best professional judgment in making the initial verification

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that the best management practices are reasonably expected to be effective and, if ~~where~~ applicable, must notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from ~~the provisions of~~ s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from the provisions of s. 376.307(5). The presumption of compliance and release is limited to the research site and applies only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research

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objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. If should the reevaluation determines ~~determine~~ that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3. and 4. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

6. ~~The provisions of~~ Subparagraphs 1. and 2. do not preclude the department or water management district from

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requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with ~~any~~ rules adopted by the department which ~~that~~ are necessary to maintain a federally delegated or approved program.

Section 16. Section 381.00651, Florida Statutes, is repealed.

Section 17. Comprehensive study on nutrient reduction improvements and the beneficial use of reclaimed water, stormwater, and excess surface water.—

(1) The Department of Agriculture and Consumer Services and the Department of Environmental Protection, in cooperation with the five water management districts, shall conduct a comprehensive study on nutrient reduction improvements for row crops and for the expansion of the beneficial use of reclaimed water, stormwater, and excess surface water in this state. The final report of the study must:

(a) Describe factors that currently prohibit or otherwise complicate the expansion of the beneficial use of reclaimed water and include recommendations for the mitigation or elimination of such factors.

(b) Identify environmental, public health, public perception, engineering, and fiscal issues, and user fee amounts, including utility rate structures for potable and reclaimed water.

(c) Identify areas in the state where making reclaimed water available for irrigation or other uses is necessary

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1045 because the use of traditional water supply sources is
1046 constrained by limitations on availability.

1047 (d) Evaluate the costs to users of reclaimed water compared
1048 to the cost associated with traditional water sources, including
1049 an examination of the nutrient concentrations in reclaimed water
1050 and the necessity for additional fertilizer supplementation.

1051 (e) Evaluate permitting incentives, such as further
1052 extending current authorization for long-term consumptive
1053 permits to all entities substituting reclaimed water for
1054 traditional water sources or including in such permits a
1055 provision that authorizes conversion to traditional water
1056 sources if reclaimed water becomes unavailable or cost
1057 prohibitive.

1058 (f) Describe the basic feasibility, benefit, and cost
1059 estimates for the infrastructure needed to construct regional
1060 storage features on public or private lands for reclaimed water,
1061 stormwater, or excess surface water, including collection and
1062 delivery mechanisms for beneficial uses rather than discharge to
1063 tide, such as agricultural irrigation, power generation, public
1064 water supply, wetland restoration, groundwater recharge, and
1065 water body base flow augmentation.

1066 (g) Describe any other alternative processes, systems, or
1067 technology that may be comparable or preferable to a regional
1068 storage system or that may effectively complement or be a
1069 substitute for a regional storage system.

1070 (h) Evaluate the impact of implementation of a
1071 comprehensive reclaimed water plan on traditional water sources
1072 and aquifer levels.

1073 (i) Evaluate strategies to reduce nutrient loading from row

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crops in areas sensitive to nutrient pollution, including the application of organic fertilizers, or provide incentives for agricultural producers to plant crops that require less fertilization.

(2) The Department of Agriculture and Consumer Services and the Department of Environmental Protection shall jointly hold a public meeting to gather input on the design of the comprehensive study and to provide an opportunity for public comment before publishing the final report of the study.

(3) The final report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2015.

(4) This section expires on December 1, 2015.

Section 18. This act shall take effect July 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1582

INTRODUCER: Senator Dean

SUBJECT: Rehabilitation of Petroleum Contamination Sites

DATE: March 20, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Gudeman	Uchino	EP	Favorable
2. _____	_____	AGG	_____
3. _____	_____	AP	_____

I. Summary:

SB 1582 revises the legislative intent for the Petroleum Restoration Program, requires competitive procurement for cleanup contracts, and amends contractor qualifications. The bill limits the eligibility funding for the Early Detection Incentive (EDI) Program, deletes obsolete provisions related to the reimbursement program, and repeals sections of statute related to the Petroleum Preapproval Program.

II. Present Situation:

Petroleum Restoration Program

The Department of Environmental Protection (DEP) Division of Waste Management regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.¹ Leaking storage tanks pose a significant threat to groundwater quality. Florida relies on groundwater for about 92 percent of its drinking water needs.²

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for clean up of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund (IPTF), which is funded by a tax on petroleum products imported or produced in Florida. The SUPER Act established the Early Detection Incentive Program (EDI), which provided site owners with the option of conducting the cleanup

¹ See ch. 83-310, Laws of Fla.

² DEP, *Storage Tank Compliance*, <http://www.dep.state.fl.us/waste/categories/tanks/> (last visited Mar. 6, 2014).

themselves, and then receive reimbursement from the IPTF, or have the state conduct the cleanup in priority order.³

The Legislature created the Petroleum Liability Insurance Program (PLIP) in 1988, to provide third-party liability insurance to qualified program participants. PLIP provided up to \$1 million of liability insurance for each incident of petroleum contamination.⁴ PLIP was revised in 1989 and renamed to the Petroleum Liability Insurance and Restoration Program (PLIRP). The PLIRP allows eligible petroleum facilities to purchase \$1 million in pollution liability protection from a state contracted insurer and provided \$1 million worth of site restoration coverage through reimbursement or state-funded cleanup.⁵

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline is now waived indefinitely for owners who are unable to pay for the closure of abandoned tanks.⁶

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup sites to the reimbursement program,⁷ which was funded by increasing the excise tax on petroleum and petroleum products.⁸ The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the IPTF. By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated \$551.5 million in outstanding reimbursement claims.⁹

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.¹⁰

The Petroleum Preapproval Program (program) was implemented by the Legislature in 1996. The program required state-funded clean up of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based corrective action principles in the cleanup criteria rule. The Petroleum Cleanup Participation Program (PCPP) was created for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties were required to cost share in the cleanup and prepare a limited scope assessment at their expense. The Preapproved Advanced Cleanup (PAC) program was created to allow sites to bypass the priority ranking list and receive funding in order to facilitate a public works project or property

³ Chapter 86-159, Laws of Fla.

⁴ Chapter 88-331, Laws of Fla.

⁵ Chapter 89-188, Laws of Fla.

⁶ Chapter 90-98, Laws of Fla.

⁷ The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.

⁸ Chapter 92-30, Laws of Fla.

⁹ Comm. on Environmental Preservation and Conservation, The Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

¹⁰ Chapter 95-2, Laws of Fla.

transaction. The PAC program requires applicants to cost share in the cleanup and to prepare limited scope assessments at their expense.¹¹

In 1999, the Legislature amended the Petroleum Preapproval Program to allow the DEP to fund certain source removal activities. The bill addressed new petroleum discharges that occurred at a site with existing contamination and were reported after December 31, 1998. The bill allowed a responsible party to enter into a Site Rehabilitation Agreement with the DEP and share in the cost and coordination of the cleanup, provided that the responsible party submit an application and a Limited Contamination Assessment Report to the DEP.¹²

The Legislature substantially amended the Petroleum Preapproval Program in 2005, to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- The DEP to establish a process to uniformly encumber funds appropriated for the underground storage tank program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Department of Transportation projects;
- Funding for limited interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to 10 sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding per facility and for activities that may be funded;
- Limited funding of \$1 million per fiscal year for Department of Transportation projects, and \$10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions as of June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges of petroleum that are eligible for restoration funding under the Petroleum Cleanup Participation Program for the state's cost share of site rehabilitation; and
- Extension of life of the Inland Protection Financing Corporation from 2011 to 2025, and require the corporation to issue notes and bonds, and to pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.¹³

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S., after June 30, 2014.¹⁴ Pursuant to s. 376.30711, F.S., the DEP is authorized to use competitive bid procedures or negotiated contracts for preapproving all costs and procedures for site-specific rehabilitation projects, but has not done so on a permanent basis.

¹¹ Chapter 96-277, ss. 18-19, Laws of Fla.

¹² Chapter 99-376, Laws of Fla.

¹³ Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.

¹⁴ Chapter 2013-41, s. 29, Laws of Fla.

Pursuant to s. 287.057, F.S., state agencies that competitively solicit contractual services exceeding \$35,000 must:

- Make the competitive solicitation available to all vendors;
- Include the time and date for the receipt of bids, proposal, or replies, and of the public opening;
- Include the contractual terms and conditions applicable to the procurement and the criteria used to determine acceptability and merit of the bid;
- Use the invitation to bid process when the agency is able to define the scope of work and establish the specifications of the services needed;
- Use the request for proposal process when the purpose of the services needed can be defined and the agency can identify the deliverables; and
- Use the invitation to negotiate process when the agency must determine the best method for achieving the specific goal and more than one vendor is able to provide the services.

Contractual services that exceed the \$35,000 threshold must be procured through competitive sealed bids, competitive sealed proposals or competitive sealed replies unless:

- The agency head determines there is an immediate danger to public health, safety, or welfare; and
- The agency purchases the services from a state procured contract that was contracted by another agency pursuant to s. 287.057(1), F.S.¹⁵

MyFloridaMarketPlace

The Department of Management Services established a statewide electronic registration and procurement system called MyFloridaMarketPlace. Pursuant to s. 287.057(23), F.S., a one percent transaction fee is charged to all vendors in order to utilize the system.¹⁶

Funding for the Petroleum Restoration Program

The fiscal year 2013-2014 General Appropriations Act (GAA) appropriated \$125M to the DEP for the rehabilitation of eligible petroleum contaminated sites. The GAA directed that up to \$50 million be appropriated to fund petroleum rehabilitation task assignments, work orders, and contracts entered into prior to June 30, 2013. The release of the balance of the appropriation (\$75 million) was subject to approval by the Legislative Budget Commission, which occurred in September 2013.¹⁷

The DEP is currently transitioning the Petroleum Restoration Program from the “preapproved contractor” approach to competitive procurement procedures pursuant to ss. 287.056, 287.057, and 287.059, F.S., and Rules 62-771 and 62-772, F.A.C. As of January 31, 2014, there are approximately 17,300 funding-eligible sites or gasoline filling stations and approximately 7,258 sites have been rehabilitated, approximately 3,167 sites are undergoing some phase of site rehabilitation, and approximately 6,911 sites await rehabilitation. Site rehabilitation is funded based on available budget and the priority score. The scores for each site range from five to 115,

¹⁵ See s. 287.057, F.S.

¹⁶ See Rules 60A-1.030, 60A-1.031, and 60A-1.032, F.A.C.

¹⁷ Chapter 2013-40, Laws of Fla.

with five representing a very low potential threat to human health and the environment, and 115 representing a substantial potential threat.¹⁸

As of March 13, 2014, there are 60 approved cleanup contractors and 137 executed contracts. The DEP has:

- Obligated approximately \$57.1 million of the fiscal year 2013-2014 appropriation of \$125 million;
- Directed assigned rehabilitation work to 149 sites with a total value of \$5,041,217, which is included in the total obligated amount of \$57.1 million; and
- Selected 13 sites to receive quotes from contractors for a total estimated value of \$4,216,075, which is not included in the \$57.1 million.¹⁹

Legislative Ratification of Agency Rules

The Legislature required the DEP to adopt rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S., by December 31, 2013, otherwise funding for the program would be terminated.

On May 30, 2013, the DEP published a Notice of Rule Development in the Florida Administrative Register to create Rule 62-772, F.A.C., and amend Rule 62-771, F.A.C. The new rules provide the procedures for the procurement of contractual services for clean up of petroleum contaminated sites and amend the procedures for establishing the priority scoring system for petroleum contaminated sites. The rules were adopted on December 27, 2013.

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature. The thresholds are:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after implementation of the rule.²⁰

The DEP prepared a Statement of Estimated Regulatory (SERC) for Rules 62-772.300 and 62-772.400, F.A.C., and determined the rules triggered a statutory threshold requiring ratification. The SERC for Rule 62-772.300, F.A.C., estimates the cost for contractors to maintain business licensure, safety compliance, workers compensation insurance, comprehensive automobile insurance, and general and professional liability insurance is approximately \$15.4 million per year. The cost estimate provided in the SERC is based on 225 contractors. As of March 2014, the

¹⁸ DEP, *Senate Bill 1582 Agency Analysis*, 3 (Mar. 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁹ Email from Pierce Schuessler, Legislative Affairs Director, DEP (Mar. 16, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

²⁰ Section 120.541(2)(a)1.-3., F.S.

number of agency term contractors is 70, decreasing the cost associated with Rule 62-772.300, F.A.C., to approximately \$4.8 million per year.²¹

The SERC for Rule 62-772.400, F.A.C., estimates the cost incurred by contractors to assemble and submit bids, responses, replies, and quotes to the DEP as part of the competitive procurement procedures and a one percent transaction fee for MyFloridaMarketPlace, to be approximately \$41 million per year.²²

The cost requirements outlined by the DEP are already incurred by contractors in order to conduct business according to ss. 376.3071, 376.30711, and 376.30713, F.S.; however, the existing requirements are being restated in rule, requiring ratification by the Legislature.

III. Effect of Proposed Changes:

The bill provides conforming language and makes technical changes to repeal the Petroleum Preapproval Program and require the DEP to competitively procure contracts for the Petroleum Restoration Program.

Section 1 amends s. 376.3071, F.S., to affirm that the Petroleum Restoration Program be implemented in manner that reduces costs and improves efficiency of rehabilitation activities. The bill specifies that the Legislature intends to prioritize the cleanup of sites based on the threat of contamination to water resources and the environment, public health, safety, and welfare, and within the funding limits of the Inland Protection Trust Fund. The bill recognizes that when source removal is feasible and cost effective, it significantly reduces and eliminates the spread of contamination.

The bill specifies contracting and contractor selection requirements. It directs that state-funded cleanup sites are funded pursuant to the provisions of the Petroleum Restoration Program in ss. 376.3071, 376.305(6), 376.3072, and 376.3073, F.S. The bill requires a facility owner to abate the source of discharge for a release that occurred after March 29, 1995, and to notify the DEP if free product is present.

The bill requires the DEP to comply with competitive procurement requirements pursuant to ch. 287, F.S. or adopted rules.

Contractors that perform site assessments and remediation are required to certify to the DEP that they:

- Comply with applicable Occupational Safety and Health Administration regulations;
- Maintain workers compensation insurance for employees as required by the Florida Workers' Compensation Law;
- Maintain comprehensive general liability and comprehensive automobile liability insurance including:

²¹ DEP, *Statement of Estimated Regulatory Cost, Rule 62-772.300, F.A.C.*, 3 (on file with the Senate Committee on Environmental Preservation and Conservation).

²² DEP, *Statement of Estimated Regulatory Cost, Rule 62-772.400, F.A.C.*, 3 (on file with the Senate Committee on Environmental Preservation and Conservation).

- Having minimum limits of \$1 million per occurrence; and
- Having \$1 million per annual aggregate for personal injury, accidental death, and property damage;
- Maintain professional liability insurance of at least \$1 million per occurrence and \$1 million annual aggregate; and
- Have the capacity to perform or directly supervise the majority of the rehabilitation work pursuant to s. 489.113(9), F.S.

The bill requires that the rules implementing this section must:

- Specify that only qualified contractors may submit responses on competitive solicitation;
- Include procedures for the rejection of vendors that do not meet the minimum qualifications; and
- Include requirements for the vendor to maintain its qualifications.

The bill provides procedures for invoicing and payments. Specifically, the bill:

- Requires invoices to be submitted on forms provided by the DEP;
- Requires contractors to provide evidence documenting the contracted services were provided;
- Requires invoices to be paid pursuant to s. 215.422, F.S., if there are sufficient unencumbered funds available;
- Allows a contractor to assign its right to payment to another person after the contractor has submitted an invoice and before payment is made;
- Specifies the assignee must be paid pursuant to s. 215.422, F.S.;
- Requires contractors to submit an invoice to the DEP within 30 days of the DEP's written acceptance of the interim deliverables or approval of the final deliverables;
- Allows the DEP to retain up to 25 percent of the contracted amount or use a performance bond as long as the terms are included in the contract;
- Specifies that the contractor, or the assignee, must make prompt payment to subcontractors and suppliers pursuant to s. 287.0585, F.S.;
- Specifies that the exemption provided in s. 287.0585(2), F.S., does not apply to payments associated with an approved contract;
- Allows the DEP to withhold payment if the validity or accuracy of the contractor's invoices or supporting documents is in question; and
- Does not authorize payment for the cost of contaminated soil treatment or disposal if the soil treatment or disposal does not meet the rules for general permitting, state air emissions standards, monitoring, sampling, and reporting rules as described by the DEP.

The bill specifies the DEP must terminate or suspend a contractor's eligibility for participation in the program if the contractor fails to perform its contractual duties. It also prohibits a site owner or operator, or its designee, from receiving remuneration in cash or in kind, directly or indirectly from a contract performing site cleanup activities. The bill clarifies that any action by the DEP to seek recovery of payments or overpayments to a contractor must be based on the law that existed at the time of payment or overpayment.

The bill deletes references to the preapproval program and obsolete provisions related to the reimbursement program and makes conforming and technical changes.

Section 2 repeals s. 376.30711, F.S., which provided contracting and contractor selection procedures for the preapproval program.

Section 3 amends s. 376.301, F.S., delete the obsolete definitions of “backlog” and “person responsible for conducting site rehabilitation,” which were associated with the reimbursement program.

Sections 4-10 amend ss. 376.302, 376.305, 376.30713, 376.30714, .376.3072, 376.3073, 376.3075, F.S., respectively, making conforming and technical changes to repeal the reimbursement program and the preapproval program, and to implement the competitive procurement process.

Section 11 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The transition from a “preapproved contractor” approach to a competitive procurement system will have a positive and negative fiscal impact on the private sector. There will be a cost to contractors associated with the requirements of submitting quotes and materials that meet the requirements of MyFloridaMarketPlace, including the one percent transaction fee. The utilization of competitive solicitation procedures are expected to reduce prices and potential profits. However, contractors that maintain a positive performance record will be able to generate more work, which could offset the lower profit margins.²³

Generally, lower costs to rehabilitate sites will lead to greater efficiency and the ability to clean up sites more cost effectively than in previous years. Individually, these costs will

²³ *Supra* note 18, at 6.

be negligible; however, in the aggregate and over time, the new program should lead to substantial savings.

C. Government Sector Impact:

The DEP expects the cost of site rehabilitation will decrease due to the implementation of competitive solicitation procedures. The cost savings are indeterminate at this time because the process is in the early stages of implementation.²⁴

The DEP estimates a fiscal impact of approximately \$80,000 per year for additional personnel in the contracts and procurement office.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1674, providing for legislative ratification of Rules 62-772.300 and 62-772.400, F.A.C., which relate to competitive bidding and contractor qualifications for the Petroleum Restoration Program, is pending. Failure to ratify the rules would prohibit the DEP from implementing the program after June 30, 2014.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes 376.3071, 376.301, 376.302, 376.305, 376.30713, 376.30714, 376.3072, 376.3073, and 376.3075.

This bill repeals section 376.30711 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.

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

²⁴ *Id.* DEP, *Senate Bill 1582 Agency Analysis*, 6 (Mar. 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

²⁵ *Supra* note 22, at 4.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/20/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 376.3071, Florida Statutes, is amended
to read:

376.3071 Inland Protection Trust Fund; creation; purposes;
funding.—

(1) FINDINGS.—In addition to the legislative findings set
forth in s. 376.30, the Legislature finds and declares:



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11 (a) That significant quantities of petroleum and petroleum
12 products are being stored in storage systems in this state,
13 which is a hazardous undertaking.

14 (b) That spills, leaks, and other discharges from such
15 storage systems have occurred, are occurring, and will continue
16 to occur and that such discharges pose a significant threat to
17 the quality of the groundwaters and inland surface waters of
18 this state.

19 (c) That, where contamination of the ground or surface
20 water has occurred, remedial measures have often been delayed
21 for long periods while determinations as to liability and the
22 extent of liability are made and that such delays result in the
23 continuation and intensification of the threat to the public
24 health, safety, and welfare; in greater damage to water
25 resources and the environment; and in significantly higher costs
26 to contain and remove the contamination.

27 (d) That adequate financial resources must be readily
28 available to provide for the expeditious supply of safe and
29 reliable alternative sources of potable water to affected
30 persons and to provide a means for investigation and cleanup of
31 contamination sites without delay.

32 (e) That it is necessary to fulfill the intent and purposes
33 of ss. 376.30-376.317, and ~~further it is hereby~~ determined to be
34 in the best interest of, and necessary for the protection of the
35 public health, safety, and ~~general~~ welfare of the residents of
36 this state, and therefore a paramount public purpose, to provide
37 for the creation of a nonprofit public benefit corporation as an
38 instrumentality of the state to assist in financing the
39 functions provided in ss. 376.30-376.317 and to authorize the



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department to enter into one or more service contracts with such corporation for the purpose ~~provision~~ of financing services related to such functions and to make payments thereunder from the amount on deposit in the Inland Protection Trust Fund, subject to annual appropriation by the Legislature.

(f) That to achieve the purposes established in paragraph (e) and in order to facilitate the expeditious handling and rehabilitation of contamination sites and remedial measures with respect to contamination sites ~~provided hereby~~ without delay, it is in the best interests of the residents of this state to authorize such corporation to issue evidences of indebtedness payable from amounts paid by the department under any such service contract entered into between the department and such corporation.

(g) That the Petroleum Restoration Program must be implemented in a manner that reduces costs and improves the efficiency of rehabilitation activities to reduce the significant backlog of contaminated sites eligible for state-funded rehabilitation and the corresponding threat to water resources, the environment, and the public health, safety, and welfare.

(2) INTENT AND PURPOSE.—

(a) It is the intent of the Legislature to establish the Inland Protection Trust Fund to serve as a repository for funds which will enable the department to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect the public health, safety, and welfare and to minimize environmental damage.



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(b) It is the intent of the Legislature that the department implement rules and procedures to improve the efficiency of the Petroleum Restoration Program. The department is directed to implement rules and policies to eliminate and reduce duplication of site rehabilitation efforts, paperwork, and documentation, and micromanagement of site rehabilitation tasks.

(c) It is the intent of the Legislature that rehabilitation of contamination sites be conducted with emphasis on first addressing the sites that pose the greatest threat to water resources, the environment, and the public health, safety, and welfare, within the availability of funds in the Inland Protection Trust Fund.

(d) ~~(e)~~ The department is directed to adopt and implement uniform and standardized forms for ~~the requests for preapproval~~ site rehabilitation work and for the submittal of reports to ensure that information is submitted to the department in a concise, standardized uniform format seeking only information that is necessary.

(e) ~~(d)~~ The department is directed to implement computerized and electronic filing capabilities of ~~preapproval requests and~~ submittal of reports in order to expedite submittal of the information and elimination of delay in paperwork. ~~The computerized, electronic filing system shall be implemented no later than January 1, 1997.~~

~~(e) The department is directed to adopt uniform scopes of work with templated labor and equipment costs to provide definitive guidance as to the type of work and authorized expenditures that will be allowed for preapproved site rehabilitation tasks.~~



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(f) The department is directed to establish guidelines for consideration and acceptance of new and innovative technologies for site rehabilitation work.

(3) CREATION.—There is ~~hereby~~ created the Inland Protection Trust Fund, hereinafter referred to as the “fund,” to be administered by the department. This fund shall be used by the department as a nonlapsing revolving fund for carrying out the purposes of this section and s. 376.3073. To this fund shall be credited all penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and s. 376.3073 and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(3) and 206.9945(1)(c). Charges against the fund shall be made pursuant to ~~in accordance with the provisions of~~ this section.

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to water resources, the environment, or the public health, safety, or welfare, the department shall obligate moneys available in the fund to provide for:

(a) Prompt investigation and assessment of contamination sites.

(b) Expeditious restoration or replacement of potable water supplies as provided in s. 376.30(3)(c)1.

(c) Rehabilitation of contamination sites, which shall consist of cleanup of affected soil, groundwater, and inland surface waters, using the most cost-effective alternative that is technologically feasible and reliable, ~~and~~ that provides adequate protection of water resources and the public health,



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safety, and welfare, and that minimizes environmental damage, pursuant to ~~in accordance with~~ the site selection and cleanup criteria established by the department under subsection (5), except that this paragraph does not ~~nothing herein shall be construed to~~ authorize the department to obligate funds for payment of costs that ~~which~~ may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

(e) Inspection and supervision of activities described in this subsection.

(f) Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities described in this subsection.

(g) Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.

(h) Establishment and implementation of the compliance verification program as authorized in s. 376.303(1)(a), including contracting with local governments or state agencies to provide for the administration of such program through locally administered programs, to minimize the potential for further contamination sites.

(i) Funding of the provisions of ss. 376.305(6) and



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376.3072.

(j) Activities related to removal and replacement of petroleum storage systems, exclusive of costs of any tank, piping, dispensing unit, or related hardware, if soil removal is approved ~~preapproved~~ as a component of site rehabilitation and requires removal of the tank where remediation is conducted under this section ~~s. 376.30711~~ or if such activities were justified in an approved remedial action plan ~~performed pursuant to subsection (12)~~.

~~(k) Activities related to reimbursement application preparation and activities related to reimbursement application examination by a certified public accountant pursuant to subsection (12).~~

~~(k)(1)~~ Reasonable costs of restoring property as nearly as practicable to the conditions that ~~which~~ existed before ~~prior to~~ activities associated with contamination assessment or remedial action taken under s. 376.303(4).

~~(l)(m)~~ Repayment of loans to the fund.

~~(m)(n)~~ Expenditure of sums from the fund to cover ineligible sites or costs as set forth in subsection (13), if the department in its discretion deems it necessary to do so. In such cases, the department may seek recovery and reimbursement of costs in the same manner and pursuant to ~~in accordance with~~ the same procedures ~~as are~~ established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

~~(n)(o)~~ Payment of amounts payable under any service contract entered into by the department pursuant to s. 376.3075, subject to annual appropriation by the Legislature.



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(o) ~~(p)~~ Petroleum remediation pursuant to this section ~~s. 376.30711~~ throughout a state fiscal year. The department shall establish a process to uniformly encumber appropriated funds throughout a state fiscal year and shall allow for emergencies and imminent threats to water resources, ~~human health and the environment~~, and the public health, safety, and welfare, as provided in paragraph (5) (a). This paragraph does not apply to appropriations associated with the free product recovery initiative provided in ~~of~~ paragraph (5) (c) or the ~~preapproved~~ advanced cleanup program provided in ~~of~~ s. 376.30713.

(p) ~~(q)~~ Enforcement of this section and ss. 376.30-376.317 by the Fish and Wildlife Conservation Commission. The department shall disburse moneys to the commission for such purpose.

The Inland Protection Trust Fund may only be used to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund in each fiscal year shall first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (n) ~~(o)~~ under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature before ~~prior to~~ making or providing for other disbursements from the fund. ~~Nothing in~~ This subsection does not ~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous wastes, except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is



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otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 are ~~shall be presumed~~ not ~~to be~~ excluded from eligibility pursuant to this section.

(5) SITE SELECTION AND CLEANUP CRITERIA.—

(a) The department shall adopt rules to establish priorities based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but need not be limited to:

1. The degree to which the public ~~human~~ health, safety, or welfare may be affected by exposure to the contamination;

2. The size of the population or area affected by the contamination;

3. The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and

4. The effect of the contamination on water resources and the environment.

Moneys in the fund shall then be obligated for activities described in paragraphs (4)(a)-(e) at individual sites pursuant to ~~in accordance with~~ such established criteria. However, ~~nothing in this paragraph does not shall be construed to~~ restrict the department from modifying the priority status of a rehabilitation site where conditions warrant, taking into consideration the actual distance between the contamination site and groundwater or surface water receptors or other factors that



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affect the risk of exposure to petroleum products' chemicals of concern. The department may use the effective date of a department final order granting eligibility pursuant to subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to establish a prioritization system within a particular priority scoring range.

(b) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program are ~~may be deemed~~ completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of water resources, ~~human health and safety and~~ the environment, and the public health, safety, and welfare in a cost-effective manner as provided in this subsection. Criteria for determining what constitutes a rehabilitation program task or completion of site rehabilitation program tasks and site rehabilitation programs shall be based upon the factors set forth in paragraph (a) and the following additional factors:

1. The current exposure and potential risk of exposure to humans and the environment including multiple pathways of exposure.

2. The appropriate point of compliance with cleanup target levels for petroleum products' chemicals of concern. The point of compliance shall be at the source of the petroleum



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contamination. However, the department may ~~is authorized to~~ temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may also ~~is authorized,~~ pursuant to criteria provided for in this paragraph, ~~to~~ temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume and if water resources, provided human health, public safety, and the environment, and the public health, safety, and welfare are adequately protected. Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, must ~~shall~~ include notice to local governments and owners of any property into which the point of compliance is allowed to extend.

3. The appropriate site-specific cleanup goal. The site-specific cleanup goal shall be that all petroleum contamination sites ultimately achieve the applicable cleanup target levels provided in this paragraph. However, the department may ~~is authorized to~~ allow concentrations of the petroleum products' chemicals of concern to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if water resources provided human health, public safety, and the environment, and the public health, welfare, and safety are adequately protected.

4. The appropriateness of using institutional or



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engineering controls. Site rehabilitation programs may include the use of institutional or engineering controls to eliminate the potential exposure to petroleum products' chemicals of concern to humans or the environment. Use of such controls must ~~have prior department approval be preapproved by the department,~~ and may ~~institutional controls shall~~ not be acquired with moneys ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional or engineering controls are implemented to control exposure, the removal of such controls must have prior department approval and must be accompanied immediately by the resumption of active cleanup, or other approved controls, unless cleanup target levels pursuant to this paragraph have been achieved.

5. The additive effects of the petroleum products' chemicals of concern. The synergistic effects of petroleum products' chemicals of concern must ~~shall~~ also be considered when the scientific data becomes available.

6. Individual site characteristics that must ~~which shall~~ include, but not be limited to, the current and projected use of the affected groundwater in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

7. Applicable state water quality standards.

a. Cleanup target levels for petroleum products' chemicals of concern found in groundwater shall be the applicable state



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water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall consider the following, as appropriate, in establishing the applicable minimum criteria: calculations using a lifetime cancer risk level of $1.0E-6$; a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

b. Where surface waters are exposed to petroleum contaminated groundwater, the cleanup target levels for the petroleum products' chemicals of concern shall be based on the surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

8. Whether deviation from state water quality standards or from established criteria is appropriate. The department may issue a "No Further Action Order" based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost-effectively implemented within available technologies or engineering and institutional control strategies. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the said standard. In determining whether it is appropriate to establish alternate cleanup target levels at a site, the department may consider the effectiveness of source removal that has been completed at the site and the practical likelihood of: the use of low yield or poor quality



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groundwater; the use of groundwater near marine surface water bodies; the current and projected use of the affected groundwater in the vicinity of the site; or the use of groundwater in the immediate vicinity of the storage tank area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, if water resources, provided human health, public safety, and the environment, and the public health, safety, and welfare are adequately protected.

9. Appropriate cleanup target levels for soils.

a. In establishing soil cleanup target levels for human exposure to petroleum products' chemicals of concern found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration.

b. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil target levels established by the department. The leachability goals do not apply ~~shall not be applicable~~ if the department determines, based upon individual site characteristics, that petroleum products' chemicals of concern will not leach into the groundwater at levels which pose a threat to water resources, ~~human health and safety or the environment, or the public~~



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health, safety, or welfare.

~~However, nothing in~~ This paragraph does not ~~shall be construed~~
~~to~~ restrict the department from temporarily postponing
completion of any site rehabilitation program for which funds
are being expended whenever such postponement is ~~deemed~~
necessary in order to make funds available for rehabilitation of
a contamination site with a higher priority status.

(c) The department shall require source removal, if
warranted and cost-effective, at each site eligible for
restoration funding from the ~~Inland Protection Trust~~ fund.

1. Funding for free product recovery may be provided in
advance of the order established by the priority ranking system
under paragraph (a) for site cleanup activities. However, a
separate prioritization for free product recovery shall be
established consistent with paragraph (a). No more than \$5
million shall be encumbered from the ~~Inland Protection Trust~~
fund in any fiscal year for free product recovery conducted in
advance of the priority order under paragraph (a) established
for site cleanup activities.

2. Once free product removal and other source removal
identified in this paragraph are completed at a site, and
notwithstanding the order established by the priority ranking
system under paragraph (a) for site cleanup activities, the
department may reevaluate the site to determine the degree of
active cleanup needed to continue site rehabilitation. Further,
the department shall determine whether ~~if~~ the reevaluated site
qualifies for natural attenuation monitoring, long-term natural
attenuation monitoring, or no further action. If additional site



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rehabilitation is necessary to reach no further action status, the site rehabilitation shall be conducted in the order established by the priority ranking system under paragraph (a). The department shall use ~~utilize~~ natural attenuation monitoring strategies and, when cost-effective, transition sites eligible for restoration funding assistance to long-term natural attenuation monitoring where the plume is shrinking or stable and confined to the source property boundaries and the petroleum products' chemicals of concern meet the natural attenuation default concentrations, as defined by department rule. If the plume migrates beyond the source property boundaries, natural attenuation monitoring may be conducted pursuant to ~~in~~ ~~accordance with~~ department rule, or if the site no longer qualifies for natural attenuation monitoring, active remediation may be resumed. For long-term natural attenuation monitoring, if the petroleum products' chemicals of concern increase or are not significantly reduced after 42 months of monitoring, or if the plume migrates beyond the property boundaries, active remediation shall be resumed as necessary. For sites undergoing active remediation, the department shall evaluate ~~template~~ the cost of natural attenuation monitoring pursuant to s. 376.30711 to ensure that site mobilizations are performed in a cost-effective manner. Sites that are not eligible for state restoration funding may transition to long-term natural attenuation monitoring using the criteria in this subparagraph. ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site from pursuing a "No Further Action" order with conditions.

3. The department shall evaluate whether higher natural attenuation default concentrations for natural attenuation



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monitoring or long-term natural attenuation monitoring are cost-effective and would adequately protect water resources, public health and the environment, and the public health, safety, and welfare. The department shall also evaluate site-specific characteristics that would allow for higher natural attenuation or long-term natural attenuation concentration levels.

4. A local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor. All building permits and any construction, repairs, or renovations performed in conjunction with such permits must comply with the applicable provisions of chapters 489 and 553.

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

(a) Site rehabilitation work on sites that are eligible for state-funded cleanup from the fund pursuant to this section and ss. 376.305(6), 376.3072, and 376.3073 may be funded only pursuant to this section. A facility operator shall abate the source of discharge for a new release that occurred after March 29, 1995. If free product is present, the operator shall notify the department, and the department may direct the removal of the free product. The department shall grant approval to continue site rehabilitation pursuant to this section.

(b) When contracting for site rehabilitation activities performed under the Petroleum Restoration Program, the department shall comply with competitive procurement



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requirements provided in chapter 287 or rules adopted under this section or s. 287.0595. A competitive solicitation issued pursuant to this section is not subject to s. 287.055, s. 287.057(17)(c), or s. 287.057(22).

(c) Each contractor performing site assessment and remediation activities for state-funded sites under this section shall certify to the department that the contractor meets all certification and license requirements imposed by law. Each contractor shall certify to the department that the contractor meets the following minimum qualifications:

1. Complies with applicable Occupational Safety and Health Administration regulations.

2. Maintains workers' compensation insurance for employees as required by the Florida Workers' Compensation Law.

3. Maintains comprehensive general liability and comprehensive automobile liability insurance with minimum limits of at least \$1 million per occurrence and \$1 million annual aggregate to pay claims for damage for personal injury, including accidental death, as well as claims for property damage that may arise from performance of work under the program, which insurance designates the state as an additional insured party.

4. Maintains professional liability insurance of at least \$1 million per occurrence and \$1 million annual aggregate.

5. Has the capacity to perform or directly supervise the majority of the rehabilitation work at a site pursuant to s. 489.113(9).

(d) The department shall allow existing master service agreements in which the property owner or responsible party may



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select a competitively procured contractor to remain in place in the Petroleum Restoration Program.

(e) The department rules implementing this section must specify that only qualified vendors may submit responses on a competitive solicitation. The department rules must also include procedures for the rejection of vendors not meeting the minimum qualifications on the opening of a competitive solicitation and requirements for a vendor to maintain its qualifications in order to enter contracts or perform rehabilitation work.

(f) A contractor that performs services pursuant to this subsection may file invoices for payment with the department for the services described in the approved contract. The invoices for payment must be submitted to the department on forms provided by the department, together with evidence documenting that activities were conducted or completed pursuant to the approved contract. If there are sufficient unencumbered funds available in the fund which have been appropriated for expenditure by the Legislature and if all of the terms of the approved contract have been met, invoices for payment must be paid pursuant to s. 215.422. After a contractor has submitted its invoices to the department, and before payment is made, the contractor may assign its right to payment to another person without recourse of the assignee or assignor to the state. In such cases, the assignee must be paid pursuant to s. 215.422. Prior notice of the assignment and assignment information must be made to the department and must be signed and notarized by the assigning party.

(g) The contractor shall submit an invoice to the department within 30 days after the date of the department's



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written acceptance of each interim deliverable or written approval of the final deliverable specified in the approved contract.

(h) The department shall make payments based on the terms of an approved contract for site rehabilitation work. The department may, based on its experience and the past performance and concerns regarding a contractor, retain up to 25 percent of the contracted amount or use performance bonds to ensure performance. The amount of retainage and the amount of performance bonds, as well as the terms and conditions for such, must be included in the approved contract.

(i) The contractor or the person to which the contractor has assigned its right to payment pursuant to paragraph (e) shall make prompt payment to subcontractors and suppliers for their costs associated with an approved contract pursuant to s. 287.0585(1).

(j) The exemption under s. 287.0585(2) does not apply to payments associated with an approved contract.

(k) The department may withhold payment if the validity or accuracy of a contractor's invoices or supporting documents is in question.

(l) This section does not authorize payment to a person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described by department rules.

(m) The department shall terminate or suspend a contractor's eligibility for participation in the program if the



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contractor fails to perform its contractual duties for site
rehabilitation program tasks.

(n) A site owner or operator, or his or her designee, may
not receive any remuneration, in cash or in kind, directly or
indirectly, from a rehabilitation contractor performing site
cleanup activities pursuant to this section.

(7) ~~(6)~~ FUNDING.—The Inland Protection Trust Fund shall be
funded as follows:

(a) All excise taxes levied, collected, and credited to the
fund in accordance with ~~the provisions of~~ ss. 206.9935(3) and
206.9945(1) (c) .

(b) All penalties, judgments, recoveries, reimbursements,
and other fees and charges credited to the fund pursuant to ~~in~~
~~accordance with the provisions of~~ subsection (3) .

(8) ~~(7)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND
REIMBURSEMENT.—

(a) Except as provided in subsection (10) ~~(9)~~ and as
otherwise provided by law, the department shall recover to the
use of the fund from a person or persons at any time causing or
having caused the discharge or from the Federal Government,
jointly and severally, all sums owed or expended from the fund,
pursuant to s. 376.308, except that the department may decline
to pursue such recovery if it finds the amount involved too
small or the likelihood of recovery too uncertain. Sums
recovered as a result of damage due to a discharge related to
the storage of petroleum or petroleum products or other similar
disaster shall be apportioned between the fund and the General
Revenue Fund so as to repay the full costs to the General
Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such



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disaster. ~~A Any~~ request for reimbursement to the fund for such costs, if not paid within 30 days after ~~of~~ demand, shall be turned over to the department for collection.

(b) Except as provided in subsection (10) ~~(9)~~ and as otherwise provided by law, it is the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup and abatement pursuant to ~~in accordance with the provisions of this section or s. 376.3073, unless the department finds the amount involved too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall begin ~~commence~~ on the last date on which ~~any~~ such sums were expended,~~ and not the date on which ~~that~~ the discharge occurred. The department's claim for recovery of payments or overpayments from the fund must be based on the law in existence at the time of the payment or overpayment.

(c) If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party cannot ~~is~~ financially ~~unable to~~ undertake complete restoration of the contaminated site, that the current property owner was not responsible for the discharge when the contamination first occurred, or that the state's interest can best be served by conducting cleanup, the department may enter into an agreement with the responsible party or property owner whereby the department agrees to conduct site rehabilitation and the responsible party or property owner agrees to pay for the portion of the cleanup costs that are within such party's or owner's financial capabilities as determined by the department,



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taking into consideration the party's or owner's net worth and the economic impact on the party or owner.

(9)~~(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under this section and s. 376.3073 shall be deposited with the Chief Financial Officer to the credit of the fund and may be invested in such manner as ~~is provided for~~ by law statute. The interest received on such investment shall be credited to the fund. Any provisions of law to the contrary notwithstanding, such interest may be freely transferred between the ~~this~~ trust fund and the Water Quality Assurance Trust Fund, in the discretion of the department.

(10)~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage early detection, reporting, and cleanup of contamination from leaking petroleum storage systems, the department shall, within the guidelines established in this subsection, conduct an incentive program that provides ~~which shall provide~~ for a 30-month grace period ending on December 31, 1988. ~~Pursuant thereto:~~

(a) The department shall establish reasonable requirements for the written reporting of petroleum contamination incidents and shall distribute forms to registrants under s. 376.303(1)(b) and to other interested parties upon request to be used for such purpose. Until such forms are available for distribution, the department shall take reports of such incidents, however made, but shall notify any person making such a report that a complete written report of the incident will be required by the department at a later time, the form for which will be provided by the department.



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(b) When reporting forms become available for distribution, all sites involving incidents of contamination from petroleum storage systems initially reported to the department at any time from midnight on June 30, 1986, to midnight on December 31, 1988, shall be qualified sites ~~if, provided that such~~ a complete written report is filed with respect thereto within a reasonable time. Subject to the delays which may occur as a result of the prioritization of sites under paragraph (5)(a) for any qualified site, costs for activities described in paragraphs (4)(a)-(e) shall be absorbed at the expense of the fund, without recourse to reimbursement or recovery, with the following exceptions:

1. ~~The provisions of~~ This subsection does ~~shall~~ not apply to a ~~any~~ site where the department has been denied site access to implement ~~the provisions of~~ this section.

2. ~~The provisions of~~ This subsection does ~~shall~~ not ~~be construed to~~ authorize or require reimbursement from the fund for costs expended before ~~prior to~~ the beginning of the grace period, ~~except as provided in subsection (12).~~

3.a. Upon discovery by the department that the owner or operator of a petroleum storage system has been grossly negligent in the maintenance of such petroleum storage system; has, with willful intent to conceal the existence of a serious discharge, falsified inventory or reconciliation records maintained with respect to the site at which such system is located; or has intentionally damaged such petroleum storage system, the site at which such system is located shall be ineligible for participation in the incentive program and the owner shall be liable for all costs due to discharges from petroleum storage systems at that site, any other provisions of



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chapter 86-159, Laws of Florida, to the contrary notwithstanding. For the purposes of this paragraph, willful failure to maintain inventory and reconciliation records, willful failure to make monthly monitoring system checks where such systems are in place, and failure to meet monitoring and retrofitting requirements within the schedules established under chapter 62-761, Florida Administrative Code, or violation of similar rules adopted by the department under this chapter, constitutes ~~shall be construed to be~~ gross negligence in the maintenance of a petroleum storage system.

b. The department shall redetermine the eligibility of petroleum storage systems for which a timely Early Detection Incentive Program ~~EDI~~ application was filed, but which were deemed ineligible by the department, under the following conditions:

(I) The owner or operator, on or before March 31, 1991, shall submit, in writing, notification that the storage system is now in compliance with department rules adopted pursuant to s. 376.303, and which requests the department to reevaluate the storage system eligibility; and

(II) The department verifies the storage system compliance based on a compliance inspection.

~~Provided, however, that~~ A site may be determined eligible by the department for good cause shown, including, but not limited to, demonstration by the owner or operator that to achieve compliance would cause an increase in the potential for the spread of the contamination.

c. Redetermination of eligibility pursuant to sub-



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subparagraph b. shall not be available to:

(I) Petroleum storage systems owned or operated by the Federal Government.

(II) Facilities that denied site access to the department.

(III) Facilities where a discharge was intentionally concealed.

(IV) Facilities that were denied eligibility due to:

(A) Absence of contamination, unless any such facility subsequently establishes that contamination did exist at that facility on or before December 31, 1988.

(B) Contamination from substances that were not petroleum or a petroleum product.

(C) Contamination that was not from a petroleum storage system.

d. ~~EDI~~ Applicants who demonstrate compliance for a site pursuant to sub-subparagraph b. are eligible for the Early Detection Incentive Program and site rehabilitation funding pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.

If, in order to avoid prolonged delay, the department in its discretion deems it necessary to expend sums from the fund to cover ineligible sites or costs as set forth in this paragraph, the department may do so and seek recovery and reimbursement therefor in the same manner and pursuant to ~~in accordance with~~ the same procedures ~~as are~~ established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(c) A ~~No~~ report of a discharge made to the department by a ~~any~~ person pursuant to ~~in accordance with~~ this subsection, or



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any rules adopted promulgated pursuant to this subsection may not ~~hereto, shall~~ be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(d) ~~The provisions of~~ This subsection does ~~shall~~ not apply to petroleum storage systems owned or operated by the Federal Government.

(11) ~~(10)~~ VIOLATIONS; PENALTY.—~~A It is unlawful for any~~ person may not ~~to~~:

(a) Falsify inventory or reconciliation records maintained in compliance with chapters 62-761 and 62-762, Florida Administrative Code, with willful intent to conceal the existence of a serious leak; or

(b) Intentionally damage a petroleum storage system.

A ~~Any~~ person convicted of such a violation commits ~~shall be~~ ~~guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) ~~(11)~~ SITE CLEANUP.—

(a) *Voluntary cleanup.*—This section does not prohibit a person from conducting site rehabilitation ~~either~~ through his or her own personnel or through responsible response action contractors or subcontractors when such person is not seeking site rehabilitation funding from the fund. Such voluntary cleanups must meet all applicable environmental standards.

(b) *Low-scored site initiative.*—Notwithstanding subsections (5) and (6) ~~s. 376.30711~~, a ~~any~~ site with a priority ranking score of 29 points or less may voluntarily participate in the low-scored site initiative regardless of, whether ~~or not~~ the



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site is eligible for state restoration funding.

1. To participate in the low-scored site initiative, the responsible party or property owner must affirmatively demonstrate that the following conditions are met:

a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.

b. ~~No~~ Excessively contaminated soil, as defined by department rule, does not exist ~~exists~~ onsite as a result of a release of petroleum products.

c. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

e. The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated.

f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human exposure is limited by appropriate institutional or engineering controls.

2. Upon affirmative demonstration of the conditions under subparagraph 1., the department shall, with the written consent of the responsible party or property owner, issue a determination of "No Further Action." Such determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to water resources, ~~human~~



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~~health or the environment, or the public health, safety, or~~
~~welfare.~~ If no contamination is detected, the department may
issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding
may receive payment of ~~preapproved~~ costs for the low-scored site
initiative as follows:

a. A responsible party or property owner may submit an
assessment plan designed to affirmatively demonstrate that the
site meets the conditions under subparagraph 1. Notwithstanding
the priority ranking score of the site, the department may
~~approve preapprove~~ the cost of the assessment ~~pursuant to s.~~
~~376.30711~~, including 6 months of groundwater monitoring, not to
exceed \$30,000 for each site. The department may not pay the
costs associated with the establishment of institutional or
engineering controls.

b. The assessment work shall be completed no later than 6
months after the department issues its approval.

c. No more than \$10 million for the low-scored site
initiative may be encumbered from the ~~Inland Protection Trust~~
fund in any fiscal year. Funds shall be made available on a
first-come, first-served basis and shall be limited to 10 sites
in each fiscal year for each responsible party or property
owner.

d. Program deductibles, copayments, and the limited
contamination assessment report requirements under paragraph
(13)(c) do not apply to expenditures under this paragraph.

~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES. Except as provided~~
~~in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall~~
~~not apply to any site rehabilitation program task initiated~~



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~~after March 29, 1995. Effective August 1, 1996, no further site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s. 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date; provided, however if an application filed on or prior to January 3, 1997, was returned by the department on the grounds of untimely filing, it shall be refiled within 30 days after the effective date of this act in order to be processed.~~

~~(a) Legislative findings. The Legislature finds and declares that rehabilitation of contamination sites should be conducted in a manner and to a level of completion which will protect the public health, safety, and welfare and will minimize damage to the environment.~~

~~(b) Conditions.—~~



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~~1. The owner, operator, or his or her designee of a site which is eligible for restoration funding assistance in the EDI, PLRIP, or ATRP programs shall be reimbursed from the Inland Protection Trust Fund of allowable costs at reasonable rates incurred on or after January 1, 1985, for completed program tasks as identified in the department rule promulgated pursuant to paragraph (5) (b), or uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, subject to the conditions in this section. It is unlawful for a site owner or operator, or his or her designee, to receive any remuneration, in cash or in kind, directly or indirectly from the rehabilitation contractor.~~

~~2. Nothing in this subsection shall be construed to authorize reimbursement to any person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described in department rules.~~

~~(c) Legislative intent. Due to the value of the potable water of this state, it is the intent of the Legislature that the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector, recognizing that source removal, wherever it is technologically feasible and cost-effective, shall be considered the primary initial response to protect public health, safety, and the environment.~~

~~(d) Amount of reimbursement. The department shall reimburse actual and reasonable costs for site rehabilitation. The department shall not reimburse interest on the amount of~~



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~~reimbursable costs for any reimbursement application. However, nothing herein shall affect the department's authority to pay interest authorized under prior law.~~

~~(e) Records. The person responsible for conducting site rehabilitation, or his or her agent, shall keep and preserve suitable records as follows:~~

~~1. Hydrological and other site investigations and assessments; site rehabilitation plans; contracts and contract negotiations; and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving costs actually incurred related to site rehabilitation. Such records shall be made available upon request to agents and employees of the department during regular business hours and at other times upon written request of the department.~~

~~2. In addition, the department may from time to time request submission of such site-specific information as it may require, unless a waiver or variance from such department request is granted pursuant to paragraph (k).~~

~~3. All records of costs actually incurred for cleanup shall be certified by affidavit to the department as being true and correct.~~

~~(f) Application for reimbursement. Any eligible person who performs a site rehabilitation program or performs site rehabilitation program tasks such as preparation of site rehabilitation plans or assessments; product recovery; cleanup of groundwater or inland surface water; soil treatment or removal; or any other tasks identified by department rule developed pursuant to subsection (5), may apply for~~



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~~reimbursement. Such applications for reimbursement must be submitted to the department on forms provided by the department, together with evidence documenting that site rehabilitation program tasks were conducted or completed in accordance with department rule developed pursuant to subsection (5), and other such records or information as the department requires. The reimbursement application and supporting documentation shall be examined by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. A copy of the accountant's report shall be submitted with the reimbursement application. Applications for reimbursement shall not be approved for site rehabilitation program tasks which have not been completed, except for the task of remedial action and except for uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, and this subsection. Applications for remedial action may be submitted semiannually at the discretion of the person responsible for cleanup. After an applicant has filed an application with the department and before payment is made, the applicant may assign the right to payment to any other person, without recourse of the assignee or assignor to the state, without affecting the order in which payment is made. Information necessary to process the application shall be requested from and provided by the assigning applicant. Proper notice of the assignment and assignment information shall be made to the department which notice shall be signed and notarized by the assigning applicant.~~

~~(g) Review.—~~

~~1. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund, or to the extent~~



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~~proceeds of debt obligations are available for the payment of existing reimbursement obligations pursuant to s. 376.3075, the department shall have 60 days to determine if the applicant has provided sufficient information for processing the application and shall request submission of any additional information that the department may require within such 60-day period. If the applicant believes any request for additional information is not authorized, the applicant may request a hearing pursuant to ss. 120.569 and 120.57. Once the department requests additional information, the department may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information.~~

~~2. The department shall deny or approve the application for reimbursement within 90 days after receipt of the last item of timely requested additional material, or, if no additional material is requested, within 90 days of the close of the 60-day period described in subparagraph 1., unless the total review period is otherwise extended by written mutual agreement of the applicant and the department.~~

~~3. Final disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the department fails to make a determination on an application within the time provided in subparagraph 2., or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing pursuant to ss. 120.569 and 120.57.~~

~~(h) Reimbursement. Upon approval of an application for~~



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~~reimbursement, reimbursement for reasonable expenditures of a site rehabilitation program or site rehabilitation program tasks documented therein shall be made in the order in which the department receives completed applications. Effective January 1, 1997, all unpaid reimbursement applications are subject to payment on the following terms: The department shall develop a schedule of the anticipated dates of reimbursement of applications submitted to the department pursuant to this subsection. The schedule shall specify the projected date of payment based on equal monthly payments and projected annual revenue of \$100 million. Based on the schedule, the department shall notify all reimbursement applicants of the projected date of payment of their applications. The department shall direct the Inland Protection Financing Corporation to pay applicants the present value of their applications as soon as practicable after approval by the department, subject to the availability of funds within the Inland Protection Financing Corporation. The present value of an application shall be based on the date on which the department anticipates the Inland Protection Financing Corporation will settle the reimbursement application and the schedule's projected date of payment and shall use 3.5 percent as the annual discount rate. The determination of the amount of the claim and the projected date of payment shall be subject to s. 120.57.~~

~~(i) Liberal construction. With respect to site rehabilitation initiated prior to July 1, 1986, the provisions of this subsection shall be given such liberal construction by the department as will accomplish the purposes set forth in this subsection. With regard to the keeping of particular records or~~



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~~the giving of certain notice, the department may accept as compliance action by a person which meets the intent of the requirements set forth in this subsection.~~

~~(j) Reimbursement review contracts. The department may contract with entities capable of processing or assisting in the review of reimbursement applications. Any purchase of such services shall not be subject to chapter 287.~~

~~(k) Audits.—~~

~~1. The department is authorized to perform financial and technical audits in order to certify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayments based on the findings of these audits. The department must commence any audit within 5 years after the date of reimbursement, except in cases where the department alleges specific facts indicating fraud.~~

~~2. Upon determination by the department that any portion of costs which have been reimbursed are disallowed, the department shall give written notice to the applicant setting forth with specificity the allegations of fact which justify the department's proposed action and ordering repayment of disallowed costs within 60 days of notification of the applicant.~~

~~3. In the event the applicant does not make payment to the department within 60 days of receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover reimbursement overpayments made to the person responsible for conducting site rehabilitation, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.~~



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~~4. In addition to the amount of any overpayment, the applicant shall be liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of overpayment, from the date of overpayment by the department until the applicant satisfies the department's request for repayment pursuant to this paragraph. The calculation of interest shall be tolled during the pendency of any litigation.~~

~~5. Financial and technical audits frequently are conducted under this section many years after the site rehabilitation activities were performed and the costs examined in the course of the audit were incurred by the person responsible for site rehabilitation. During the intervening span of years, the department's rule requirements and its related guidance and other nonrule policy directives may have changed significantly. The Legislature finds that it may be appropriate for the department to provide relief to persons subject to such requirements in financial and technical audits conducted pursuant to this section.~~

~~a. The department is authorized to grant variances and waivers from the documentation requirements of subparagraph (c)2. and from the requirements of rules applicable in technical and financial audits conducted under this section. Variances and waivers shall be granted when the person responsible for site rehabilitation demonstrates to the department that application of a financial or technical auditing requirement would create a substantial hardship or would violate principles of fairness. For purposes of this subsection, "substantial hardship" means a demonstrated economic, technological, legal, or other type of~~



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~~hardship to the person requesting the variance or waiver. For purposes of this subsection, "principles of fairness" are violated when the application of a requirement affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are affected by the requirement or when the requirement is being applied retroactively without due notice to the affected parties.~~

~~b. A person whose reimbursed costs are subject to a financial and technical audit under this section may file a written request to the department for grant of a variance or waiver. The request shall specify:~~

~~(I) The requirement from which a variance or waiver is requested.~~

~~(II) The type of action requested.~~

~~(III) The specific facts which would justify a waiver or variance.~~

~~(IV) The reason or reasons why the requested variance or waiver would serve the purposes of this section.~~

~~e. Within 90 days after receipt of a written request for variance or waiver under this subsection, the department shall grant or deny the request. If the request is not granted or denied within 90 days of receipt, the request shall be deemed approved. An order granting or denying the request shall be in writing and shall contain a statement of the relevant facts and reasons supporting the department's action. The department's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Once adopted, model rules promulgated by the Administration Commission under s. 120.542 shall govern the~~



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~~processing of requests under this provision.~~

~~6. The Chief Financial Officer may audit the records of persons who receive or who have received payments pursuant to this chapter in order to verify site restoration costs, ensure compliance with this chapter, and verify the accuracy and completeness of audits performed by the department pursuant to this paragraph. The Chief Financial Officer may contract with entities or persons to perform audits pursuant to this subparagraph. The Chief Financial Officer shall commence any audit within 1 year after the department's completion of an audit conducted pursuant to this paragraph, except in cases where the department or the Chief Financial Officer alleges specific facts indicating fraud.~~

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement. Eligibility is ~~shall be~~ subject to an annual appropriation from the ~~Inland Protection Trust~~ fund. Additionally, funding for eligible sites is ~~shall be~~ contingent upon annual appropriation in subsequent years. Such continued state funding is ~~shall~~ not be deemed an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, ~~shall be~~ notwithstanding any other provision of



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law, consent order, order, judgment, or ordinance to the contrary.

(a)1. The department shall accept any discharge reporting form received before ~~prior to~~ January 1, 1995, as an application for this program, and the facility owner or operator need not reapply.

2. Owners or operators of property contaminated by petroleum or petroleum products from a petroleum storage system may apply for such program by filing a written report of the contamination incident, including evidence that such incident occurred before ~~prior to~~ January 1, 1995, with the department. Incidents of petroleum contamination discovered after December 31, 1994, at sites which have not stored petroleum or petroleum products for consumption, use, or sale after such date shall be presumed to have occurred before ~~prior to~~ January 1, 1995. An operator's filed report shall be ~~deemed~~ an application of the owner for all purposes. Sites reported to the department after December 31, 1998, are ~~shall not be~~ eligible for the ~~this~~ program.

(b) Subject to annual appropriation from the ~~Inland Protection Trust~~ fund, sites meeting the criteria of this subsection are eligible for up to \$400,000 of site rehabilitation funding assistance in priority order pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before ~~prior to~~ June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site



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rehabilitation completion order was not issued before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section ~~s. 376.30711~~ until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. The department may not pay ~~At no time shall~~ expenses incurred beyond ~~outside~~ the scope of an approved contract ~~preapproved site rehabilitation program under s. 376.30711~~ be reimbursable.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~, the owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a Petroleum Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement with the department ~~and a contractor qualified under s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~ comply with the copayment and limited contamination assessment report requirements. The department shall take into



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consideration the owner's and operator's net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot ~~are unable to~~ complete negotiation of the cost-sharing agreement within 120 days after beginning ~~commencing~~ negotiations, the department shall terminate negotiations, and the site shall be ~~deemed~~ ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

(d) ~~A~~ No report of a discharge made to the department by a ~~any~~ person pursuant to ~~in accordance with~~ this subsection, or any rules adopted pursuant to this subsection may not hereto, ~~shall~~ be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(e) ~~Nothing in~~ This subsection does not ~~shall be construed~~ to preclude the department from pursuing penalties under ~~in accordance with~~ s. 403.141 for violations of any law or any rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

(f) Upon the filing of a discharge reporting form under paragraph (a), ~~neither~~ the department or ~~nor any~~ local government may not ~~shall~~ pursue any judicial or enforcement action to compel rehabilitation of the discharge. This paragraph does ~~shall~~ not prevent any such action with respect to discharges determined ineligible under this subsection or to sites for which rehabilitation funding assistance is available pursuant to subsections ~~in accordance with subsection~~ (5) and (6) ~~s. 376.30711.~~



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(g) The following are ~~shall be~~ excluded from participation in the program:

1. Sites at which the department has been denied reasonable site access to implement ~~the provisions of~~ this section.

2. Sites that were active facilities when owned or operated by the Federal Government.

3. Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.

4. Sites for which ~~The~~ contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program, or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program.

(14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Before ~~Prior~~ ~~to~~ the department enters ~~entering~~ into a service contract with the Inland Protection Financing Corporation which includes payments by the department to support any existing or planned note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness of the corporation pursuant to s. 376.3075, the Legislature, by law, must specifically authorize the department to enter into such a contract. The corporation may issue bonds in an amount not to exceed \$104 million, with a term up to 15 years, and annual payments not in excess of \$10.4 million. The department may enter into a service contract in



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conjunction with the issuance of such bonds which provides for annual payments for debt service payments or other amounts payable with respect to bonds, plus any administrative expenses of the corporation to finance the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317.

Section 2. Section 376.30711, Florida Statutes, is repealed.

Section 3. Section 376.30713, Florida Statutes, is amended to read:

376.30713 ~~Preapproved~~ Advanced cleanup.—

(1) In addition to the legislative findings provided in s. 376.3071 ~~s. 376.30711~~, the Legislature finds and declares:

(a) That the inability to conduct site rehabilitation in advance of a site's priority ranking pursuant to s. 376.3071(5) (a) may substantially impede or prohibit property transactions or the proper completion of public works projects.

(b) While the first priority of the state is to provide for protection of ~~the water resources of the state, human health, and the environment,~~ and the public health, safety, and welfare, the viability of commerce is of equal importance to the state.

(c) It is in the public interest and of substantial economic benefit to the state to provide an opportunity for site rehabilitation to be conducted on a limited basis at contaminated sites, in advance of the site's priority ranking, to facilitate property transactions or public works projects.

(d) It is appropriate for a person who is ~~persons~~ responsible for site rehabilitation to share the costs associated with managing and conducting ~~preapproved~~ advanced cleanup, to facilitate the opportunity for ~~preapproved~~ advanced



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cleanup, and to mitigate the additional costs that will be incurred by the state in conducting site rehabilitation in advance of the site's priority ranking. Such cost sharing will result in more contaminated sites being cleaned up and greater environmental benefits to the state. ~~The provisions of This section is shall only be available only~~ for sites eligible for restoration funding under EDI, ATRP, or PLRIP ~~PLIRP~~. This section is available for discharges eligible for restoration funding under the petroleum cleanup participation program for the state's cost share of site rehabilitation. Applications must ~~shall~~ include a cost-sharing commitment for this section in addition to the 10 percent copayment ~~25-percent-copayment~~ requirement of the petroleum cleanup participation program. This section is not available for any discharge under a petroleum cleanup participation program where the 10 percent copayment ~~25-percent-copayment~~ requirement of the petroleum cleanup participation program has been reduced or eliminated pursuant to s. 376.3071(13)(c).

(2) The department may ~~is authorized to~~ approve an application for ~~preapproved~~ advanced cleanup at eligible sites, before ~~prior to~~ funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to ~~in accordance with the provisions of this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies~~ Persons who qualify as an applicant under ~~the provisions of this section shall only include the facility owner or operator or the person otherwise responsible for site rehabilitation.~~

(a) ~~Preapproved~~ Advanced cleanup applications may be



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submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 shall be for the fiscal year beginning July 1. An application must ~~shall~~ consist of:

1. A commitment to pay 10 ~~no less than 25~~ percent or more of the total cleanup cost deemed recoverable under ~~the provisions of~~ this section along with proof of the ability to pay the cost share.

2. A nonrefundable review fee of \$250 to cover the administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

The limited contamination assessment report must ~~shall~~ be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. ~~Any~~ Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection, ~~or~~ any other provision of this section is, ~~shall~~ not constitute an entitlement to ~~preapproved~~ advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an ~~a preapproved~~ advanced cleanup contract with the department. ~~The~~ This certification must ~~shall~~ be submitted with the application.

(b) The department shall rank the applications based on the percentage of cost-sharing commitment proposed by the applicant,



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with the highest ranking given to the applicant who ~~that~~ proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that ~~which~~ exceed the funds available to commit to all such proposals during the ~~preapproved~~ advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical cost-sharing proposals that ~~which~~ exceed funding availability must ~~shall~~ be so notified by the department and ~~shall be~~ offered the opportunity to raise their individual cost-share commitments, in a period ~~of time~~ specified in the notice. At the close of the period, the department shall proceed to rerank the applications pursuant to ~~in accordance with~~ this paragraph.

(3) (a) Based on the ranking established under paragraph (2) (b) ~~and the funding limitations provided in subsection (4),~~ the department shall begin ~~commence~~ negotiation with such applicants. If the department and the applicant agree on the course of action, the department may enter into a contract with the applicant. The department may ~~is authorized to~~ negotiate the terms and conditions of the contract.

(b) ~~Preapproved~~ Advanced cleanup must ~~shall~~ be conducted pursuant to s. 376.3071(5) (b) and (6) and rules adopted under ss. 287.0595 and 376.3071 ~~under the provisions of ss. 376.3071(5) (b) and 376.30711.~~ If the terms of the ~~preapproved~~ advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.

(c) The department's decision not to enter into an ~~a~~ ~~preapproved~~ advanced cleanup contract with the applicant is



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shall not be subject to the provisions of chapter 120. If the department ~~cannot~~ ~~is not able to~~ complete negotiation of the course of action and the terms of the contract within 60 days after beginning ~~commencing~~ negotiations, the department shall terminate negotiations with that applicant.

(4) The department may ~~is authorized to~~ enter into contracts for a total of up to \$15 million of ~~preapproved~~ advanced cleanup work in each fiscal year. However, a facility may not be approved ~~preapproved~~ for more than \$5 million of cleanup activity in each fiscal year. For the purposes of this section, the term "facility" includes ~~shall include~~, but is not ~~be~~ limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

(5) All funds collected by the department pursuant to this section shall be deposited into the Inland Protection Trust Fund to be used as provided in this section.

Section 4. Section 376.30717, Florida Statutes, is created to read:

376.30717 Petroleum Cleanup Program Council.—

(1) The Petroleum Cleanup Program Council, an advisory council as defined in s. 20.03, is created within the department.

(2) The council shall consist of seven members, appointed by September 1, 2014, as follows:

(a) A member appointed by the President of the Senate.

(b) A member appointed by the Speaker of the House of Representatives.



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(c) Five members appointed by the secretary of the department, including one representative of the Florida Petroleum Council, one representative of the Florida Groundwater Association, and two representatives of the Florida Petroleum Marketers and Convenience Store Association, Inc.

(3) Each member of the council shall be appointed to a 4-year term; however, for the purpose of providing staggered terms, of the initial appointments, 2 members shall be appointed to serve 2-year terms, 3 members shall be appointed to serve 3-year terms, and 2 members shall be appointed to serve 4-year terms. Notwithstanding s. 20.052, members serve without compensation and are not entitled to reimbursement for travel expenses.

(4) The chairman and the vice chairman shall be elected at the council's first meeting from the council membership and shall serve for up to 2 consecutive years.

(5) The council shall meet at least four times each year at locations determined by a vote of the majority of the members. The first meeting of the council shall occur no later than October 31, 2014. Any recommendation of the Petroleum Cleanup Program Council must be agreed upon by quorum, and a quorum consists of a majority of members.

(6) At the request of the department, the council shall assist in reviewing complaints made to the department relating to practices that are not in keeping with program policies, rules, and standard operating procedures and shall provide guidance and recommendations to the department on the petroleum cleanup program, including, but not limited to, business planning, scheduled training, conferences, operations,



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budgeting, procedures, rules, petroleum system requirements, and
compliance and site rehabilitation progress on individual sites.

(7) The department shall provide administrative support to
the council.

(8) The Petroleum Cleanup Program Council shall provide a
report to the President of the Senate, the Speaker of the House
of Representatives, and the secretary of the department by
December 1, 2015, and by December 1 of each year thereafter. The
report must include the council's recommendations to the
Legislature relating to changes to statutes, rules, policies,
procedures, appropriations, program operations, management,
administration, petroleum system compliance, and site
rehabilitation. Before making such recommendations, the council
shall solicit and receive testimony from the industry and state
agencies, departments, boards, or commissions regarding the
petroleum program, the obligations and expenditures of
appropriations, operations, management and administration, and
any relevant statistic or measurement necessary to evaluate the
progress and success of the petroleum program.

Section 5. Subsections (4) and (30) of section 376.301,
Florida Statutes, are amended to read:

376.301 Definitions of terms used in ss. 376.30-376.317,
376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
376.75, unless the context clearly requires otherwise, the term:

~~(4) "Backlog" means reimbursement obligations incurred
pursuant to s. 376.3071(12), prior to March 29, 1995, or
authorized for reimbursement under the provisions of s.
376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims
within the backlog are subject to adjustment, where appropriate.~~



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~~(30) "Person responsible for conducting site rehabilitation" means the site owner, operator, or the person designated by the site owner or operator on the reimbursement application. Mortgage holders and trust holders may be eligible to participate in the reimbursement program pursuant to s. 376.3071(12).~~

Section 6. Subsection (5) of section 376.302, Florida Statutes, is amended to read:

376.302 Prohibited acts; penalties.—

(5) Any person who commits fraud in representing his or her ~~their~~ qualifications as a contractor ~~for reimbursement~~ or in submitting a payment invoice ~~reimbursement request~~ pursuant to s. 376.3071 ~~s. 376.3071(12)~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 7. Subsection (6) of section 376.305, Florida Statutes, is amended to read:

376.305 Removal of prohibited discharges.—

(6) The Legislature created the Abandoned Tank Restoration Program in response to the need to provide financial assistance for cleanup of sites that have abandoned petroleum storage systems. For purposes of this subsection, the term "abandoned petroleum storage system" means a ~~shall mean any~~ petroleum storage system that has not stored petroleum products for consumption, use, or sale since March 1, 1990. The department shall establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:



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1. An application must be submitted to the department by June 30, 1996, certifying that the system has not stored petroleum products for consumption, use, or sale at the facility since March 1, 1990.

2. The owner or operator of the petroleum storage system when it was in service must have ceased conducting business involving consumption, use, or sale of petroleum products at that facility on or before March 1, 1990.

3. The site is not otherwise eligible for the cleanup programs pursuant to s. 376.3071 or s. 376.3072.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to ~~in accordance with~~ department rules before ~~prior to~~ an eligibility determination. However, if the department determines that the owner of the facility cannot ~~is~~ financially ~~unable to~~ comply with the department's petroleum storage system closure requirements and all other eligibility requirements are met, the petroleum storage system closure requirements shall be waived. The department shall take into consideration the owner's net worth and the economic impact on the owner in making the determination of the owner's financial ability. The June 30, 1996, application deadline shall be waived for owners who cannot ~~are~~ financially ~~unable to~~ comply.

(c) Sites accepted in the program are ~~will be~~ eligible for site rehabilitation funding as provided in s. 376.3071 ~~s. 376.3071(12) or s. 376.30711, as appropriate.~~

(d) The following sites are excluded from eligibility:

1. Sites on property of the Federal Government;
2. Sites contaminated by pollutants that are not petroleum



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products;

3. Sites where the department has been denied site access;
or

4. Sites which are owned by a ~~any~~ person who had knowledge of the polluting condition when title was acquired unless the ~~that~~ person acquired title to the site after issuance of a notice of site eligibility by the department.

(e) Participating sites are subject to a deductible as determined by rule, not to exceed \$10,000.

~~The provisions of~~ This subsection does ~~do~~ not relieve a ~~any~~ person who has acquired title after ~~subsequent to~~ July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s. 376.308(1)(c).

Section 8. Paragraph (a) of subsection (1) and subsections (3), (4), and (9) of section 376.30714, Florida Statutes, are amended to read:

376.30714 Site rehabilitation agreements.—

(1) In addition to the legislative findings provided in s. 376.3071, the Legislature finds and declares:

(a) The provisions of s. 376.3071(5)(a) ~~ss. 376.3071(5)(a) and 376.30711~~ have delayed cleanup of low-priority sites determined to be eligible for state funding under that section ~~and ss. 376.305, 376.3071, and 376.3072.~~

(3) Free product attributable to a new discharge shall be



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removed to the extent practicable and pursuant to ~~in accordance with~~ department rules adopted pursuant to s. 376.3071(5) at the expense of the owner, operator, or other responsible party. Free product attributable to existing contamination shall be removed pursuant to ~~in accordance with~~ s. 376.3071(5) and (6), ~~or s. 376.3071(1)(b),~~ and department rules adopted pursuant thereto.

(4) Beginning January 1, 1999, the department may ~~is authorized to~~ negotiate and enter into site rehabilitation agreements with applicants at sites with eligible existing contamination at which a new discharge occurs. The site rehabilitation agreement must ~~shall~~ include, but is not ~~be~~ limited to, allocation of the funding responsibilities of the department and the applicant for cleanup of the qualified site, establishment of a mechanism to guarantee the applicant's commitment to pay its agreed amount of site rehabilitation as set forth in the agreement, and establishment of the priority in which cleanup of the qualified site will occur. Under ~~any~~ such a negotiated site rehabilitation agreement, the applicant may not ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are attributable to the new discharge. However, the payment of ~~any~~ applicable deductibles, copayments, or other program eligibility requirements under ss. 376.305, 376.3071, and 376.3072 shall continue to apply to the existing contamination and must be accounted for in the negotiated site rehabilitation agreement. The department may ~~is further authorized,~~ pursuant to this section, ~~to preapprove or~~ conduct additional assessment activities at the site.

(9) Site rehabilitation conducted at qualified sites shall be conducted pursuant to s. 376.3071(5)(b) and (6) ~~under the~~



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~~provisions of ss. 376.3071(5)(b) and 376.30711.~~ If the terms of the agreement are not fulfilled by the applicant, the applicant forfeits the ~~any~~ right to continued funding for ~~any~~ site rehabilitation work under the agreement and is ~~shall be~~ subject to enforcement action by the department or local government to compel cleanup of the new discharge.

Section 9. Subsection (2) of section 376.3072, Florida Statutes, is amended to read:

376.3072 Florida Petroleum Liability and Restoration Insurance Program.—

(2)(a) An ~~Any~~ owner or operator of a petroleum storage system may become an insured in the restoration insurance program at a facility if ~~provided~~:

1. A site at which an incident has occurred is ~~shall be~~ eligible for restoration if the insured is a participant in the third-party liability insurance program or otherwise meets applicable financial responsibility requirements. After July 1, 1993, the insured must also provide the required excess insurance coverage or self-insurance for restoration to achieve the financial responsibility requirements of 40 C.F.R. s. 280.97, subpart H, not covered by paragraph (d).

2. A site that ~~which~~ had a discharge reported before ~~prior~~ to January 1, 1989, for which notice was given pursuant to s. 376.3071(10) ~~s. 376.3071(9) or (12)~~, and that ~~which~~ is ineligible for the third-party liability insurance program solely due to that discharge is ~~shall be~~ eligible for participation in the restoration program for an ~~any~~ incident occurring on or after January 1, 1989, pursuant to ~~in accordance with~~ subsection (3). Restoration funding for an eligible



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contaminated site will be provided without participation in the third-party liability insurance program until the site is restored as required by the department or until the department determines that the site does not require restoration.

3. Notwithstanding paragraph (b), a site where an application is filed with the department before ~~prior to~~ January 1, 1995, where the owner is a small business under s. 288.703(6), a state community college with less than 2,500 FTE, a religious institution as defined by s. 212.08(7)(m), a charitable institution as defined by s. 212.08(7)(p), or a county or municipality with a population of less than 50,000, is ~~shall be~~ eligible for up to \$400,000 of eligible restoration costs, less a deductible of \$10,000 for small businesses, eligible community colleges, and religious or charitable institutions, and \$30,000 for eligible counties and municipalities, if ~~provided that~~:

a. Except as provided in sub-subparagraph e., the facility was in compliance with department rules at the time of the discharge.

b. The owner or operator has, upon discovery of a discharge, promptly reported the discharge to the department, and drained and removed the system from service, if necessary.

c. The owner or operator has not intentionally caused or concealed a discharge or disabled leak detection equipment.

d. The owner or operator proceeds to complete initial remedial action as specified ~~defined~~ by department rules.

e. The owner or operator, if required and if it has not already done so, applies for third-party liability coverage for the facility within 30 days after ~~of~~ receipt of an eligibility



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order issued by the department pursuant to this subparagraph
~~provision~~.

However, the department may consider in-kind services from eligible counties and municipalities in lieu of the \$30,000 deductible. The cost of conducting initial remedial action as defined by department rules is ~~shall be~~ an eligible restoration cost pursuant to this subparagraph ~~provision~~.

4.a. By January 1, 1997, facilities at sites with existing contamination must ~~shall be required to~~ have methods of release detection to be eligible for restoration insurance coverage for new discharges subject to department rules for secondary containment. Annual storage system testing, in conjunction with inventory control, shall be considered to be a method of release detection until the later of December 22, 1998, or 10 years after the date of installation or the last upgrade. Other methods of release detection for storage tanks which meet such requirement are:

(I) Interstitial monitoring of tank and integral piping secondary containment systems;

(II) Automatic tank gauging systems; or

(III) A statistical inventory reconciliation system with a tank test every 3 years.

b. For pressurized integral piping systems, the owner or operator must use:

(I) An automatic in-line leak detector with flow restriction meeting the requirements of department rules used in conjunction with an annual tightness or pressure test; or

(II) An automatic in-line leak detector with electronic



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flow shut-off meeting the requirements of department rules.

c. For suction integral piping systems, the owner or operator must use:

(I) A single check valve installed directly below the suction pump ~~if, provided~~ there are no other valves between the dispenser and the tank; or

(II) An annual tightness test or other approved test.

d. Owners of facilities with existing contamination which ~~that~~ install internal release detection systems pursuant to ~~in accordance with~~ sub-subparagraph a. shall permanently close their external groundwater and vapor monitoring wells pursuant to ~~in accordance with~~ department rules by December 31, 1998. Upon installation of the internal release detection system, such ~~these~~ wells must ~~shall~~ be secured and taken out of service until permanent closure.

e. Facilities with vapor levels of contamination meeting the requirements of or below the concentrations specified in the performance standards for release detection methods specified in department rules may continue to use vapor monitoring wells for release detection.

f. The department may approve other methods of release detection for storage tanks and integral piping which have at least the same capability to detect a new release as the methods specified in this subparagraph.

(b)1. To be eligible to be certified as an insured facility, for discharges reported after January 1, 1989, the owner or operator must ~~shall~~ file an affidavit upon enrollment in the program. The affidavit must ~~shall~~ state that the owner or operator has read and is familiar with this chapter and the



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rules relating to petroleum storage systems and petroleum contamination site cleanup adopted pursuant to ss. 376.303 and 376.3071 and that the facility is in compliance with this chapter and applicable rules adopted pursuant to s. 376.303. Thereafter, the facility's annual inspection report shall serve as evidence of the facility's compliance with department rules. The facility's certificate as an insured facility may be revoked only if the insured fails to correct a violation identified in an inspection report before a discharge occurs. The facility's certification may be restored when the violation is corrected as verified by a reinspection.

2. Except as provided in paragraph (a), to be eligible to be certified as an insured facility, the applicant must demonstrate to the department that the applicant has financial responsibility for third-party claims and excess coverage, as required by this section and 40 C.F.R. s. 280.97(h), and that the applicant maintains such insurance during the applicant's participation as an insured facility.

3. Should a reinspection of the facility be necessary to demonstrate compliance, the insured shall pay an inspection fee not to exceed \$500 per facility to be deposited in the Inland Protection Trust Fund.

4. Upon report of a discharge, the department shall issue an order stating that the site is eligible for restoration coverage unless the insured has intentionally caused or concealed a discharge or disabled leak detection equipment, has misrepresented facts in the affidavit filed pursuant to subparagraph 1., or cannot demonstrate that he or she has obtained and maintained the financial responsibility for third-



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party claims and excess coverage as required in subparagraph 2.

This paragraph does not ~~Nothing contained herein shall~~ prevent the department from assessing civil penalties for noncompliance pursuant to this subsection ~~as provided herein.~~

(c) A lender that has loaned money to a participant in the Florida Petroleum Liability and Restoration Insurance Program and has held a mortgage lien, security interest, or ~~any~~ lien rights on the site primarily to protect the lender's right to convert or liquidate the collateral in satisfaction of the debt secured, or a financial institution ~~that~~ which serves as a trustee for an insured in the program for the purpose of site rehabilitation, ~~is shall be~~ eligible for a state-funded cleanup of the site, if the lender forecloses the lien or accepts a deed in lieu of foreclosure on that property and acquires title, and as long as the following has occurred, as applicable:

1. The owner or operator provided the lender with proof that the facility is eligible for the restoration insurance program at the time of the loan or before the discharge occurred.

2. The financial institution or lender ~~completes site rehabilitation and seeks reimbursement pursuant to s. 376.3071(12) or~~ conducts ~~preapproved~~ site rehabilitation pursuant to s. 376.3071 ~~s. 376.30711, as appropriate.~~

3. The financial institution or lender did not engage in management activities at the site ~~prior to~~ before foreclosure and does not operate the site or otherwise engage in management activities after foreclosure, except to comply with environmental statutes or rules or to prevent, abate, or



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remediate a discharge.

(d)1. With respect to eligible incidents reported to the department before ~~prior to~~ July 1, 1992, the restoration insurance program shall provide up to \$1.2 million of restoration for each incident and shall have an annual aggregate limit of \$2 million of restoration per facility.

2. For any site at which a discharge is reported on or after July 1, 1992, and for which restoration coverage is requested, the department shall pay for restoration in accordance with the following schedule:

a. For discharges reported to the department from July 1, 1992, to June 30, 1993, the department shall pay up to \$1.2 million of eligible restoration costs, less a \$1,000 deductible per incident.

b. For discharges reported to the department from July 1, 1993, to December 31, 1993, the department shall pay up to \$1.2 million of eligible restoration costs, less a \$5,000 deductible per incident. However, if, before ~~prior to~~ the date the discharge is reported and by September 1, 1993, the owner or operator can demonstrate financial responsibility in effect in accordance with 40 C.F.R. s. 280.97, subpart H, for coverage under sub-subparagraph c., the deductible will be \$500. The \$500 deductible shall apply for a period of 1 year from the effective date of a policy or other form of financial responsibility obtained and in effect by September 1, 1993.

c. For discharges reported to the department from January 1, 1994, to December 31, 1996, the department shall pay up to \$400,000 of eligible restoration costs, less a deductible of \$10,000.



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d. For discharges reported to the department from January 1, 1997, to December 31, 1998, the department shall pay up to \$300,000 of eligible restoration costs, less a deductible of \$10,000.

e. Beginning January 1, 1999, ~~no~~ restoration coverage may ~~not shall~~ be provided.

f. In addition, a supplemental deductible shall be added as follows:

(I) A supplemental deductible of \$5,000 if the owner or operator fails to report a suspected release within 1 working day after discovery.

(II) A supplemental deductible of \$10,000 if the owner or operator, within 3 days after discovery of an actual new discharge, fails to take steps to test or empty the storage system and complete such activity within 7 days.

(III) A supplemental deductible of \$25,000 if the owner or operator, after testing or emptying the storage system, fails to proceed within 24 hours thereafter to abate the known source of the discharge or to begin free product removal relating to an actual new discharge and fails to complete abatement within 72 hours, although free product recovery may be ongoing.

(e) The following are not eligible to participate in the Petroleum Liability and Restoration Insurance Program:

1. Sites owned or operated by the Federal Government during the time the facility was in operation.

2. Sites where the owner or operator has denied the department reasonable site access.

3. Any third-party claims relating to damages caused by discharges discovered before ~~prior to~~ January 1, 1989.



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4. Any incidents discovered before ~~prior to~~ January 1, 1989, ~~are not eligible to participate in the restoration insurance program.~~ However, this exclusion does ~~shall~~ not be ~~construed to~~ prevent a new incident at the same location from participation in the restoration insurance program if the owner or operator is otherwise eligible. This exclusion does ~~shall~~ not affect eligibility for participation in the Early Detection Incentive ~~EDI~~ Program.

Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before ~~prior to~~ June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to s. 376.3071(6) ~~s. 376.30711~~ until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. ~~At no time shall expenses incurred outside the preapproved site rehabilitation program under s. 376.30711 be reimbursable.~~

Section 10. Subsections (1) and (4) of section 376.3073, Florida Statutes, are amended to read:

376.3073 Local programs and state agency programs for control of contamination.—

(1) The department shall, to the greatest extent possible and cost-effective, contract with local governments to provide



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for the administration of its departmental responsibilities under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6) ~~(l), (n), 376.30711~~, 376.3072, and 376.3077 through locally administered programs. The department may also contract with state agencies to carry out the restoration activities authorized pursuant to ss. 376.305, 376.3071, and 376.3072, ~~376.305, and 376.30711~~. However, ~~no~~ a contract may not ~~shall~~ be entered into unless the local government or state agency is deemed capable of carrying out such responsibilities to the department's satisfaction.

(4) Under no circumstances shall the cleanup criteria employed in locally administered programs or state agency programs or pursuant to local ordinance be more stringent than the criteria established by the department pursuant to s. 376.3071(5) or (6) ~~s. 376.30711~~.

Section 11. Subsections (4) and (5) of section 376.3075, Florida Statutes, are amended to read:

376.3075 Inland Protection Financing Corporation.—

(4) The corporation may enter into one or more service contracts with the department to provide services to the department in connection with financing the functions and activities provided in ss. 376.30-376.317. The department may enter into one or more such service contracts with the corporation and provide for payments under such contracts pursuant to s. 376.3071(4)(n) ~~s. 376.3071(4)(e)~~, subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the corporation's administrative costs and expenses after payments as set forth in subsection (5). Each service contract may have a term of up to



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20 years. Amounts annually appropriated and applied to make payments under such service contracts may not include any funds derived from penalties or other payments received from any property owner or private party, including payments received under s. 376.3071(7)(b) ~~s. 376.3071(6)(b)~~. In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under such service contracts do not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state, and ~~nor may~~ such obligations are not obligations ~~be construed in any manner as an obligation~~ of the State Board of Administration or entities for which it invests funds, other than the department as provided in this section, but are payable solely from amounts available in the Inland Protection Trust Fund, subject to annual appropriation. In compliance with this subsection and s. 287.0582, the service contract must expressly include the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(5) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts payable to the corporation by the department under a service contract entered into pursuant to subsection (4) for the purpose of financing the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317. The term of any such note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness may not have a financing term that exceeds 15 years. The corporation may select its financing team and issue



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its obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of the corporation does not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state, but is payable from and secured by payments made by the department under the service contract pursuant to s. 376.3071(4)(n) ~~s. 376.3071(4)(e)~~.

Section 12. This act shall take effect July 1, 2014.

===== 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 rehabilitation of petroleum contamination sites; amending s. 376.3071, F.S.; revising legislative findings and intent regarding the Petroleum Restoration Program and the rehabilitation of contamination sites; providing requirements for site rehabilitation contracts and procedures for payment of rehabilitation work under the Petroleum Restoration Program; limiting eligibility for funding under the Early Detection Incentive Program; deleting obsolete provisions relating to reimbursement for certain cleanup expenses; repealing s. 376.30711, F.S., relating to preapproved site rehabilitation; amending s. 376.30713, F.S.; revising the copayment requirement of the petroleum cleanup participation program; creating s. 376.30717, F.S.; creating the



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1896 Petroleum Cleanup Program Council within the
1897 Department of Environmental Protection; providing
1898 membership; providing terms; providing duties;
1899 requiring the committee to submit a report; amending
1900 ss. 376.301, 376.302, 376.305, 376.30714, 376.3072,
1901 376.3073, and 376.3075, F.S.; conforming provisions to
1902 changes made by the act; providing an effective date.

By Senator Dean

5-00511A-14

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A bill to be entitled
An act relating to rehabilitation of petroleum
contamination sites; amending s. 376.3071, F.S.;
revising legislative findings and intent regarding the
Petroleum Restoration Program and the rehabilitation
of contamination sites; providing requirements for
site rehabilitation contracts and procedures for
payment of rehabilitation work under the Petroleum
Restoration Program; limiting eligibility for funding
under the Early Detection Incentive Program; deleting
obsolete provisions relating to reimbursement for
certain cleanup expenses; repealing s. 376.30711,
F.S., relating to preapproved site rehabilitation;
amending ss. 376.301, 376.302, 376.305, 376.30713,
376.30714, 376.3072, 376.3073, and 376.3075, F.S.;
conforming provisions to changes made by the act;
providing an effective date.

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

Section 1. Section 376.3071, Florida Statutes, is amended
to read:

376.3071 Inland Protection Trust Fund; creation; purposes;
funding.—

(1) FINDINGS.—In addition to the legislative findings set
forth in s. 376.30, the Legislature finds and declares:

(a) That significant quantities of petroleum and petroleum
products are being stored in storage systems in this state,
which is a hazardous undertaking.

5-00511A-14

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(b) That spills, leaks, and other discharges from such storage systems have occurred, are occurring, and will continue to occur and that such discharges pose a significant threat to the quality of the groundwaters and inland surface waters of this state.

(c) That, where contamination of the ground or surface water has occurred, remedial measures have often been delayed for long periods while determinations as to liability and the extent of liability are made and that such delays result in the continuation and intensification of the threat to the public health, safety, and welfare; in greater damage to water resources and the environment; and in significantly higher costs to contain and remove the contamination.

(d) That adequate financial resources must be readily available to provide for the expeditious supply of safe and reliable alternative sources of potable water to affected persons and to provide a means for investigation and cleanup of contamination sites without delay.

(e) That it is necessary to fulfill the intent and purposes of ss. 376.30-376.317, ~~and further it is hereby~~ determined to be in the best interest of, and necessary for the protection of the public health, safety, and ~~general~~ welfare of the residents of this state, and therefore a paramount public purpose, to provide for the creation of a nonprofit public benefit corporation as an instrumentality of the state to assist in financing the functions provided in ss. 376.30-376.317 and to authorize the department to enter into one or more service contracts with such corporation for the purpose ~~provision~~ of financing services related to such functions and to make payments thereunder from

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the amount on deposit in the Inland Protection Trust Fund,
subject to annual appropriation by the Legislature.

(f) That to achieve the purposes established in paragraph
(e) and in order to facilitate the expeditious handling and
rehabilitation of contamination sites and remedial measures with
respect to contamination sites ~~provided hereby~~ without delay, it
is in the best interests of the residents of this state to
authorize such corporation to issue evidences of indebtedness
payable from amounts paid by the department under any such
service contract entered into between the department and such
corporation.

(g) That the Petroleum Restoration Program must be
implemented in a manner that reduces costs and improves the
efficiency of rehabilitation activities to reduce the
significant backlog of contaminated sites eligible for state-
funded rehabilitation and the corresponding threat to water
resources, the environment, and the public health, safety, and
welfare.

(2) INTENT AND PURPOSE.—

(a) It is the intent of the Legislature to establish the
Inland Protection Trust Fund to serve as a repository for funds
which will enable the department to respond without delay to
incidents of inland contamination related to the storage of
petroleum and petroleum products in order to protect the public
health, safety, and welfare and to minimize environmental
damage.

(b) It is the intent of the Legislature that the department
implement rules and procedures to improve the efficiency of the
Petroleum Restoration Program. The department is directed to

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88 implement rules and policies to eliminate and reduce duplication
89 of site rehabilitation efforts, paperwork, and documentation,
90 and micromanagement of site rehabilitation tasks.

91 (c) It is the intent of the Legislature that rehabilitation
92 of contamination sites be conducted with emphasis on first
93 addressing the sites that pose the greatest threat to water
94 resources, the environment, and the public health, safety, and
95 welfare, within the availability of funds in the Inland
96 Protection Trust Fund, recognizing that source removal, wherever
97 it is technologically feasible and cost-effective, significantly
98 reduces contamination or eliminates the spread of contamination
99 and protects water resources, the environment, and the public
100 health, safety, and welfare.

101 (d)~~(e)~~ The department is directed to adopt and implement
102 uniform and standardized forms for ~~the requests for preapproval~~
103 site rehabilitation work and for the submittal of reports to
104 ensure that information is submitted to the department in a
105 concise, standardized uniform format seeking only information
106 that is necessary.

107 (e)~~(d)~~ The department is directed to implement computerized
108 and electronic filing capabilities of ~~preapproval requests and~~
109 submittal of reports in order to expedite submittal of the
110 information and elimination of delay in paperwork. ~~The~~
111 ~~computerized, electronic filing system shall be implemented no~~
112 ~~later than January 1, 1997.~~

113 ~~(e) The department is directed to adopt uniform scopes of~~
114 ~~work with templated labor and equipment costs to provide~~
115 ~~definitive guidance as to the type of work and authorized~~
116 ~~expenditures that will be allowed for preapproved site~~

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~~rehabilitation tasks.~~

(f) The department is directed to establish guidelines for consideration and acceptance of new and innovative technologies for site rehabilitation work.

(3) CREATION.—There is ~~hereby~~ created the Inland Protection Trust Fund, hereinafter referred to as the “fund,” to be administered by the department. This fund shall be used by the department as a nonlapsing revolving fund for carrying out the purposes of this section and s. 376.3073. To this fund shall be credited all penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and s. 376.3073 and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(3) and 206.9945(1)(c). Charges against the fund shall be made pursuant to ~~in accordance with the provisions of~~ this section.

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to water resources, the environment, or the public health, safety, or welfare, the department shall obligate moneys available in the fund to provide for:

(a) Prompt investigation and assessment of contamination sites.

(b) Expeditionary restoration or replacement of potable water supplies as provided in s. 376.30(3)(c)1.

(c) Rehabilitation of contamination sites, which shall consist of cleanup of affected soil, groundwater, and inland surface waters, using the most cost-effective alternative that is technologically feasible and reliable, ~~and~~ and that provides

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adequate protection of water resources and the public health,
safety, and welfare, and that minimizes environmental damage,
pursuant to ~~in accordance with~~ the site selection and cleanup
criteria established by the department under subsection (5),
except that this paragraph does not ~~nothing herein shall be~~
~~construed to~~ authorize the department to obligate funds for
payment of costs that ~~which~~ may be associated with, but are not
integral to, site rehabilitation, such as the cost for
retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

(e) Inspection and supervision of activities described in
this subsection.

(f) Payment of expenses incurred by the department in its
efforts to obtain from responsible parties the payment or
recovery of reasonable costs resulting from the activities
described in this subsection.

(g) Payment of any other reasonable costs of
administration, including those administrative costs incurred by
the Department of Health in providing field and laboratory
services, toxicological risk assessment, and other assistance to
the department in the investigation of drinking water
contamination complaints and costs associated with public
information and education activities.

(h) Establishment and implementation of the compliance
verification program as authorized in s. 376.303(1)(a),
including contracting with local governments or state agencies
to provide for the administration of such program through
locally administered programs, to minimize the potential for
further contamination sites.

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(i) Funding of the provisions of ss. 376.305(6) and 376.3072.

(j) Activities related to removal and replacement of petroleum storage systems, exclusive of costs of any tank, piping, dispensing unit, or related hardware, if soil removal is approved ~~preapproved~~ as a component of site rehabilitation and requires removal of the tank where remediation is conducted under this section ~~s. 376.30711~~ or if such activities were justified in an approved remedial action plan ~~performed pursuant to subsection (12).~~

~~(k) Activities related to reimbursement application preparation and activities related to reimbursement application examination by a certified public accountant pursuant to subsection (12).~~

(k) ~~(l)~~ Reasonable costs of restoring property as nearly as practicable to the conditions that ~~which~~ existed before ~~prior to~~ activities associated with contamination assessment or remedial action taken under s. 376.303(4).

(l) ~~(m)~~ Repayment of loans to the fund.

(m) ~~(n)~~ Expenditure of sums from the fund to cover ineligible sites or costs as set forth in subsection (13), if the department in its discretion deems it necessary to do so. In such cases, the department may seek recovery and reimbursement of costs in the same manner and pursuant to ~~in accordance with~~ the same procedures ~~as are~~ established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(n) ~~(o)~~ Payment of amounts payable under any service contract entered into by the department pursuant to s. 376.3075,

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subject to annual appropriation by the Legislature.

(o) ~~(p)~~ Petroleum remediation pursuant to this section ~~s.~~
~~376.30711~~ throughout a state fiscal year. The department shall
establish a process to uniformly encumber appropriated funds
throughout a state fiscal year and shall allow for emergencies
and imminent threats to water resources, ~~human health and the~~
~~environment~~, and the public health, safety, and welfare, as
provided in paragraph (5) (a). This paragraph does not apply to
appropriations associated with the free product recovery
initiative provided in ~~of~~ paragraph (5) (c) or the ~~preapproved~~
advanced cleanup program provided in ~~of~~ s. 376.30713.

(p) ~~(q)~~ Enforcement of this section and ss. 376.30-376.317
by the Fish and Wildlife Conservation Commission. The department
shall disburse moneys to the commission for such purpose.

The Inland Protection Trust Fund may only be used to fund the
activities in ss. 376.30-376.317 except ss. 376.3078 and
376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund
in each fiscal year shall first be applied or allocated for the
payment of amounts payable by the department pursuant to
paragraph (n) ~~(o)~~ under a service contract entered into by the
department pursuant to s. 376.3075 and appropriated in each year
by the Legislature before ~~prior to~~ making or providing for other
disbursements from the fund. ~~Nothing in~~ This subsection does not
~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for
cleanup of contamination caused primarily by a discharge of
solvents as defined in s. 206.9925(6), or polychlorinated
biphenyls when their presence causes them to be hazardous
wastes, except solvent contamination which is the result of

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chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 are ~~shall be presumed not to be~~ excluded from eligibility pursuant to this section.

(5) SITE SELECTION AND CLEANUP CRITERIA.—

(a) The department shall adopt rules to establish priorities based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but need not be limited to:

1. The degree to which the public ~~human~~ health, safety, or welfare may be affected by exposure to the contamination;

2. The size of the population or area affected by the contamination;

3. The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and

4. The effect of the contamination on water resources and the environment.

Moneys in the fund shall then be obligated for activities described in paragraphs (4) (a)-(e) at individual sites pursuant to ~~in accordance with~~ such established criteria. However, ~~nothing in this paragraph does not shall be construed to~~ restrict the department from modifying the priority status of a rehabilitation site where conditions warrant, taking into consideration the actual distance between the contamination site

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and groundwater or surface water receptors or other factors that affect the risk of exposure to petroleum products' chemicals of concern. The department may use the effective date of a department final order granting eligibility pursuant to subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to establish a prioritization system within a particular priority scoring range.

(b) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program are ~~may be deemed~~ completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of water resources, ~~human health and safety and~~ the environment, and the public health, safety, and welfare in a cost-effective manner as provided in this subsection. Criteria for determining what constitutes a rehabilitation program task or completion of site rehabilitation program tasks and site rehabilitation programs shall be based upon the factors set forth in paragraph (a) and the following additional factors:

1. The current exposure and potential risk of exposure to humans and the environment including multiple pathways of exposure.

2. The appropriate point of compliance with cleanup target levels for petroleum products' chemicals of concern. The point

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of compliance shall be at the source of the petroleum contamination. However, the department may ~~is authorized to~~ temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department may also ~~is authorized,~~ pursuant to criteria provided for in this paragraph, ~~to~~ temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume and if water resources, provided human health, public safety, and the environment, and the public health, safety, and welfare are adequately protected. Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, must ~~shall~~ include notice to local governments and owners of any property into which the point of compliance is allowed to extend.

3. The appropriate site-specific cleanup goal. The site-specific cleanup goal shall be that all petroleum contamination sites ultimately achieve the applicable cleanup target levels provided in this paragraph. However, the department may ~~is authorized to~~ allow concentrations of the petroleum products' chemicals of concern to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, if water resources provided human health, public safety, and the environment, and the public health, welfare, and safety are adequately protected.

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320 4. The appropriateness of using institutional or
321 engineering controls. Site rehabilitation programs may include
322 the use of institutional or engineering controls to eliminate
323 the potential exposure to petroleum products' chemicals of
324 concern to humans or the environment. Use of such controls must
325 have prior department approval ~~be preapproved by the department,~~
326 and may institutional controls shall not be acquired with moneys
327 ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional
328 or engineering controls are implemented to control exposure, the
329 removal of such controls must have prior department approval and
330 must be accompanied immediately by the resumption of active
331 cleanup, or other approved controls, unless cleanup target
332 levels pursuant to this paragraph have been achieved.

333 5. The additive effects of the petroleum products'
334 chemicals of concern. The synergistic effects of petroleum
335 products' chemicals of concern must ~~shall~~ also be considered
336 when the scientific data becomes available.

337 6. Individual site characteristics that must ~~which shall~~
338 include, but not be limited to, the current and projected use of
339 the affected groundwater in the vicinity of the site, current
340 and projected land uses of the area affected by the
341 contamination, the exposed population, the degree and extent of
342 contamination, the rate of contaminant migration, the apparent
343 or potential rate of contaminant degradation through natural
344 attenuation processes, the location of the plume, and the
345 potential for further migration in relation to site property
346 boundaries.

347 7. Applicable state water quality standards.

348 a. Cleanup target levels for petroleum products' chemicals

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of concern found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall consider the following, as appropriate, in establishing the applicable minimum criteria: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

b. Where surface waters are exposed to petroleum contaminated groundwater, the cleanup target levels for the petroleum products' chemicals of concern shall be based on the surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

8. Whether deviation from state water quality standards or from established criteria is appropriate. The department may issue a "No Further Action Order" based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost-effectively implemented within available technologies or engineering and institutional control strategies. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than the ~~said~~ standard. In determining whether it is appropriate to establish alternate cleanup target levels at a site, the department may consider the effectiveness of source removal that has been completed at the site and the

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practical likelihood of: the use of low yield or poor quality groundwater; the use of groundwater near marine surface water bodies; the current and projected use of the affected groundwater in the vicinity of the site; or the use of groundwater in the immediate vicinity of the storage tank area, where it has been demonstrated that the groundwater contamination is not migrating away from such localized source, if water resources, provided human health, public safety, and the environment, and the public health, safety, and welfare are adequately protected.

9. Appropriate cleanup target levels for soils.

a. In establishing soil cleanup target levels for human exposure to petroleum products' chemicals of concern found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration.

b. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil target levels established by the department. The leachability goals do not apply ~~shall not be applicable~~ if the department determines, based upon individual site characteristics, that petroleum products' chemicals of concern will not leach into the groundwater at levels which pose a threat to water resources,

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~~human health and safety or the environment, or the public~~
health, safety, or welfare.

~~However, nothing in~~ This paragraph does not ~~shall be construed~~
~~to~~ restrict the department from temporarily postponing
completion of any site rehabilitation program for which funds
are being expended whenever such postponement is ~~deemed~~
necessary in order to make funds available for rehabilitation of
a contamination site with a higher priority status.

(c) The department shall require source removal, if
warranted and cost-effective, at each site eligible for
restoration funding from the ~~Inland Protection Trust~~ fund.

1. Funding for free product recovery may be provided in
advance of the order established by the priority ranking system
under paragraph (a) for site cleanup activities. However, a
separate prioritization for free product recovery shall be
established consistent with paragraph (a). No more than \$5
million shall be encumbered from the ~~Inland Protection Trust~~
fund in any fiscal year for free product recovery conducted in
advance of the priority order under paragraph (a) established
for site cleanup activities.

2. Once free product removal and other source removal
identified in this paragraph are completed at a site, and
notwithstanding the order established by the priority ranking
system under paragraph (a) for site cleanup activities, the
department may reevaluate the site to determine the degree of
active cleanup needed to continue site rehabilitation. Further,
the department shall determine whether ~~if~~ the reevaluated site
qualifies for natural attenuation monitoring, long-term natural

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attenuation monitoring, or no further action. If additional site rehabilitation is necessary to reach no further action status, the site rehabilitation shall be conducted in the order established by the priority ranking system under paragraph (a). The department shall use ~~utilize~~ natural attenuation monitoring strategies and, when cost-effective, transition sites eligible for restoration funding assistance to long-term natural attenuation monitoring where the plume is shrinking or stable and confined to the source property boundaries and the petroleum products' chemicals of concern meet the natural attenuation default concentrations, as defined by department rule. If the plume migrates beyond the source property boundaries, natural attenuation monitoring may be conducted pursuant to ~~in~~ ~~accordance with~~ department rule, or if the site no longer qualifies for natural attenuation monitoring, active remediation may be resumed. For long-term natural attenuation monitoring, if the petroleum products' chemicals of concern increase or are not significantly reduced after 42 months of monitoring, or if the plume migrates beyond the property boundaries, active remediation shall be resumed as necessary. For sites undergoing active remediation, the department shall evaluate ~~template~~ the cost of natural attenuation monitoring pursuant to s. 376.30711 to ensure that site mobilizations are performed in a cost-effective manner. Sites that are not eligible for state restoration funding may transition to long-term natural attenuation monitoring using the criteria in this subparagraph. ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site from pursuing a "No Further Action" order with conditions.

3. The department shall evaluate whether higher natural

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attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and would adequately protect water resources, public health and the environment, and the public health, safety, and welfare. The department shall also evaluate site-specific characteristics that would allow for higher natural attenuation or long-term natural attenuation concentration levels.

4. A local government may not deny a building permit based solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor. All building permits and any construction, repairs, or renovations performed in conjunction with such permits must comply with the applicable provisions of chapters 489 and 553.

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

(a) Site rehabilitation work on sites that are eligible for state-funded cleanup from the fund pursuant to this section and ss. 376.305(6), 376.3072, and 376.3073 may be funded only pursuant to this section. A facility operator shall abate the source of discharge for a new release that occurred after March 29, 1995. If free product is present, the operator shall notify the department, and the department may direct the removal of the free product. The department shall grant approval to continue site rehabilitation pursuant to this section.

(b) When contracting for site rehabilitation activities performed under the Petroleum Restoration Program, the

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department shall comply with competitive procurement requirements provided in chapter 287 or rules adopted under this section or s. 287.0595. A competitive solicitation issued pursuant to this section is not subject to s. 287.055.

(c) Each contractor performing site assessment and remediation activities for state-funded sites under this section shall certify to the department that the contractor meets all certification and license requirements imposed by law. Each contractor shall certify to the department that the contractor meets the following minimum qualifications:

1. Complies with applicable Occupational Safety and Health Administration regulations.

2. Maintains workers' compensation insurance for employees as required by the Florida Workers' Compensation Law.

3. Maintains comprehensive general liability and comprehensive automobile liability insurance with minimum limits of at least \$1 million per occurrence and \$1 million annual aggregate to pay claims for damage for personal injury, including accidental death, as well as claims for property damage that may arise from performance of work under the program, which insurance designates the state as an additional insured party.

4. Maintains professional liability insurance of at least \$1 million per occurrence and \$1 million annual aggregate.

5. Has the capacity to perform or directly supervise the majority of the rehabilitation work at a site pursuant to s. 489.113(9).

(d) The department rules implementing this section must specify that only qualified vendors may submit responses on a

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523 competitive solicitation. The department rules must also include
524 procedures for the rejection of vendors not meeting the minimum
525 qualifications on the opening of a competitive solicitation and
526 requirements for a vendor to maintain its qualifications in
527 order to enter contracts or perform rehabilitation work.

528 (e) A contractor that performs services pursuant to this
529 subsection may file invoices for payment with the department for
530 the services described in the approved contract. The invoices
531 for payment must be submitted to the department on forms
532 provided by the department, together with evidence documenting
533 that activities were conducted or completed pursuant to the
534 approved contract. If there are sufficient unencumbered funds
535 available in the fund which have been appropriated for
536 expenditure by the Legislature and if all of the terms of the
537 approved contract have been met, invoices for payment must be
538 paid pursuant to s. 215.422. After a contractor has submitted
539 its invoices to the department, and before payment is made, the
540 contractor may assign its right to payment to another person
541 without recourse of the assignee or assignor to the state. In
542 such cases, the assignee must be paid pursuant to s. 215.422.
543 Prior notice of the assignment and assignment information must
544 be made to the department and must be signed and notarized by
545 the assigning party.

546 (f) The contractor shall submit an invoice to the
547 department within 30 days after the date of the department's
548 written acceptance of each interim deliverable or written
549 approval of the final deliverable specified in the approved
550 contract.

551 (g) The department shall make payments based on the terms

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of an approved contract for site rehabilitation work. The department may, based on its experience and the past performance and concerns regarding a contractor, retain up to 25 percent of the contracted amount or use performance bonds to ensure performance. The amount of retainage and the amount of performance bonds, as well as the terms and conditions for such, must be included in the approved contract.

(h) The contractor or the person to which the contractor has assigned its right to payment pursuant to paragraph (e) shall make prompt payment to subcontractors and suppliers for their costs associated with an approved contract pursuant to s. 287.0585(1).

(i) The exemption under s. 287.0585(2) does not apply to payments associated with an approved contract.

(j) The department may withhold payment if the validity or accuracy of a contractor's invoices or supporting documents is in question.

(k) This section does not authorize payment to a person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described by department rules.

(l) The department shall terminate or suspend a contractor's eligibility for participation in the program if the contractor fails to perform its contractual duties for site rehabilitation program tasks.

(m) A site owner or operator, or his or her designee, may not receive any remuneration, in cash or in kind, directly or

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indirectly, from a rehabilitation contractor performing site
cleanup activities pursuant to this section.

(7)~~(6)~~ FUNDING.—The Inland Protection Trust Fund shall be
funded as follows:

(a) All excise taxes levied, collected, and credited to the
fund in accordance with ~~the provisions of~~ ss. 206.9935(3) and
206.9945(1)(c).

(b) All penalties, judgments, recoveries, reimbursements,
and other fees and charges credited to the fund pursuant to ~~in~~
~~accordance with the provisions of~~ subsection (3).

(8)~~(7)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND
REIMBURSEMENT.—

(a) Except as provided in subsection (10) ~~(9)~~ and as
otherwise provided by law, the department shall recover to the
use of the fund from a person or persons at any time causing or
having caused the discharge or from the Federal Government,
jointly and severally, all sums owed or expended from the fund,
pursuant to s. 376.308, except that the department may decline
to pursue such recovery if it finds the amount involved too
small or the likelihood of recovery too uncertain. Sums
recovered as a result of damage due to a discharge related to
the storage of petroleum or petroleum products or other similar
disaster shall be apportioned between the fund and the General
Revenue Fund so as to repay the full costs to the General
Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such
disaster. A ~~Any~~ request for reimbursement to the fund for such
costs, if not paid within 30 days after ~~of~~ demand, shall be
turned over to the department for collection.

(b) Except as provided in subsection (10) ~~(9)~~ and as

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otherwise provided by law, it is the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup and abatement pursuant to ~~in accordance with the provisions of~~ this section or s. 376.3073, unless the department finds the amount involved too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall begin ~~commence~~ on the last date on which ~~any~~ such sums were expended, and not the date on which ~~that~~ the discharge occurred. The department's claim for recovery of payments or overpayments from the fund must be based on the law in existence at the time of the payment or overpayment.

(c) If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party cannot ~~is~~ financially ~~unable to~~ undertake complete restoration of the contaminated site, that the current property owner was not responsible for the discharge when the contamination first occurred, or that the state's interest can best be served by conducting cleanup, the department may enter into an agreement with the responsible party or property owner whereby the department agrees to conduct site rehabilitation and the responsible party or property owner agrees to pay for the portion of the cleanup costs that are within such party's or owner's financial capabilities as determined by the department, taking into consideration the party's or owner's net worth and the economic impact on the party or owner.

(9) ~~(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are not needed currently to meet the obligations of the department

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in the exercise of its responsibilities under this section and s. 376.3073 shall be deposited with the Chief Financial Officer to the credit of the fund and may be invested in such manner as ~~is provided for~~ by law statute. The interest received on such investment shall be credited to the fund. Any provisions of law to the contrary notwithstanding, such interest may be freely transferred between the ~~this~~ trust fund and the Water Quality Assurance Trust Fund, in the discretion of the department.

(10) ~~(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage early detection, reporting, and cleanup of contamination from leaking petroleum storage systems, the department shall, within the guidelines established in this subsection, conduct an incentive program that provides ~~which shall provide~~ for a 30-month grace period ending on December 31, 1988. ~~Pursuant thereto:~~

(a) The department shall establish reasonable requirements for the written reporting of petroleum contamination incidents and shall distribute forms to registrants under s. 376.303(1)(b) and to other interested parties upon request to be used for such purpose. Until such forms are available for distribution, the department shall take reports of such incidents, however made, but shall notify any person making such a report that a complete written report of the incident will be required by the department at a later time, the form for which will be provided by the department.

(b) When reporting forms become available for distribution, all sites involving incidents of contamination from petroleum storage systems initially reported to the department at any time from midnight on June 30, 1986, to midnight on December 31,

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1988, shall be qualified sites ~~if, provided that such~~ a complete written report is filed with respect thereto within a reasonable time. Subject to the delays which may occur as a result of the prioritization of sites under paragraph (5)(a) for any qualified site, costs for activities described in paragraphs (4)(a)-(e) shall be absorbed at the expense of the fund, without recourse to reimbursement or recovery, with the following exceptions:

1. ~~The provisions of~~ This subsection does ~~shall~~ not apply to a ~~any~~ site where the department has been denied site access to implement ~~the provisions of~~ this section.

2. ~~The provisions of~~ This subsection does ~~shall~~ not ~~be construed to~~ authorize or require reimbursement from the fund for costs expended before ~~prior to~~ the beginning of the grace period, ~~except as provided in subsection (12).~~

3.a. Upon discovery by the department that the owner or operator of a petroleum storage system has been grossly negligent in the maintenance of such petroleum storage system; has, with willful intent to conceal the existence of a serious discharge, falsified inventory or reconciliation records maintained with respect to the site at which such system is located; or has intentionally damaged such petroleum storage system, the site at which such system is located shall be ineligible for participation in the incentive program and the owner shall be liable for all costs due to discharges from petroleum storage systems at that site, any other provisions of chapter 86-159, Laws of Florida, to the contrary notwithstanding. For the purposes of this paragraph, willful failure to maintain inventory and reconciliation records, willful failure to make monthly monitoring system checks where

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such systems are in place, and failure to meet monitoring and retrofitting requirements within the schedules established under chapter 62-761, Florida Administrative Code, or violation of similar rules adopted by the department under this chapter, constitutes ~~shall be construed to be~~ gross negligence in the maintenance of a petroleum storage system.

b. The department shall redetermine the eligibility of petroleum storage systems for which a timely Early Detection Incentive Program ~~EDI~~ application was filed, but which were deemed ineligible by the department, under the following conditions:

(I) The owner or operator, on or before March 31, 1991, shall submit, in writing, notification that the storage system is now in compliance with department rules adopted pursuant to s. 376.303, and which requests the department to reevaluate the storage system eligibility; and

(II) The department verifies the storage system compliance based on a compliance inspection.

~~Provided, however, that~~ A site may be determined eligible by the department for good cause shown, including, but not limited to, demonstration by the owner or operator that to achieve compliance would cause an increase in the potential for the spread of the contamination.

c. Redetermination of eligibility pursuant to subparagraph b. shall not be available to:

(I) Petroleum storage systems owned or operated by the Federal Government.

(II) Facilities that denied site access to the department.

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(III) Facilities where a discharge was intentionally concealed.

(IV) Facilities that were denied eligibility due to:

(A) Absence of contamination, unless any such facility subsequently establishes that contamination did exist at that facility on or before December 31, 1988.

(B) Contamination from substances that were not petroleum or a petroleum product.

(C) Contamination that was not from a petroleum storage system.

d. ~~EDI~~ Applicants who demonstrate compliance for a site pursuant to sub-subparagraph b. are eligible for the Early Detection Incentive Program and site rehabilitation funding pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.

If, in order to avoid prolonged delay, the department in its discretion deems it necessary to expend sums from the fund to cover ineligible sites or costs as set forth in this paragraph, the department may do so and seek recovery and reimbursement therefor in the same manner and pursuant to ~~in accordance with~~ the same procedures ~~as are~~ established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(c) A ~~No~~ report of a discharge made to the department by a ~~any~~ person pursuant to ~~in accordance with~~ this subsection, or ~~any~~ rules adopted ~~promulgated~~ pursuant to this subsection may ~~not hereto, shall~~ be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

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(d) ~~The provisions of~~ This subsection does ~~shall~~ not apply to petroleum storage systems owned or operated by the Federal Government.

(11) ~~(10)~~ VIOLATIONS; PENALTY.—~~A it is unlawful for any~~ person may not ~~to~~:

(a) Falsify inventory or reconciliation records maintained in compliance with chapters 62-761 and 62-762, Florida Administrative Code, with willful intent to conceal the existence of a serious leak; or

(b) Intentionally damage a petroleum storage system.

A ~~Any~~ person convicted of such a violation commits ~~shall be~~ ~~guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) ~~(11)~~ SITE CLEANUP.—

(a) *Voluntary cleanup.*—This section does not prohibit a person from conducting site rehabilitation ~~either~~ through his or her own personnel or through responsible response action contractors or subcontractors when such person is not seeking site rehabilitation funding from the fund. Such voluntary cleanups must meet all applicable environmental standards.

(b) *Low-scored site initiative.*—Notwithstanding subsections (5) and (6) ~~s. 376.30711~~, a ~~any~~ site with a priority ranking score of 29 points or less may voluntarily participate in the low-scored site initiative regardless of, whether ~~or not~~ the site is eligible for state restoration funding.

1. To participate in the low-scored site initiative, the responsible party or property owner must affirmatively demonstrate that the following conditions are met:

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784 a. Upon reassessment pursuant to department rule, the site
785 retains a priority ranking score of 29 points or less.

786 b. ~~No~~ Excessively contaminated soil, as defined by
787 department rule, does not exist ~~exists~~ onsite as a result of a
788 release of petroleum products.

789 c. A minimum of 6 months of groundwater monitoring
790 indicates that the plume is shrinking or stable.

791 d. The release of petroleum products at the site does not
792 adversely affect adjacent surface waters, including their
793 effects on human health and the environment.

794 e. The area of groundwater containing the petroleum
795 products' chemicals of concern is less than one-quarter acre and
796 is confined to the source property boundaries of the real
797 property on which the discharge originated.

798 f. Soils onsite that are subject to human exposure found
799 between land surface and 2 feet below land surface meet the soil
800 cleanup target levels established by department rule or human
801 exposure is limited by appropriate institutional or engineering
802 controls.

803 2. Upon affirmative demonstration of the conditions under
804 subparagraph 1., the department shall issue a determination of
805 "No Further Action." Such determination acknowledges that
806 minimal contamination exists onsite and that such contamination
807 is not a threat to water resources, ~~human health or the~~
808 environment, or the public health, safety, or welfare. If no
809 contamination is detected, the department may issue a site
810 rehabilitation completion order.

811 3. Sites that are eligible for state restoration funding
812 may receive payment of ~~preapproved~~ costs for the low-scored site

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initiative as follows:

a. A responsible party or property owner may submit an assessment plan designed to affirmatively demonstrate that the site meets the conditions under subparagraph 1. Notwithstanding the priority ranking score of the site, the department may approve ~~preapprove~~ the cost of the assessment ~~pursuant to s. 376.30711~~, including 6 months of groundwater monitoring, not to exceed \$30,000 for each site. The department may not pay the costs associated with the establishment of institutional or engineering controls.

b. The assessment work shall be completed no later than 6 months after the department issues its approval.

c. No more than \$10 million for the low-scored site initiative may be encumbered from the ~~Inland Protection Trust~~ fund in any fiscal year. Funds shall be made available on a first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each responsible party or property owner.

d. Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13) (c) do not apply to expenditures under this paragraph.

~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES. Except as provided in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall not apply to any site rehabilitation program task initiated after March 29, 1995. Effective August 1, 1996, no further site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek~~

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~~reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s. 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date; provided, however if an application filed on or prior to January 3, 1997, was returned by the department on the grounds of untimely filing, it shall be refiled within 30 days after the effective date of this act in order to be processed.~~

~~(a) Legislative findings. The Legislature finds and declares that rehabilitation of contamination sites should be conducted in a manner and to a level of completion which will protect the public health, safety, and welfare and will minimize damage to the environment.~~

~~(b) Conditions.—~~

~~1. The owner, operator, or his or her designee of a site which is eligible for restoration funding assistance in the EDI, PLRIP, or ATRP programs shall be reimbursed from the Inland Protection Trust Fund of allowable costs at reasonable rates incurred on or after January 1, 1985, for completed program~~

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tasks as identified in the department rule promulgated pursuant to paragraph (5) (b), or uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, subject to the conditions in this section. It is unlawful for a site owner or operator, or his or her designee, to receive any remuneration, in cash or in kind, directly or indirectly from the rehabilitation contractor.

2. Nothing in this subsection shall be construed to authorize reimbursement to any person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described in department rules.

(c) *Legislative intent.* Due to the value of the potable water of this state, it is the intent of the Legislature that the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector, recognizing that source removal, wherever it is technologically feasible and cost-effective, shall be considered the primary initial response to protect public health, safety, and the environment.

(d) *Amount of reimbursement.* The department shall reimburse actual and reasonable costs for site rehabilitation. The department shall not reimburse interest on the amount of reimbursable costs for any reimbursement application. However, nothing herein shall affect the department's authority to pay interest authorized under prior law.

(e) *Records.* The person responsible for conducting site rehabilitation, or his or her agent, shall keep and preserve

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900 ~~suitable records as follows:~~

901 ~~1. Hydrological and other site investigations and~~
902 ~~assessments; site rehabilitation plans; contracts and contract~~
903 ~~negotiations; and accounts, invoices, sales tickets, or other~~
904 ~~payment records from purchases, sales, leases, or other~~
905 ~~transactions involving costs actually incurred related to site~~
906 ~~rehabilitation. Such records shall be made available upon~~
907 ~~request to agents and employees of the department during regular~~
908 ~~business hours and at other times upon written request of the~~
909 ~~department.~~

910 ~~2. In addition, the department may from time to time~~
911 ~~request submission of such site-specific information as it may~~
912 ~~require, unless a waiver or variance from such department~~
913 ~~request is granted pursuant to paragraph (k).~~

914 ~~3. All records of costs actually incurred for cleanup shall~~
915 ~~be certified by affidavit to the department as being true and~~
916 ~~correct.~~

917 ~~(f) Application for reimbursement. Any eligible person who~~
918 ~~performs a site rehabilitation program or performs site~~
919 ~~rehabilitation program tasks such as preparation of site~~
920 ~~rehabilitation plans or assessments; product recovery; cleanup~~
921 ~~of groundwater or inland surface water; soil treatment or~~
922 ~~removal; or any other tasks identified by department rule~~
923 ~~developed pursuant to subsection (5), may apply for~~
924 ~~reimbursement. Such applications for reimbursement must be~~
925 ~~submitted to the department on forms provided by the department,~~
926 ~~together with evidence documenting that site rehabilitation~~
927 ~~program tasks were conducted or completed in accordance with~~
928 ~~department rule developed pursuant to subsection (5), and other~~

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929 ~~such records or information as the department requires. The~~
930 ~~reimbursement application and supporting documentation shall be~~
931 ~~examined by a certified public accountant in accordance with~~
932 ~~standards established by the American Institute of Certified~~
933 ~~Public Accountants. A copy of the accountant's report shall be~~
934 ~~submitted with the reimbursement application. Applications for~~
935 ~~reimbursement shall not be approved for site rehabilitation~~
936 ~~program tasks which have not been completed, except for the task~~
937 ~~of remedial action and except for uncompleted program tasks~~
938 ~~pursuant to chapter 95-2, Laws of Florida, and this subsection.~~
939 ~~Applications for remedial action may be submitted semiannually~~
940 ~~at the discretion of the person responsible for cleanup. After~~
941 ~~an applicant has filed an application with the department and~~
942 ~~before payment is made, the applicant may assign the right to~~
943 ~~payment to any other person, without recourse of the assignee or~~
944 ~~assignor to the state, without affecting the order in which~~
945 ~~payment is made. Information necessary to process the~~
946 ~~application shall be requested from and provided by the~~
947 ~~assigning applicant. Proper notice of the assignment and~~
948 ~~assignment information shall be made to the department which~~
949 ~~notice shall be signed and notarized by the assigning applicant.~~

950 ~~(g) Review.—~~

951 ~~1. Provided there are sufficient unencumbered funds~~
952 ~~available in the Inland Protection Trust Fund, or to the extent~~
953 ~~proceeds of debt obligations are available for the payment of~~
954 ~~existing reimbursement obligations pursuant to s. 376.3075, the~~
955 ~~department shall have 60 days to determine if the applicant has~~
956 ~~provided sufficient information for processing the application~~
957 ~~and shall request submission of any additional information that~~

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the department may require within such 60-day period. If the applicant believes any request for additional information is not authorized, the applicant may request a hearing pursuant to ss. 120.569 and 120.57. Once the department requests additional information, the department may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information.

2. The department shall deny or approve the application for reimbursement within 90 days after receipt of the last item of timely requested additional material, or, if no additional material is requested, within 90 days of the close of the 60-day period described in subparagraph 1., unless the total review period is otherwise extended by written mutual agreement of the applicant and the department.

3. Final disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the department fails to make a determination on an application within the time provided in subparagraph 2., or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing pursuant to ss. 120.569 and 120.57.

~~(h) Reimbursement.~~ Upon approval of an application for reimbursement, reimbursement for reasonable expenditures of a site rehabilitation program or site rehabilitation program tasks documented therein shall be made in the order in which the department receives completed applications. Effective January 1, 1997, all unpaid reimbursement applications are subject to

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987 ~~payment on the following terms: The department shall develop a~~
988 ~~schedule of the anticipated dates of reimbursement of~~
989 ~~applications submitted to the department pursuant to this~~
990 ~~subsection. The schedule shall specify the projected date of~~
991 ~~payment based on equal monthly payments and projected annual~~
992 ~~revenue of \$100 million. Based on the schedule, the department~~
993 ~~shall notify all reimbursement applicants of the projected date~~
994 ~~of payment of their applications. The department shall direct~~
995 ~~the Inland Protection Financing Corporation to pay applicants~~
996 ~~the present value of their applications as soon as practicable~~
997 ~~after approval by the department, subject to the availability of~~
998 ~~funds within the Inland Protection Financing Corporation. The~~
999 ~~present value of an application shall be based on the date on~~
1000 ~~which the department anticipates the Inland Protection Financing~~
1001 ~~Corporation will settle the reimbursement application and the~~
1002 ~~schedule's projected date of payment and shall use 3.5 percent~~
1003 ~~as the annual discount rate. The determination of the amount of~~
1004 ~~the claim and the projected date of payment shall be subject to~~
1005 ~~s. 120.57.~~

1006 ~~(i) Liberal construction. With respect to site~~
1007 ~~rehabilitation initiated prior to July 1, 1986, the provisions~~
1008 ~~of this subsection shall be given such liberal construction by~~
1009 ~~the department as will accomplish the purposes set forth in this~~
1010 ~~subsection. With regard to the keeping of particular records or~~
1011 ~~the giving of certain notice, the department may accept as~~
1012 ~~compliance action by a person which meets the intent of the~~
1013 ~~requirements set forth in this subsection.~~

1014 ~~(j) Reimbursement-review contracts. The department may~~
1015 ~~contract with entities capable of processing or assisting in the~~

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~~review of reimbursement applications. Any purchase of such services shall not be subject to chapter 287.~~

~~(k) Audits.—~~

~~1. The department is authorized to perform financial and technical audits in order to certify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayments based on the findings of these audits. The department must commence any audit within 5 years after the date of reimbursement, except in cases where the department alleges specific facts indicating fraud.~~

~~2. Upon determination by the department that any portion of costs which have been reimbursed are disallowed, the department shall give written notice to the applicant setting forth with specificity the allegations of fact which justify the department's proposed action and ordering repayment of disallowed costs within 60 days of notification of the applicant.~~

~~3. In the event the applicant does not make payment to the department within 60 days of receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover reimbursement overpayments made to the person responsible for conducting site rehabilitation, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.~~

~~4. In addition to the amount of any overpayment, the applicant shall be liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of overpayment, from the date of overpayment by the department until the applicant satisfies the department's~~

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1045 ~~request for repayment pursuant to this paragraph. The~~
1046 ~~calculation of interest shall be tolled during the pendency of~~
1047 ~~any litigation.~~

1048 ~~5. Financial and technical audits frequently are conducted~~
1049 ~~under this section many years after the site rehabilitation~~
1050 ~~activities were performed and the costs examined in the course~~
1051 ~~of the audit were incurred by the person responsible for site~~
1052 ~~rehabilitation. During the intervening span of years, the~~
1053 ~~department's rule requirements and its related guidance and~~
1054 ~~other nonrule policy directives may have changed significantly.~~
1055 ~~The Legislature finds that it may be appropriate for the~~
1056 ~~department to provide relief to persons subject to such~~
1057 ~~requirements in financial and technical audits conducted~~
1058 ~~pursuant to this section.~~

1059 ~~a. The department is authorized to grant variances and~~
1060 ~~waivers from the documentation requirements of subparagraph~~
1061 ~~(e)2. and from the requirements of rules applicable in technical~~
1062 ~~and financial audits conducted under this section. Variances and~~
1063 ~~waivers shall be granted when the person responsible for site~~
1064 ~~rehabilitation demonstrates to the department that application~~
1065 ~~of a financial or technical auditing requirement would create a~~
1066 ~~substantial hardship or would violate principles of fairness.~~
1067 ~~For purposes of this subsection, "substantial hardship" means a~~
1068 ~~demonstrated economic, technological, legal, or other type of~~
1069 ~~hardship to the person requesting the variance or waiver. For~~
1070 ~~purposes of this subsection, "principles of fairness" are~~
1071 ~~violated when the application of a requirement affects a~~
1072 ~~particular person in a manner significantly different from the~~
1073 ~~way it affects other similarly situated persons who are affected~~

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by the requirement or when the requirement is being applied retroactively without due notice to the affected parties.

b. A person whose reimbursed costs are subject to a financial and technical audit under this section may file a written request to the department for grant of a variance or waiver. The request shall specify:

(I) The requirement from which a variance or waiver is requested.

(II) The type of action requested.

(III) The specific facts which would justify a waiver or variance.

(IV) The reason or reasons why the requested variance or waiver would serve the purposes of this section.

e. Within 90 days after receipt of a written request for variance or waiver under this subsection, the department shall grant or deny the request. If the request is not granted or denied within 90 days of receipt, the request shall be deemed approved. An order granting or denying the request shall be in writing and shall contain a statement of the relevant facts and reasons supporting the department's action. The department's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Once adopted, model rules promulgated by the Administration Commission under s. 120.542 shall govern the processing of requests under this provision.

6. The Chief Financial Officer may audit the records of persons who receive or who have received payments pursuant to this chapter in order to verify site restoration costs, ensure compliance with this chapter, and verify the accuracy and

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completeness of audits performed by the department pursuant to this paragraph. The Chief Financial Officer may contract with entities or persons to perform audits pursuant to this subparagraph. The Chief Financial Officer shall commence any audit within 1 year after the department's completion of an audit conducted pursuant to this paragraph, except in cases where the department or the Chief Financial Officer alleges specific facts indicating fraud.

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program ~~preapproved~~ site rehabilitation agreement. Eligibility is ~~shall be~~ subject to an annual appropriation from the ~~Inland Protection Trust~~ fund. Additionally, funding for eligible sites is ~~shall be~~ contingent upon annual appropriation in subsequent years. Such continued state funding is ~~shall not be deemed~~ an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, ~~shall be~~ notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

(a)1. The department shall accept any discharge reporting form received before ~~prior to~~ January 1, 1995, as an application for this program, and the facility owner or operator need not

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reapply.

2. Owners or operators of property contaminated by petroleum or petroleum products from a petroleum storage system may apply for such program by filing a written report of the contamination incident, including evidence that such incident occurred before ~~prior to~~ January 1, 1995, with the department. Incidents of petroleum contamination discovered after December 31, 1994, at sites which have not stored petroleum or petroleum products for consumption, use, or sale after such date shall be presumed to have occurred before ~~prior to~~ January 1, 1995. An operator's filed report shall be ~~deemed~~ an application of the owner for all purposes. Sites reported to the department after December 31, 1998, are ~~shall~~ not be eligible for the ~~this~~ program.

(b) Subject to annual appropriation from the ~~Inland Protection Trust~~ fund, sites meeting the criteria of this subsection are eligible for up to \$400,000 of site rehabilitation funding assistance in priority order pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued before ~~prior to~~ June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to this section ~~s. 376.30711~~ until a site rehabilitation completion order is issued or the

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1161 increased site rehabilitation funding assistance limit is
1162 reached, whichever occurs first. The department may not pay ~~At~~
1163 ~~no time shall~~ expenses incurred beyond ~~outside~~ the scope of an
1164 approved contract ~~preapproved site rehabilitation program under~~
1165 ~~s. 376.30711 be reimbursable.~~

1166 (c) Upon notification by the department that rehabilitation
1167 funding assistance is available for the site pursuant to
1168 subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~, the owner,
1169 operator, or person otherwise responsible for site
1170 rehabilitation shall provide the department with a limited
1171 contamination assessment report and shall enter into a Petroleum
1172 Cleanup Participation Program ~~preapproved~~ site rehabilitation
1173 agreement with the department ~~and a contractor qualified under~~
1174 ~~s. 376.30711(2)(b).~~ The agreement must ~~shall~~ provide for a 25-
1175 percent copayment by the owner, operator, or person otherwise
1176 responsible for conducting site rehabilitation. The owner,
1177 operator, or person otherwise responsible for conducting site
1178 rehabilitation shall adequately demonstrate the ability to meet
1179 the copayment obligation. The limited contamination assessment
1180 report and the copayment costs may be reduced or eliminated if
1181 the owner and all operators responsible for restoration under s.
1182 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~
1183 comply with the copayment and limited contamination assessment
1184 report requirements. The department shall take into
1185 consideration the owner's and operator's net worth in making the
1186 determination of financial ability. In the event the department
1187 and the owner, operator, or person otherwise responsible for
1188 site rehabilitation cannot ~~are unable to~~ complete negotiation of
1189 the cost-sharing agreement within 120 days after beginning

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1190 ~~commencing~~ negotiations, the department shall terminate
1191 negotiations, and the site shall be ~~deemed~~ ineligible for state
1192 funding under this subsection and all liability protections
1193 provided for in this subsection shall be revoked.

1194 (d) A ~~No~~ report of a discharge made to the department by a
1195 ~~any person pursuant to in accordance with~~ this subsection, or
1196 any rules adopted pursuant to this subsection may not hereto,
1197 ~~shall~~ be used directly as evidence of liability for such
1198 discharge in any civil or criminal trial arising out of the
1199 discharge.

1200 (e) ~~Nothing in~~ This subsection does not ~~shall be construed~~
1201 ~~to~~ preclude the department from pursuing penalties under ~~in~~
1202 ~~accordance with~~ s. 403.141 for violations of any law or any
1203 rule, order, permit, registration, or certification adopted or
1204 issued by the department pursuant to its lawful authority.

1205 (f) Upon the filing of a discharge reporting form under
1206 paragraph (a), ~~neither~~ the department or ~~nor any~~ local
1207 government may not ~~shall~~ pursue any judicial or enforcement
1208 action to compel rehabilitation of the discharge. This paragraph
1209 does ~~shall~~ not prevent any such action with respect to
1210 discharges determined ineligible under this subsection or to
1211 sites for which rehabilitation funding assistance is available
1212 pursuant to subsections ~~in accordance with subsection~~ (5) and
1213 (6) ~~s. 376.30711~~.

1214 (g) The following are ~~shall be~~ excluded from participation
1215 in the program:

- 1216 1. Sites at which the department has been denied reasonable
1217 site access to implement ~~the provisions of~~ this section.
- 1218 2. Sites that were active facilities when owned or operated

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by the Federal Government.

3. Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.

4. Sites for which ~~The~~ contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program, or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program.

(14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Before ~~Prior~~ ~~to~~ the department enters ~~entering~~ into a service contract with the Inland Protection Financing Corporation which includes payments by the department to support any existing or planned note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness of the corporation pursuant to s. 376.3075, the Legislature, by law, must specifically authorize the department to enter into such a contract. The corporation may issue bonds in an amount not to exceed \$104 million, with a term up to 15 years, and annual payments not in excess of \$10.4 million. The department may enter into a service contract in conjunction with the issuance of such bonds which provides for annual payments for debt service payments or other amounts payable with respect to bonds, plus any administrative expenses of the corporation to finance the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317.

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1248 Section 2. Section 376.30711, Florida Statutes, is
1249 repealed.

1250 Section 3. Subsections (4) and (30) of section 376.301,
1251 Florida Statutes, are amended to read:

1252 376.301 Definitions of terms used in ss. 376.30-376.317,
1253 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
1254 376.75, unless the context clearly requires otherwise, the term:

1255 ~~(4) "Backlog" means reimbursement obligations incurred~~
1256 ~~pursuant to s. 376.3071(12), prior to March 29, 1995, or~~
1257 ~~authorized for reimbursement under the provisions of s.~~
1258 ~~376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims~~
1259 ~~within the backlog are subject to adjustment, where appropriate.~~

1260 ~~(30) "Person responsible for conducting site~~
1261 ~~rehabilitation" means the site owner, operator, or the person~~
1262 ~~designated by the site owner or operator on the reimbursement~~
1263 ~~application. Mortgage holders and trust holders may be eligible~~
1264 ~~to participate in the reimbursement program pursuant to s.~~
1265 ~~376.3071(12).—~~

1266 Section 4. Subsection (5) of section 376.302, Florida
1267 Statutes, is amended to read:

1268 376.302 Prohibited acts; penalties.—

1269 (5) Any person who commits fraud in representing his or her
1270 ~~their~~ qualifications as a contractor for reimbursement or in
1271 submitting a payment invoice reimbursement request pursuant to
1272 s. 376.3071 ~~s. 376.3071(12)~~ commits a felony of the third
1273 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1274 775.084.

1275 Section 5. Subsection (6) of section 376.305, Florida
1276 Statutes, is amended to read:

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376.305 Removal of prohibited discharges.—

(6) The Legislature created the Abandoned Tank Restoration Program in response to the need to provide financial assistance for cleanup of sites that have abandoned petroleum storage systems. For purposes of this subsection, the term "abandoned petroleum storage system" ~~means a~~ ~~shall mean any~~ petroleum storage system that has not stored petroleum products for consumption, use, or sale since March 1, 1990. The department shall establish the Abandoned Tank Restoration Program to facilitate the restoration of sites contaminated by abandoned petroleum storage systems.

(a) To be included in the program:

1. An application must be submitted to the department by June 30, 1996, certifying that the system has not stored petroleum products for consumption, use, or sale at the facility since March 1, 1990.

2. The owner or operator of the petroleum storage system when it was in service must have ceased conducting business involving consumption, use, or sale of petroleum products at that facility on or before March 1, 1990.

3. The site is not otherwise eligible for the cleanup programs pursuant to s. 376.3071 or s. 376.3072.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to ~~in accordance with~~ department rules before ~~prior to~~ an eligibility determination. However, if the department determines that the owner of the facility cannot ~~is~~ financially ~~unable to~~ comply with the department's petroleum storage system closure requirements and all other eligibility requirements are

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met, the petroleum storage system closure requirements shall be waived. The department shall take into consideration the owner's net worth and the economic impact on the owner in making the determination of the owner's financial ability. The June 30, 1996, application deadline shall be waived for owners who cannot ~~are~~ financially ~~unable to~~ comply.

(c) Sites accepted in the program are ~~will be~~ eligible for site rehabilitation funding as provided in s. 376.3071 ~~s. 376.3071(12) or s. 376.30711~~, as appropriate.

(d) The following sites are excluded from eligibility:

1. Sites on property of the Federal Government;
 2. Sites contaminated by pollutants that are not petroleum products;
 3. Sites where the department has been denied site access;
- or

4. Sites which are owned by a ~~any~~ person who had knowledge of the polluting condition when title was acquired unless the ~~that~~ person acquired title to the site after issuance of a notice of site eligibility by the department.

(e) Participating sites are subject to a deductible as determined by rule, not to exceed \$10,000.

~~The provisions of~~ This subsection does ~~do~~ not relieve a ~~any~~ person who has acquired title after ~~subsequent to~~ July 1, 1992, from the duty to establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability, as required by s.

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1335 376.308(1)(c).

1336 Section 6. Section 376.30713, Florida Statutes, is amended
1337 to read:

1338 376.30713 ~~Preapproved~~ Advanced cleanup.—

1339 (1) In addition to the legislative findings provided in s.
1340 376.3071 ~~s. 376.30711~~, the Legislature finds and declares:

1341 (a) That the inability to conduct site rehabilitation in
1342 advance of a site's priority ranking pursuant to s.
1343 376.3071(5)(a) may substantially impede or prohibit property
1344 transactions or the proper completion of public works projects.

1345 (b) While the first priority of the state is to provide for
1346 protection of ~~the water resources of the state, human health,~~
1347 ~~and the environment,~~ and the public health, safety, and welfare,
1348 the viability of commerce is of equal importance to the state.

1349 (c) It is in the public interest and of substantial
1350 economic benefit to the state to provide an opportunity for site
1351 rehabilitation to be conducted on a limited basis at
1352 contaminated sites, in advance of the site's priority ranking,
1353 to facilitate property transactions or public works projects.

1354 (d) It is appropriate for a person who is ~~persons~~
1355 responsible for site rehabilitation to share the costs
1356 associated with managing and conducting ~~preapproved~~
1357 cleanup, to facilitate the opportunity for ~~preapproved~~ advanced
1358 cleanup, and to mitigate the additional costs that will be
1359 incurred by the state in conducting site rehabilitation in
1360 advance of the site's priority ranking. Such cost sharing will
1361 result in more contaminated sites being cleaned up and greater
1362 environmental benefits to the state. ~~The provisions of This~~
1363 section is ~~shall only be~~ available only for sites eligible for

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restoration funding under EDI, ATRP, or PLRIP ~~PLIRP~~. This section is available for discharges eligible for restoration funding under the petroleum cleanup participation program for the state's cost share of site rehabilitation. Applications must ~~shall~~ include a cost-sharing commitment for this section in addition to the 25-percent-copayment requirement of the petroleum cleanup participation program. This section is not available for any discharge under a petroleum cleanup participation program where the 25-percent-copayment requirement of the petroleum cleanup participation program has been reduced or eliminated pursuant to s. 376.3071(13)(c).

(2) The department may ~~is authorized to~~ approve an application for ~~preapproved~~ advanced cleanup at eligible sites, before ~~prior to~~ funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to ~~in~~ ~~accordance with the provisions of this section.~~ Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies ~~Persons who qualify as an applicant under the provisions of this section shall only include the facility owner or operator or the person otherwise responsible for site rehabilitation.~~

(a) ~~Preapproved~~ Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 shall be for the fiscal year beginning July 1. An application must ~~shall~~ consist of:

1. A commitment to pay ~~no less than~~ 25 percent or more of the total cleanup cost deemed recoverable under ~~the provisions of~~ this section along with proof of the ability to pay the cost

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share.

2. A nonrefundable review fee of \$250 to cover the administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

The limited contamination assessment report must ~~shall~~ be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. ~~Any~~ Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection, or any other provision of this section ~~is~~, ~~shall~~ not constitute an entitlement to ~~preapproved~~ advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an ~~a preapproved~~ advanced cleanup contract with the department. ~~The~~ This certification must ~~shall~~ be submitted with the application.

(b) The department shall rank the applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who ~~that~~ proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that ~~which~~ exceed the funds available to commit to all such proposals during the ~~preapproved~~ advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical

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1422 cost-sharing proposals that ~~which~~ exceed funding availability
1423 must ~~shall~~ be so notified by the department and ~~shall be~~ offered
1424 the opportunity to raise their individual cost-share
1425 commitments, in a period ~~of time~~ specified in the notice. At the
1426 close of the period, the department shall proceed to rerank the
1427 applications pursuant to ~~in accordance with~~ this paragraph.

1428 (3) (a) Based on the ranking established under paragraph
1429 (2) (b) ~~and the funding limitations provided in subsection (4),~~
1430 the department shall begin ~~commence~~ negotiation with such
1431 applicants. If the department and the applicant agree on the
1432 course of action, the department may enter into a contract with
1433 the applicant. The department may ~~is authorized to~~ negotiate the
1434 terms and conditions of the contract.

1435 (b) ~~Preapproved~~ Advanced cleanup must ~~shall~~ be conducted
1436 pursuant to s. 376.3071(5) (b) and (6) and rules adopted under
1437 ss. 287.0595 and 376.3071 ~~under the provisions of ss.~~
1438 ~~376.3071(5) (b) and 376.30711.~~ If the terms of the ~~preapproved~~
1439 advanced cleanup contract are not fulfilled, the applicant
1440 forfeits any right to future payment for any site rehabilitation
1441 work conducted under the contract.

1442 (c) The department's decision not to enter into an ~~a~~
1443 ~~preapproved~~ advanced cleanup contract with the applicant is
1444 ~~shall not be~~ subject to ~~the provisions of~~ chapter 120. If the
1445 department cannot ~~is not able to~~ complete negotiation of the
1446 course of action and the terms of the contract within 60 days
1447 after beginning ~~commencing~~ negotiations, the department shall
1448 terminate negotiations with that applicant.

1449 (4) The department may ~~is authorized to~~ enter into
1450 contracts for a total of up to \$15 million of ~~preapproved~~

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advanced cleanup work in each fiscal year. However, a facility may not be approved ~~preapproved~~ for more than \$5 million of cleanup activity in each fiscal year. For the purposes of this section, the term "facility" includes ~~shall include~~, but is not ~~be~~ limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

(5) All funds collected by the department pursuant to this section shall be deposited into the Inland Protection Trust Fund to be used as provided in this section.

Section 7. Paragraph (a) of subsection (1) and subsections (3), (4), and (9) of section 376.30714, Florida Statutes, are amended to read:

376.30714 Site rehabilitation agreements.—

(1) In addition to the legislative findings provided in s. 376.3071, the Legislature finds and declares:

(a) The provisions of s. 376.3071(5)(a) ~~ss. 376.3071(5)(a) and 376.30711~~ have delayed cleanup of low-priority sites determined to be eligible for state funding under that section ~~and ss. 376.305, 376.3071, and 376.3072.~~

(3) Free product attributable to a new discharge shall be removed to the extent practicable and pursuant to ~~in accordance with~~ department rules adopted pursuant to s. 376.3071(5) at the expense of the owner, operator, or other responsible party. Free product attributable to existing contamination shall be removed pursuant to ~~in accordance with~~ s. 376.3071(5) and (6), ~~or s. 376.30711(1)(b),~~ and department rules adopted pursuant thereto.

(4) Beginning January 1, 1999, the department may ~~is~~

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1480 ~~authorized to~~ negotiate and enter into site rehabilitation
1481 agreements with applicants at sites with eligible existing
1482 contamination at which a new discharge occurs. The site
1483 rehabilitation agreement must ~~shall~~ include, but is not ~~be~~
1484 limited to, allocation of the funding responsibilities of the
1485 department and the applicant for cleanup of the qualified site,
1486 establishment of a mechanism to guarantee the applicant's
1487 commitment to pay its agreed amount of site rehabilitation as
1488 set forth in the agreement, and establishment of the priority in
1489 which cleanup of the qualified site will occur. Under ~~any~~ such a
1490 negotiated site rehabilitation agreement, the applicant may not
1491 ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are
1492 attributable to the new discharge. However, the payment of ~~any~~
1493 applicable deductibles, copayments, or other program eligibility
1494 requirements under ss. 376.305, 376.3071, and 376.3072 shall
1495 continue to apply to the existing contamination and must be
1496 accounted for in the negotiated site rehabilitation agreement.
1497 The department may ~~is further authorized~~, pursuant to this
1498 section, ~~to preapprove or~~ conduct additional assessment
1499 activities at the site.

1500 (9) Site rehabilitation conducted at qualified sites shall
1501 be conducted pursuant to s. 376.3071(5)(b) and (6) ~~under the~~
1502 ~~provisions of ss. 376.3071(5)(b) and 376.30711.~~ If the terms of
1503 the agreement are not fulfilled by the applicant, the applicant
1504 forfeits the ~~any~~ right to continued funding for ~~any~~ site
1505 rehabilitation work under the agreement and is ~~shall be~~ subject
1506 to enforcement action by the department or local government to
1507 compel cleanup of the new discharge.

1508 Section 8. Subsection (2) of section 376.3072, Florida

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Statutes, is amended to read:

376.3072 Florida Petroleum Liability and Restoration Insurance Program.—

(2) (a) An ~~Any~~ owner or operator of a petroleum storage system may become an insured in the restoration insurance program at a facility if provided:

1. A site at which an incident has occurred is ~~shall be~~ eligible for restoration if the insured is a participant in the third-party liability insurance program or otherwise meets applicable financial responsibility requirements. After July 1, 1993, the insured must also provide the required excess insurance coverage or self-insurance for restoration to achieve the financial responsibility requirements of 40 C.F.R. s. 280.97, subpart H, not covered by paragraph (d).

2. A site that ~~which~~ had a discharge reported before ~~prior~~ ~~to~~ January 1, 1989, for which notice was given pursuant to s. 376.3071(10) ~~s. 376.3071(9) or (12)~~, and that ~~which~~ is ineligible for the third-party liability insurance program solely due to that discharge is ~~shall be~~ eligible for participation in the restoration program for an ~~any~~ incident occurring on or after January 1, 1989, pursuant to ~~in accordance with~~ subsection (3). Restoration funding for an eligible contaminated site will be provided without participation in the third-party liability insurance program until the site is restored as required by the department or until the department determines that the site does not require restoration.

3. Notwithstanding paragraph (b), a site where an application is filed with the department before ~~prior to~~ January 1, 1995, where the owner is a small business under s.

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288.703(6), a state community college with less than 2,500 FTE, a religious institution as defined by s. 212.08(7)(m), a charitable institution as defined by s. 212.08(7)(p), or a county or municipality with a population of less than 50,000, is ~~shall be~~ eligible for up to \$400,000 of eligible restoration costs, less a deductible of \$10,000 for small businesses, eligible community colleges, and religious or charitable institutions, and \$30,000 for eligible counties and municipalities, if ~~provided that~~:

a. Except as provided in sub-subparagraph e., the facility was in compliance with department rules at the time of the discharge.

b. The owner or operator has, upon discovery of a discharge, promptly reported the discharge to the department, and drained and removed the system from service, if necessary.

c. The owner or operator has not intentionally caused or concealed a discharge or disabled leak detection equipment.

d. The owner or operator proceeds to complete initial remedial action as specified ~~defined~~ by department rules.

e. The owner or operator, if required and if it has not already done so, applies for third-party liability coverage for the facility within 30 days after ~~of~~ receipt of an eligibility order issued by the department pursuant to this subparagraph ~~provision~~.

However, the department may consider in-kind services from eligible counties and municipalities in lieu of the \$30,000 deductible. The cost of conducting initial remedial action as defined by department rules is ~~shall be~~ an eligible restoration

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cost pursuant to this subparagraph ~~provision~~.

4.a. By January 1, 1997, facilities at sites with existing contamination must ~~shall be required to~~ have methods of release detection to be eligible for restoration insurance coverage for new discharges subject to department rules for secondary containment. Annual storage system testing, in conjunction with inventory control, shall be considered to be a method of release detection until the later of December 22, 1998, or 10 years after the date of installation or the last upgrade. Other methods of release detection for storage tanks which meet such requirement are:

(I) Interstitial monitoring of tank and integral piping secondary containment systems;

(II) Automatic tank gauging systems; or

(III) A statistical inventory reconciliation system with a tank test every 3 years.

b. For pressurized integral piping systems, the owner or operator must use:

(I) An automatic in-line leak detector with flow restriction meeting the requirements of department rules used in conjunction with an annual tightness or pressure test; or

(II) An automatic in-line leak detector with electronic flow shut-off meeting the requirements of department rules.

c. For suction integral piping systems, the owner or operator must use:

(I) A single check valve installed directly below the suction pump if, ~~provided~~ there are no other valves between the dispenser and the tank; or

(II) An annual tightness test or other approved test.

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d. Owners of facilities with existing contamination which
~~that~~ install internal release detection systems pursuant to ~~in~~
~~accordance with~~ sub-subparagraph a. shall permanently close
their external groundwater and vapor monitoring wells pursuant
to ~~in accordance with~~ department rules by December 31, 1998.
Upon installation of the internal release detection system, such
~~these~~ wells must ~~shall~~ be secured and taken out of service until
permanent closure.

e. Facilities with vapor levels of contamination meeting
the requirements of or below the concentrations specified in the
performance standards for release detection methods specified in
department rules may continue to use vapor monitoring wells for
release detection.

f. The department may approve other methods of release
detection for storage tanks and integral piping which have at
least the same capability to detect a new release as the methods
specified in this subparagraph.

(b)1. To be eligible to be certified as an insured
facility, for discharges reported after January 1, 1989, the
owner or operator must ~~shall~~ file an affidavit upon enrollment
in the program. The affidavit must ~~shall~~ state that the owner or
operator has read and is familiar with this chapter and the
rules relating to petroleum storage systems and petroleum
contamination site cleanup adopted pursuant to ss. 376.303 and
376.3071 and that the facility is in compliance with this
chapter and applicable rules adopted pursuant to s. 376.303.
Thereafter, the facility's annual inspection report shall serve
as evidence of the facility's compliance with department rules.
The facility's certificate as an insured facility may be revoked

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only if the insured fails to correct a violation identified in an inspection report before a discharge occurs. The facility's certification may be restored when the violation is corrected as verified by a reinspection.

2. Except as provided in paragraph (a), to be eligible to be certified as an insured facility, the applicant must demonstrate to the department that the applicant has financial responsibility for third-party claims and excess coverage, as required by this section and 40 C.F.R. s. 280.97(h), and that the applicant maintains such insurance during the applicant's participation as an insured facility.

3. Should a reinspection of the facility be necessary to demonstrate compliance, the insured shall pay an inspection fee not to exceed \$500 per facility to be deposited in the Inland Protection Trust Fund.

4. Upon report of a discharge, the department shall issue an order stating that the site is eligible for restoration coverage unless the insured has intentionally caused or concealed a discharge or disabled leak detection equipment, has misrepresented facts in the affidavit filed pursuant to subparagraph 1., or cannot demonstrate that he or she has obtained and maintained the financial responsibility for third-party claims and excess coverage as required in subparagraph 2.

This paragraph does not ~~Nothing contained herein shall~~ prevent the department from assessing civil penalties for noncompliance pursuant to this subsection ~~as provided herein.~~

(c) A lender that has loaned money to a participant in the Florida Petroleum Liability and Restoration Insurance Program

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and has held a mortgage lien, security interest, or ~~any~~ lien rights on the site primarily to protect the lender's right to convert or liquidate the collateral in satisfaction of the debt secured, or a financial institution that ~~which~~ serves as a trustee for an insured in the program for the purpose of site rehabilitation, is ~~shall be~~ eligible for a state-funded cleanup of the site, if the lender forecloses the lien or accepts a deed in lieu of foreclosure on that property and acquires title, and as long as the following has occurred, as applicable:

1. The owner or operator provided the lender with proof that the facility is eligible for the restoration insurance program at the time of the loan or before the discharge occurred.

2. The financial institution or lender ~~completes site rehabilitation and seeks reimbursement pursuant to s. 376.3071(12) or~~ conducts ~~preapproved~~ site rehabilitation pursuant to s. 376.3071 ~~s. 376.30711, as appropriate.~~

3. The financial institution or lender did not engage in management activities at the site before ~~prior to~~ foreclosure and does not operate the site or otherwise engage in management activities after foreclosure, except to comply with environmental statutes or rules or to prevent, abate, or remediate a discharge.

(d)1. With respect to eligible incidents reported to the department before ~~prior to~~ July 1, 1992, the restoration insurance program shall provide up to \$1.2 million of restoration for each incident and shall have an annual aggregate limit of \$2 million of restoration per facility.

2. For any site at which a discharge is reported on or

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after July 1, 1992, and for which restoration coverage is requested, the department shall pay for restoration in accordance with the following schedule:

a. For discharges reported to the department from July 1, 1992, to June 30, 1993, the department shall pay up to \$1.2 million of eligible restoration costs, less a \$1,000 deductible per incident.

b. For discharges reported to the department from July 1, 1993, to December 31, 1993, the department shall pay up to \$1.2 million of eligible restoration costs, less a \$5,000 deductible per incident. However, if, before ~~prior to~~ the date the discharge is reported and by September 1, 1993, the owner or operator can demonstrate financial responsibility in effect in accordance with 40 C.F.R. s. 280.97, subpart H, for coverage under sub-subparagraph c., the deductible will be \$500. The \$500 deductible shall apply for a period of 1 year from the effective date of a policy or other form of financial responsibility obtained and in effect by September 1, 1993.

c. For discharges reported to the department from January 1, 1994, to December 31, 1996, the department shall pay up to \$400,000 of eligible restoration costs, less a deductible of \$10,000.

d. For discharges reported to the department from January 1, 1997, to December 31, 1998, the department shall pay up to \$300,000 of eligible restoration costs, less a deductible of \$10,000.

e. Beginning January 1, 1999, ~~no~~ restoration coverage may ~~not shall~~ be provided.

f. In addition, a supplemental deductible shall be added as

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follows:

(I) A supplemental deductible of \$5,000 if the owner or operator fails to report a suspected release within 1 working day after discovery.

(II) A supplemental deductible of \$10,000 if the owner or operator, within 3 days after discovery of an actual new discharge, fails to take steps to test or empty the storage system and complete such activity within 7 days.

(III) A supplemental deductible of \$25,000 if the owner or operator, after testing or emptying the storage system, fails to proceed within 24 hours thereafter to abate the known source of the discharge or to begin free product removal relating to an actual new discharge and fails to complete abatement within 72 hours, although free product recovery may be ongoing.

(e) The following are not eligible to participate in the Petroleum Liability and Restoration Insurance Program:

1. Sites owned or operated by the Federal Government during the time the facility was in operation.

2. Sites where the owner or operator has denied the department reasonable site access.

3. Any third-party claims relating to damages caused by discharges discovered before ~~prior to~~ January 1, 1989.

4. Any incidents discovered before ~~prior to~~ January 1, 1989, ~~are not eligible to participate in the restoration insurance program.~~ However, this exclusion does ~~shall~~ not ~~be construed to~~ prevent a new incident at the same location from participation in the restoration insurance program if the owner or operator is otherwise eligible. This exclusion does ~~shall~~ not affect eligibility for participation in the Early Detection

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1741 Incentive ~~EDI~~ Program.

1742
1743 Sites meeting the criteria of this subsection for which a site
1744 rehabilitation completion order was issued before ~~prior to~~ June
1745 1, 2008, do not qualify for the 2008 increase in site
1746 rehabilitation funding assistance and are bound by the pre-June
1747 1, 2008, limits. Sites meeting the criteria of this subsection
1748 for which a site rehabilitation completion order was not issued
1749 before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they
1750 have previously transitioned to nonstate-funded cleanup status,
1751 may continue state-funded cleanup pursuant to s. 376.3071(6) ~~s.~~
1752 ~~376.30711~~ until a site rehabilitation completion order is issued
1753 or the increased site rehabilitation funding assistance limit is
1754 reached, whichever occurs first. ~~At no time shall expenses~~
1755 ~~incurred outside the preapproved site rehabilitation program~~
1756 ~~under s. 376.30711 be reimbursable.~~

1757 Section 9. Subsections (1) and (4) of section 376.3073,
1758 Florida Statutes, are amended to read:

1759 376.3073 Local programs and state agency programs for
1760 control of contamination.—

1761 (1) The department shall, to the greatest extent possible
1762 and cost-effective, contract with local governments to provide
1763 for the administration of its departmental responsibilities
1764 under ss. 376.305, 376.3071(4) (a)-(e), (h), (k), and (m) and (6)
1765 ~~(l), (n), 376.30711~~, 376.3072, and 376.3077 through locally
1766 administered programs. The department may also contract with
1767 state agencies to carry out the restoration activities
1768 authorized pursuant to ss. 376.305, 376.3071, and 376.3072~~r~~
1769 ~~376.305, and 376.30711~~. However, ~~no~~ such a contract may not

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shall be entered into unless the local government or state agency is deemed capable of carrying out such responsibilities to the department's satisfaction.

(4) Under no circumstances shall the cleanup criteria employed in locally administered programs or state agency programs or pursuant to local ordinance be more stringent than the criteria established by the department pursuant to s. 376.3071(5) or (6) ~~s. 376.30711~~.

Section 10. Subsections (4) and (5) of section 376.3075, Florida Statutes, are amended to read:

376.3075 Inland Protection Financing Corporation.—

(4) The corporation may enter into one or more service contracts with the department to provide services to the department in connection with financing the functions and activities provided in ss. 376.30-376.317. The department may enter into one or more such service contracts with the corporation and provide for payments under such contracts pursuant to s. 376.3071(4)(n) ~~s. 376.3071(4)(e)~~, subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the corporation's administrative costs and expenses after payments as set forth in subsection (5). Each service contract may have a term of up to 20 years. Amounts annually appropriated and applied to make payments under such service contracts may not include any funds derived from penalties or other payments received from any property owner or private party, including payments received under s. 376.3071(7)(b) ~~s. 376.3071(6)(b)~~. In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under such service contracts do not constitute

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1799 a general obligation of the state or a pledge of the faith and
1800 credit or taxing power of the state, and ~~nor may~~ such
1801 obligations are not obligations ~~be construed in any manner as an~~
1802 ~~obligation~~ of the State Board of Administration or entities for
1803 which it invests funds, other than the department as provided in
1804 this section, but are payable solely from amounts available in
1805 the Inland Protection Trust Fund, subject to annual
1806 appropriation. In compliance with this subsection and s.
1807 287.0582, the service contract must expressly include the
1808 following statement: "The State of Florida's performance and
1809 obligation to pay under this contract is contingent upon an
1810 annual appropriation by the Legislature."

1811 (5) The corporation may issue and incur notes, bonds,
1812 certificates of indebtedness, or other obligations or evidences
1813 of indebtedness payable from and secured by amounts payable to
1814 the corporation by the department under a service contract
1815 entered into pursuant to subsection (4) for the purpose of
1816 financing the rehabilitation of petroleum contamination sites
1817 pursuant to ss. 376.30-376.317. The term of any such note, bond,
1818 certificate of indebtedness, or other obligation or evidence of
1819 indebtedness may not have a financing term that exceeds 15
1820 years. The corporation may select its financing team and issue
1821 its obligations through competitive bidding or negotiated
1822 contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of
1823 the corporation does not constitute a debt or obligation of the
1824 state or a pledge of the faith and credit or taxing power of the
1825 state, but is payable from and secured by payments made by the
1826 department under the service contract pursuant to s.
1827 376.3071(4)(n) ~~s. 376.3071(4)(e)~~.

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1828

Section 11. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR WILTON SIMPSON

18th District

COMMITTEES:

Community Affairs, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

February 19, 2014

Senator Charles S. "Charlie" Dean, Sr., Chairman
Committee on Environmental Preservation and Conservation
325 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Senator Dean,

Please place Senate Bill 536 relating to reclaimed water, on the next Committee on Environmental Preservation and Conservation agenda. This bill passed its first committee with a unanimous favorable vote.

Please contact my office with any questions.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson
Senator, 18th District

REPLY TO:

- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- ☐ Post Office Box 938, Brooksville, Florida 34605
- ☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date _____

Topic _____

Bill Number

SB 1582

(if applicable)

Name _____

Amendment Barcode _____

(if applicable)

Job Title _____

Deputy Secretary Regulating Programs

Address _____

3000 Commonwealth Dr

Phone

245-2148

Street

Tallahassee

City

FL

State

32399

Zip

E-mail _____

Speaking: ☒ For

☐ Against

☐ Information

Representing

DEP

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 (10/20/11)

Amy Datz

1130 Crestview Ave.

Tallahassee Fl. 32303

(850) 322-7599

Amalie.datz@mac.com

SB 1576

3-20-14

Chairman Dean:

I am so proud of you all for your care and attention to the matter of water quality in Florida.

I will address you as a two Sen. one special this morning.

I'm speaking of both the springs legislation and aquatic preserve legislation.

I am so grateful that Senator Simpson said this is an ongoing process. I am also heartened that Senator Lutwala

has asked about preventing future degradation.

I know I am late to get your inclusion of the development of statutes to regulate Fracking. Currently there is no legislative oversight of the Fracking process. Please address

To Save the Future of Florida please develop a statute to have a moratorium of Fracking in Florida.

this next session at a minimum

If there is Fracking as is already permitted by FDEP in 18 wells then all the money you put in both these good bills will just be flushed down the sinkholes they create.

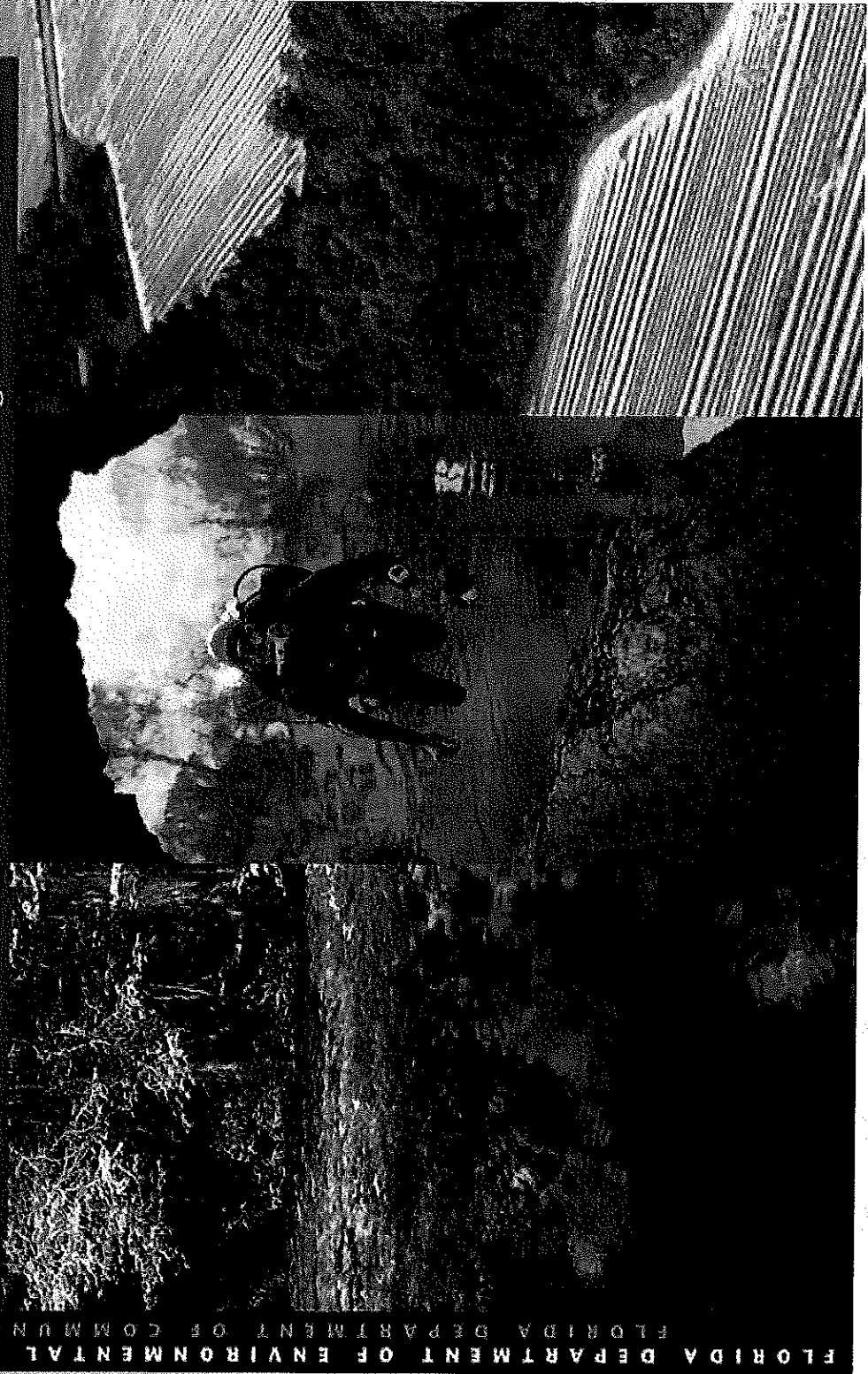
Please Remember: once you Frack you can't go back. ~~the~~ No amount of money will bring back our aquifer to normal. Please Save Our Drinking water Source.

once you Frack you can never go back to normal clear water safe for humans & plants

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

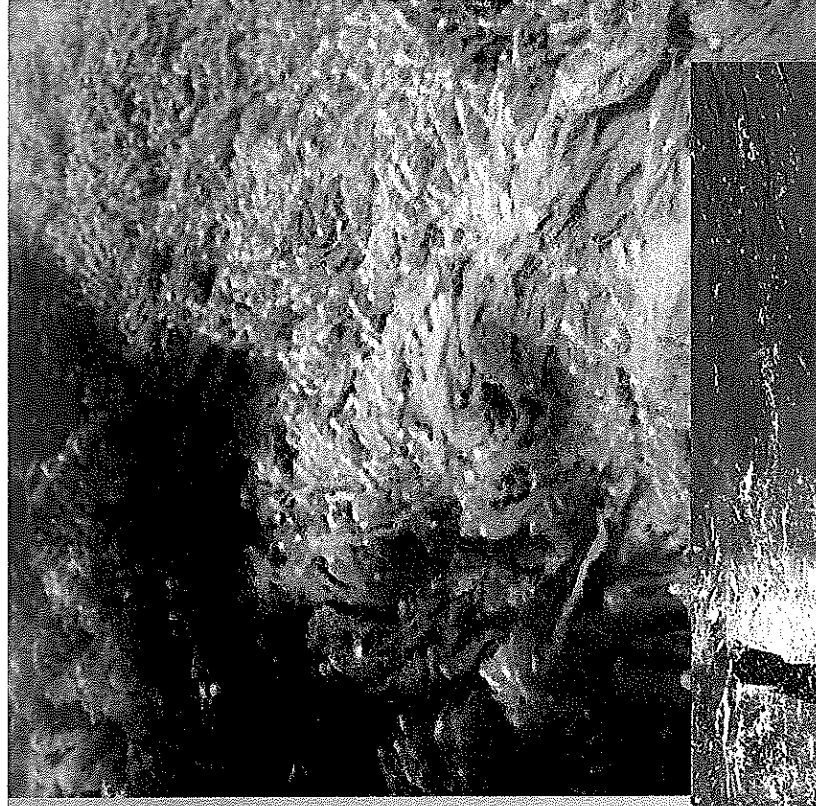
Protecting Florida's Springs

Land Use Planning Strategies and Best Management Practices



What's the Point

- With no sewer infrastructure, no advanced waste treatment to remove nutrients and no organized means (such as a RME) to begin overtime to manage the problem of large in-place populations of septic systems - we can expect the problem to continue, and likely get worse.

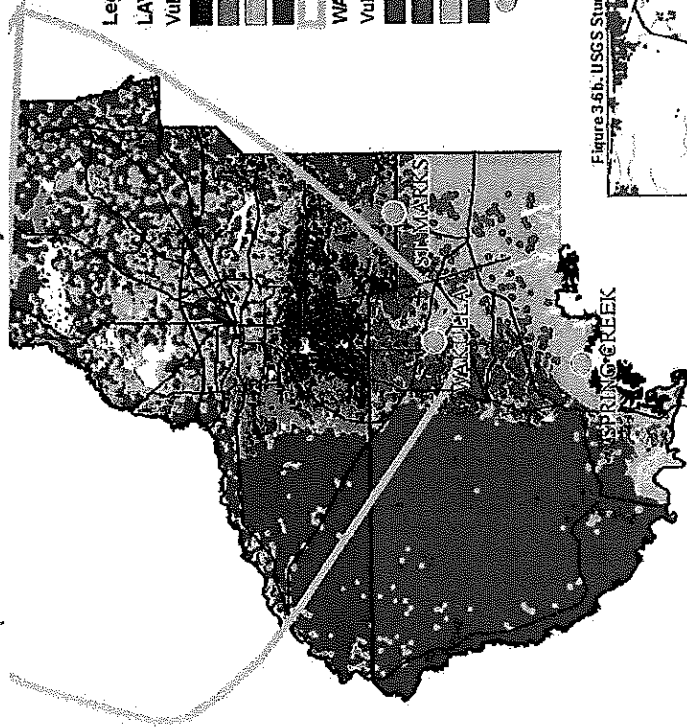


Wakulla Springs

Before and After Photos

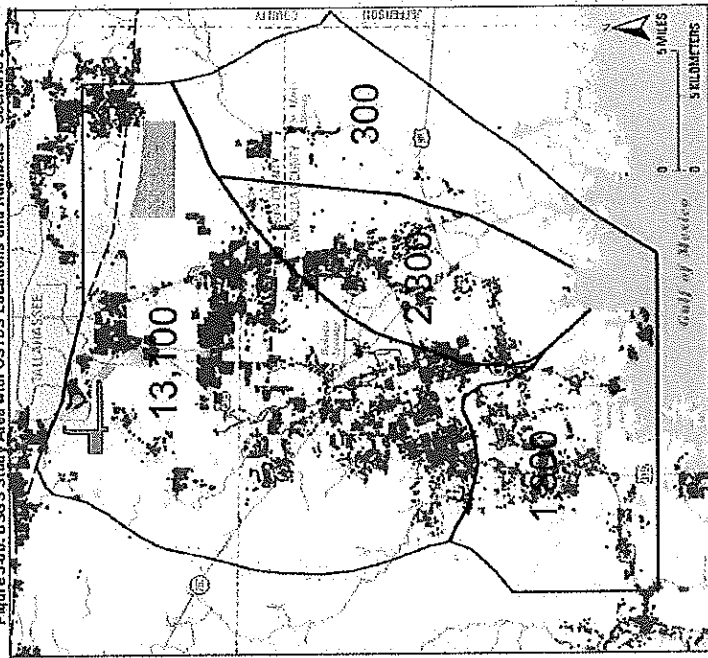
Can you tell the more recent?

Leon and Wakulla County Aquifer Vulnerability Assessments



- Legend**
- LAVA Results**
- Vulnerability Class**
- Most Vulnerable
 - More Vulnerable
 - Vulnerable
 - Less Vulnerable
- Wakulla Springs Recharge**
- WAVA Results**
- Vulnerability Class**
- Most Vulnerable
 - More Vulnerable
 - Vulnerable
 - Less Vulnerable
- Magnitude 1 Springs**

Figure 3.6b. USGS Study Area with OSTDS Locations and Numbers - Scenario 2



EXPLANATION

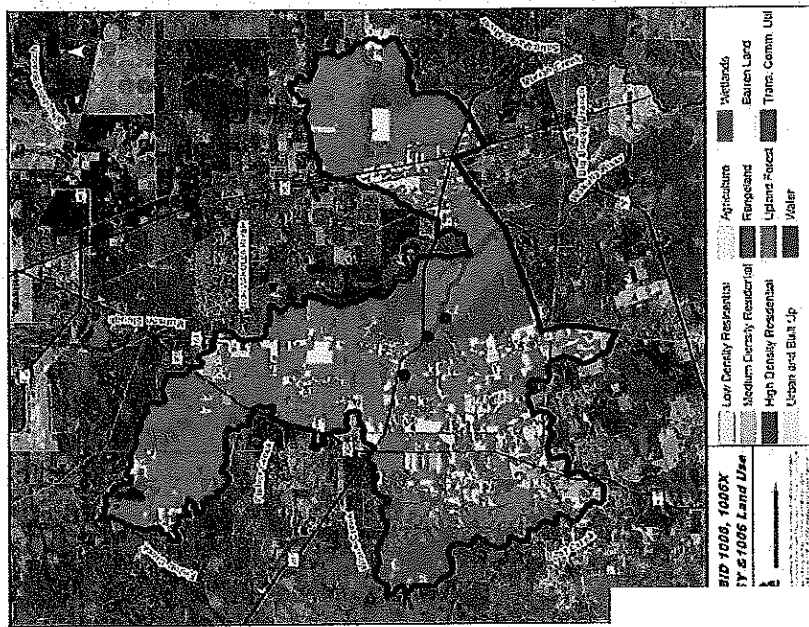
RESTRICTION INFERRAL AREA

MAPPING UNAPPROVED CASES

Land Use

Septic Systems

U.S. Principal Land Uses in the Upper Wakulla River Watershed (WSID 1000, 1000X, and 1000Y) in 1997



North Florida – Wakulla Springs

Levy County

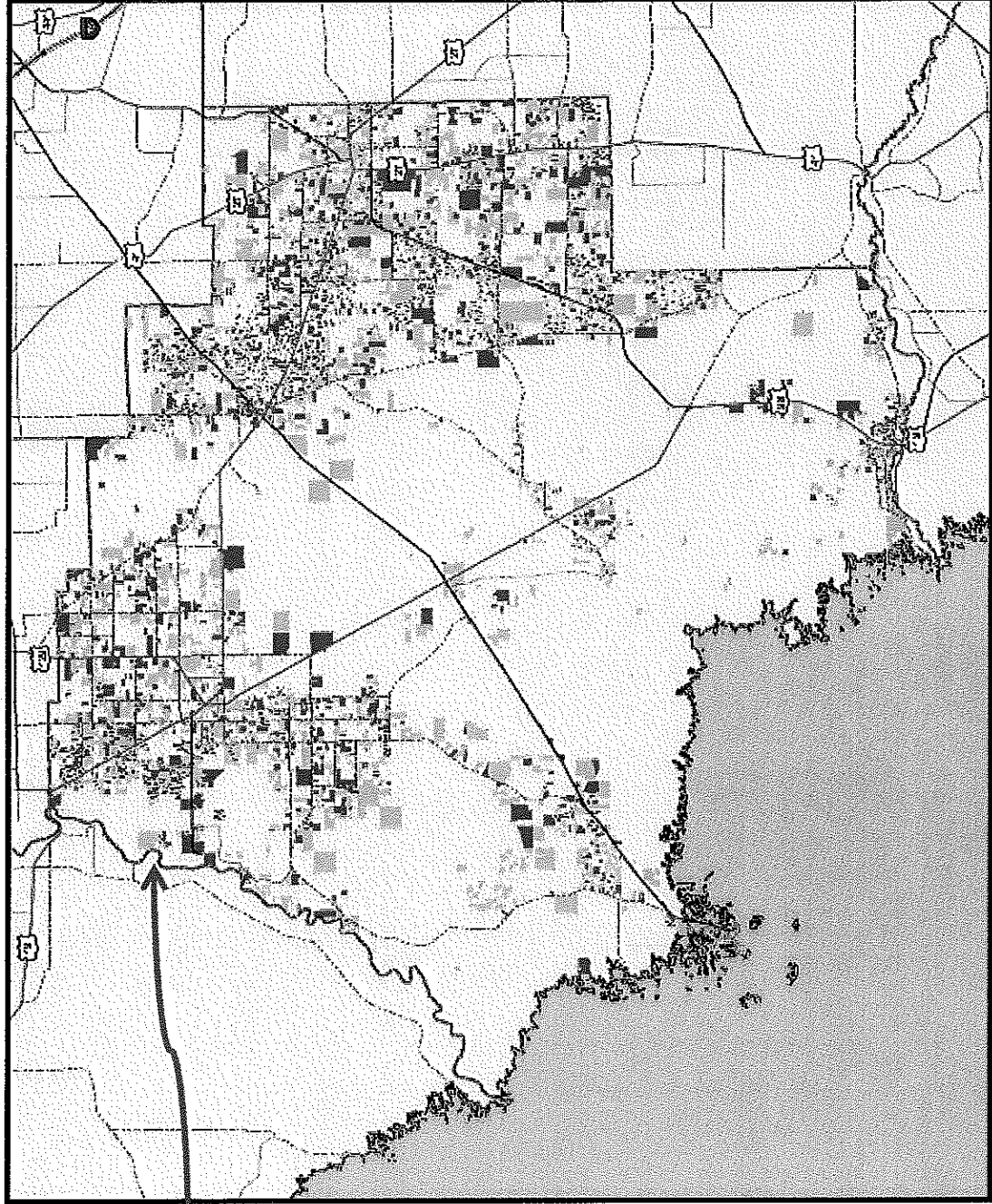
Wastewater Method

Manatee Springs



Legend

- Developed - Unknown
- Known Wastewater Method
- Septic
- Sewer

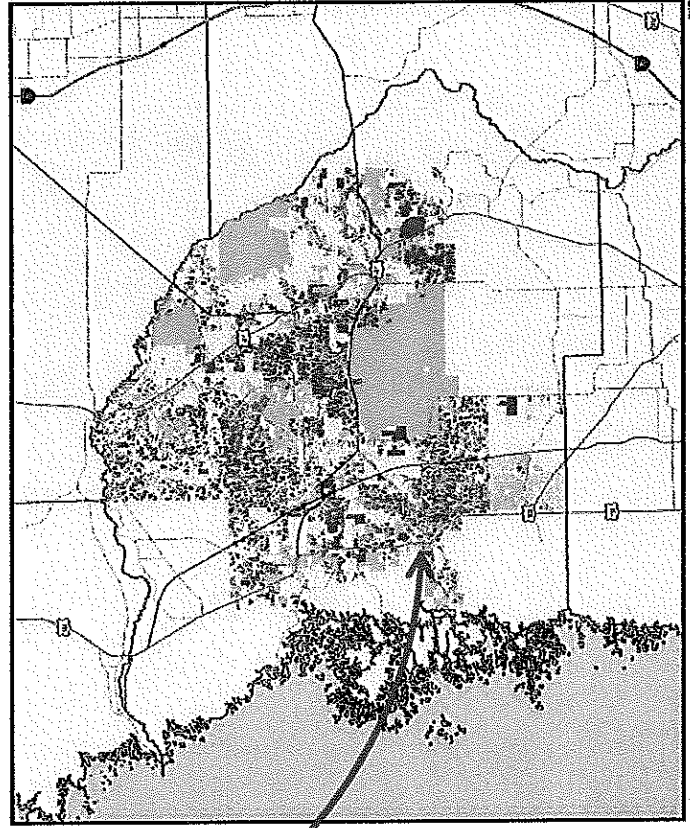
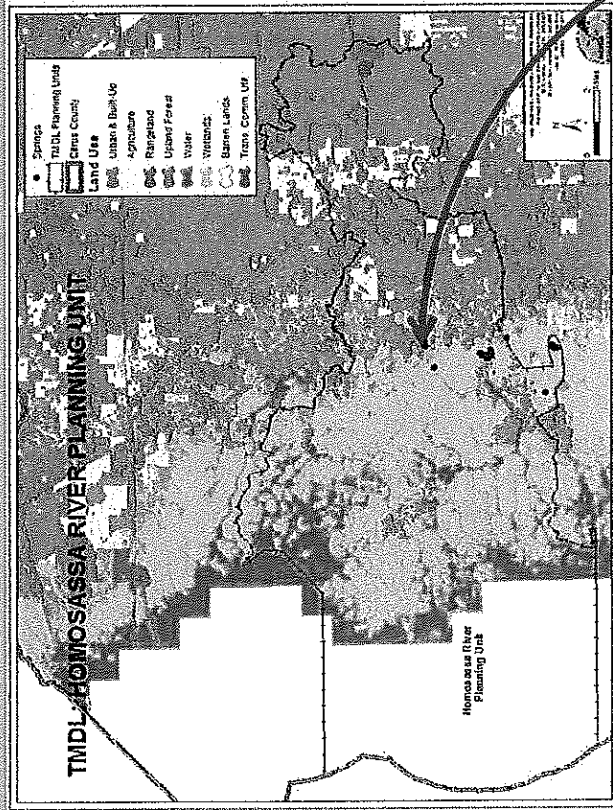


Levy County - Manatee Springs



- Overhead Irrigation/fertilizers
- Community on Septic Systems
- Golf Course - fertilizers

Citrus County – Homosassa Springs



Citrus County - Crystal River/Kings Bay

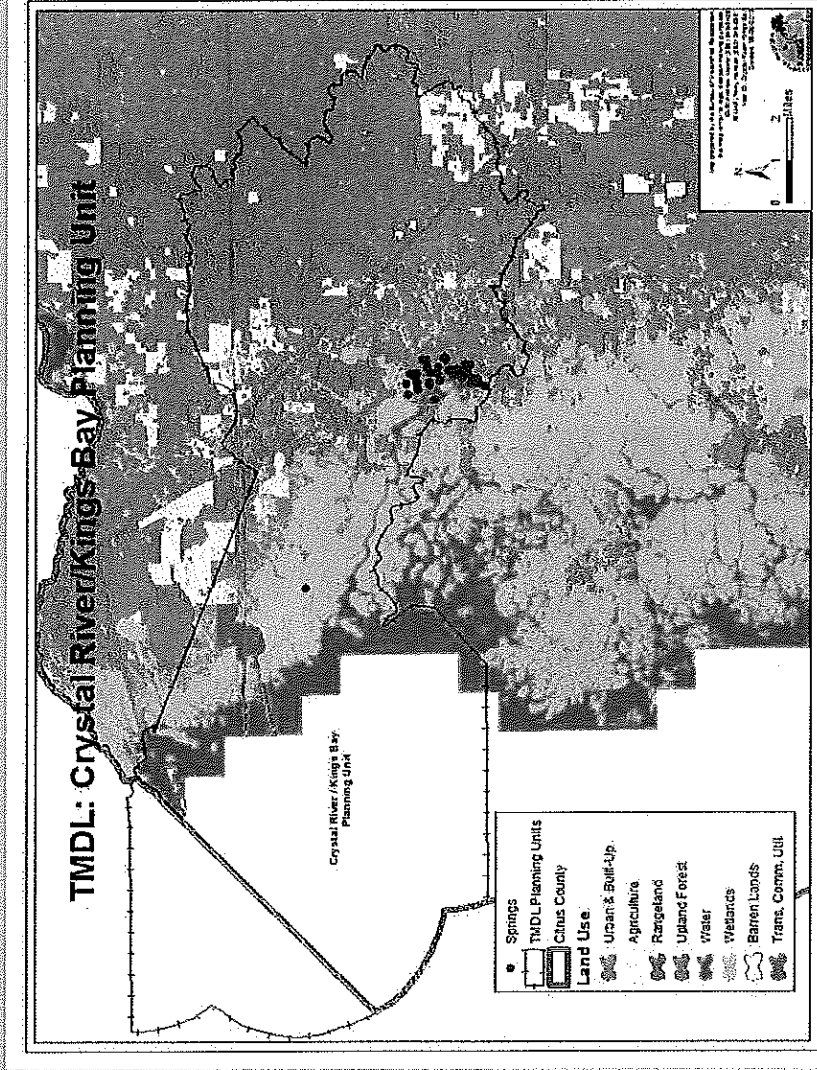


Figure 2.2. Floating *Lyngbya* sp. Mats at Hunter Spring (WBID 1341C) in November 2009 (Source: L. Hester)



Figure 2.3. Aerial Photo of Algal Coverage and Chlorophyll in the Water Column at Hunter Spring (WBID 1341C) in June 2010 (Source: H. Means, Department)

After

Citrus County - Crystal River/Kings Bay

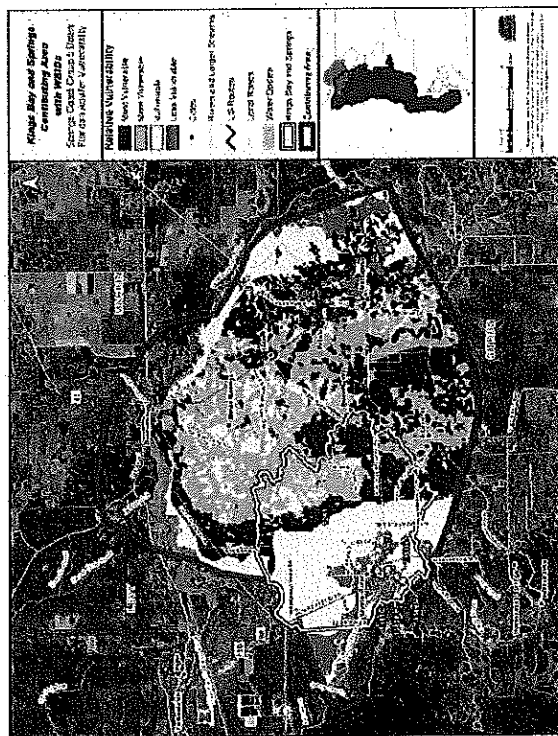


Figure 4.7. Florida Aquifer Vulnerability in the Portion of the Kings Bay Contributing Area within Florida

FAVA

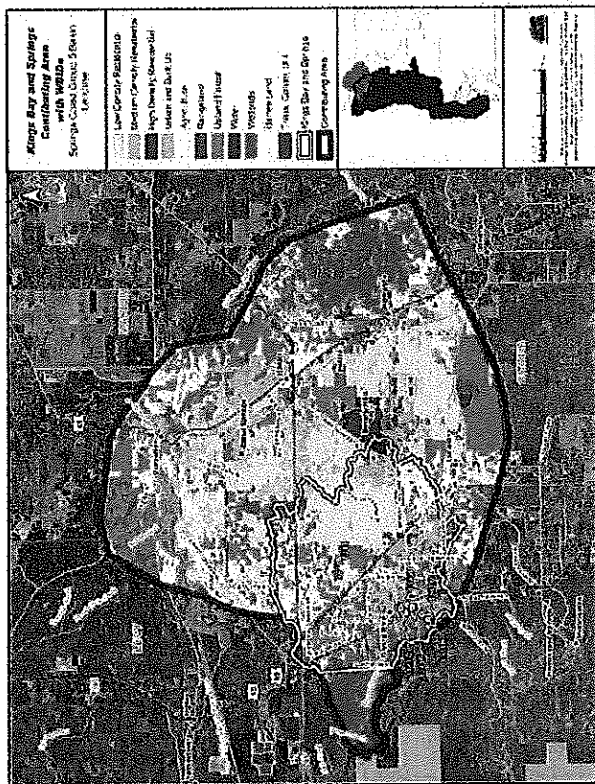


Figure 4.5. Principal Land Uses in the Kings Bay Contributing Area in 2009

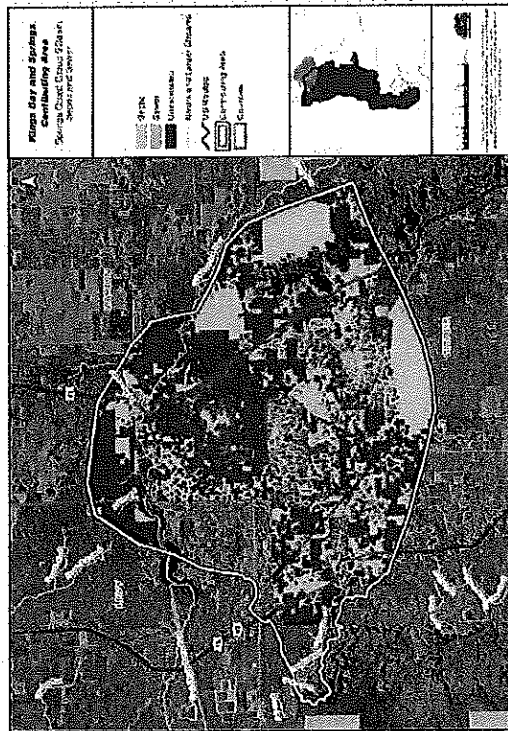


Figure 4.6. Density of OSTDS (Septic Tanks) and Sewer Systems in the Kings Bay Contributing Area in 2009 (Hall and Glancy 2009)

Land Use

Septic Systems

Hernando County Weeki Wachee System



Figure 2.1. Archives Underwater Photo of Weeki Wachee Spring Shows Native Vegetation (Florida Archives)



Figure 2.2. Archives Underwater Photo of Weeki Wachee Spring Shows Native Vegetation and Water Clarity (Florida Archives)

Before

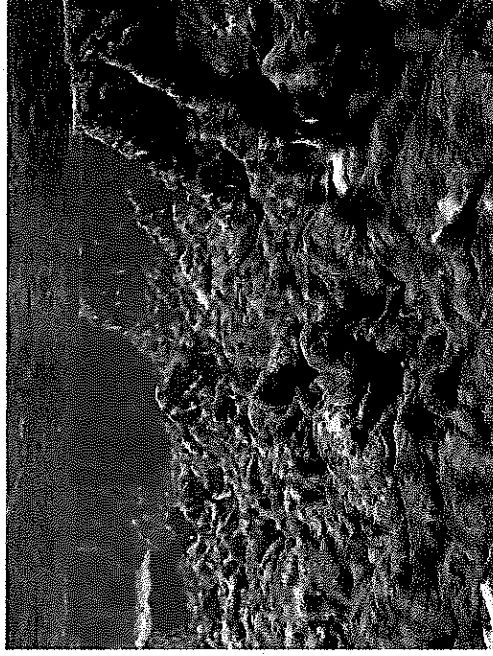
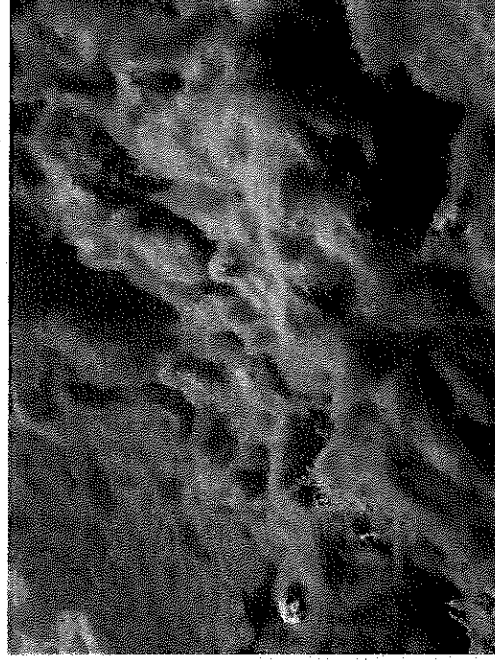


Figure 2.3. Algae on Tape Grass and Dead Logs in Weeki Wachee Spring, WBID 4382B, in 2006 (Department)



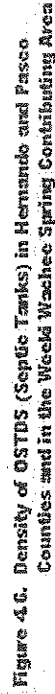
After

Figure 2.4. Algal Smothering at Weeki Wachee Spring, WBID 1382B, in 2009 (photo by Gary Maddox, Department)

Hernando County - Weeki Wachee System



FAVA

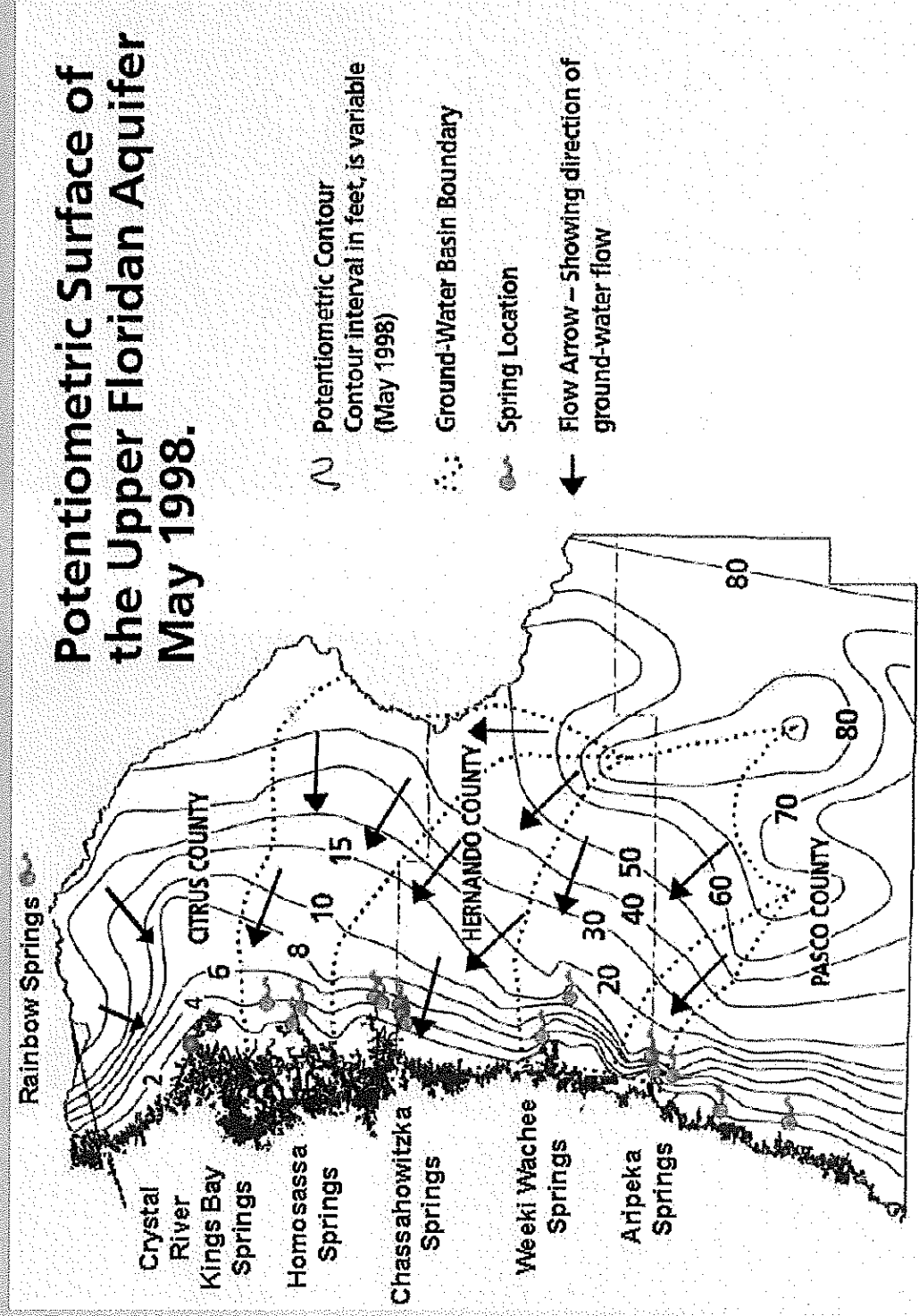


Septic Systems

Septic Systems

Several Florida West Coast Springs

Direction of Groundwater flow



modified from USGS WRIR 01-4230: Knochenmus and

Marion County - Rainbow River System

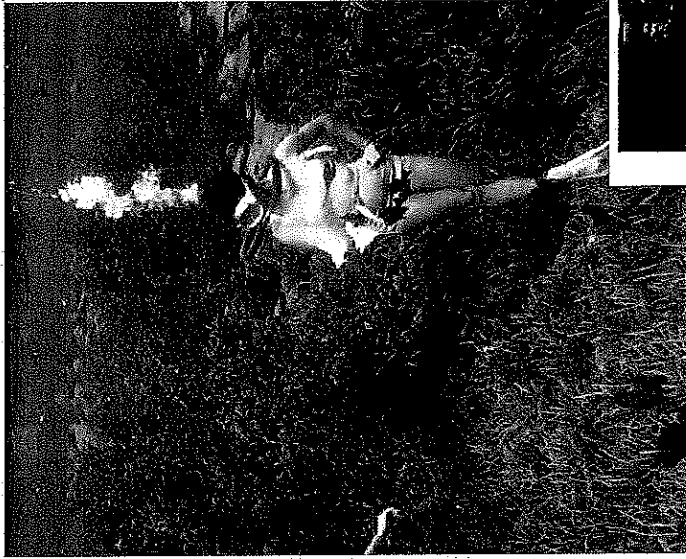


Figure 2.3. Underwater Photo of Rainbow Spring of Florida)



Figure 2.2. Underwater Photo of Rainbow Springs, 1935 (State Archives of Florida)

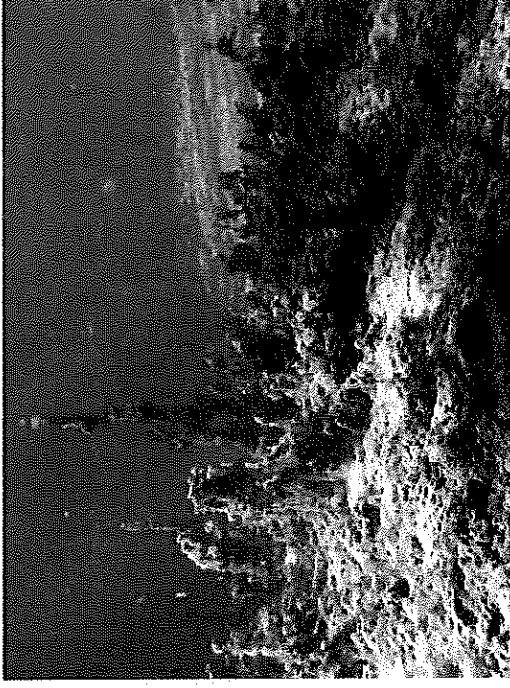


Figure 2.6. Rainbow Spring #4, South of Vent, March 2009 (FGS)



Figure 2.7. Rainbow Spring, #4, North of Vent, Close to Shoreline, November 2009 (FGS)

Before

After

Marion County - Rainbow River System

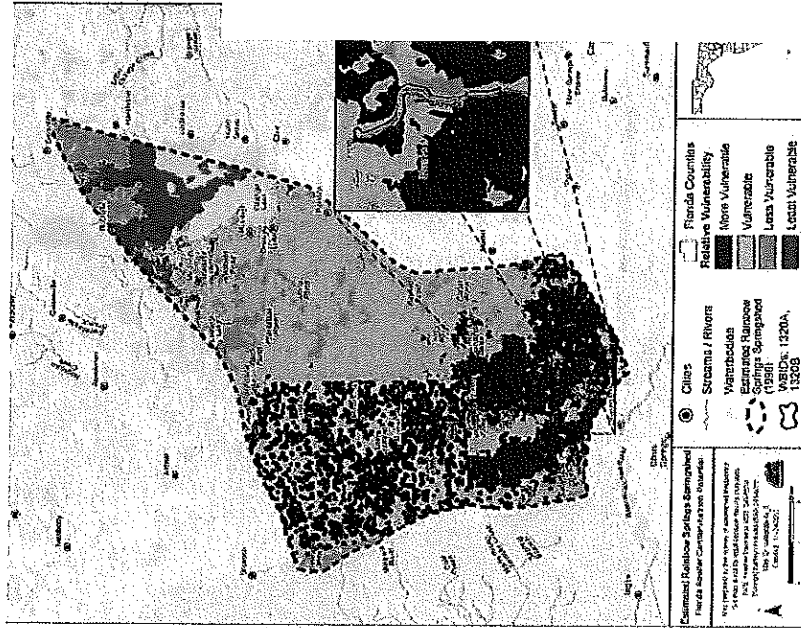


Figure 4.7. Aquifer Vulnerability in the Estimated Rainbow Springs Springshed

FAVA

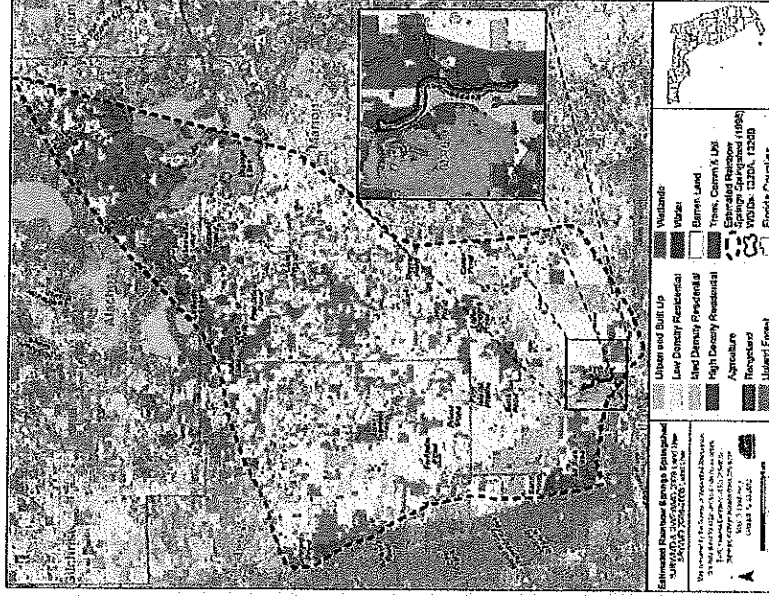


Figure 4.3. Principal Land Uses in the Rainbow Springs Springshed (based on 2006-08 GIS coverages)

Land Use

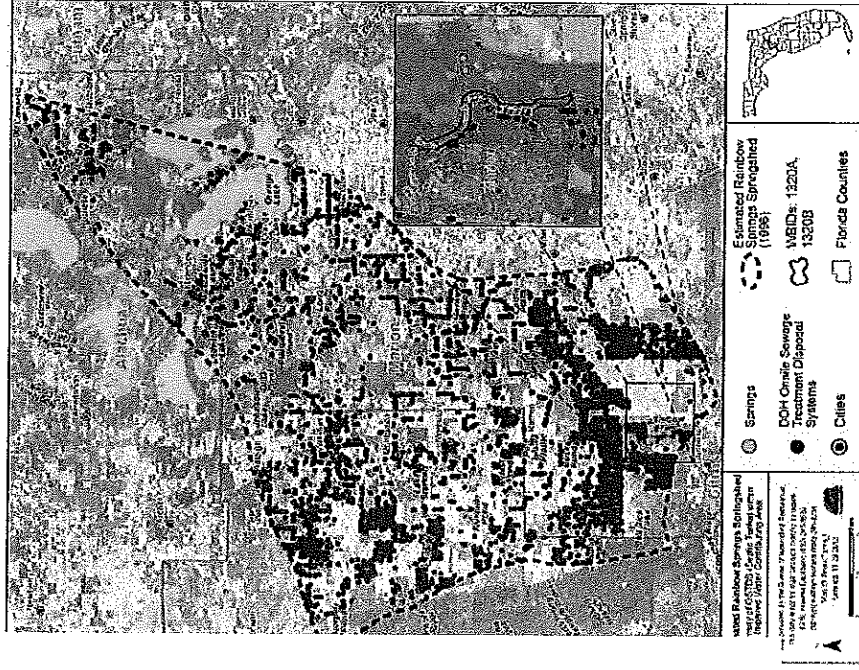


Figure 4.4. Density of OSTDS (Septic Tanks) in the Rainbow Springs Springshed (Marion County 2008; FDOH 2010)

Septic Systems

Orange, Seminole & Lake Counties - Wekiva System

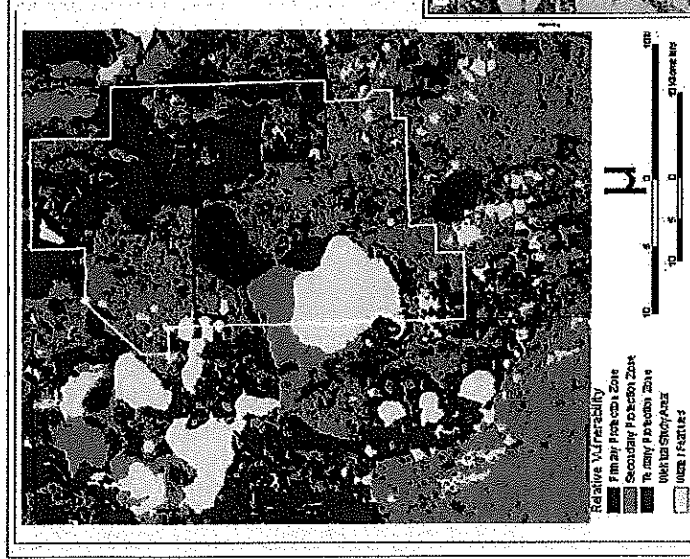
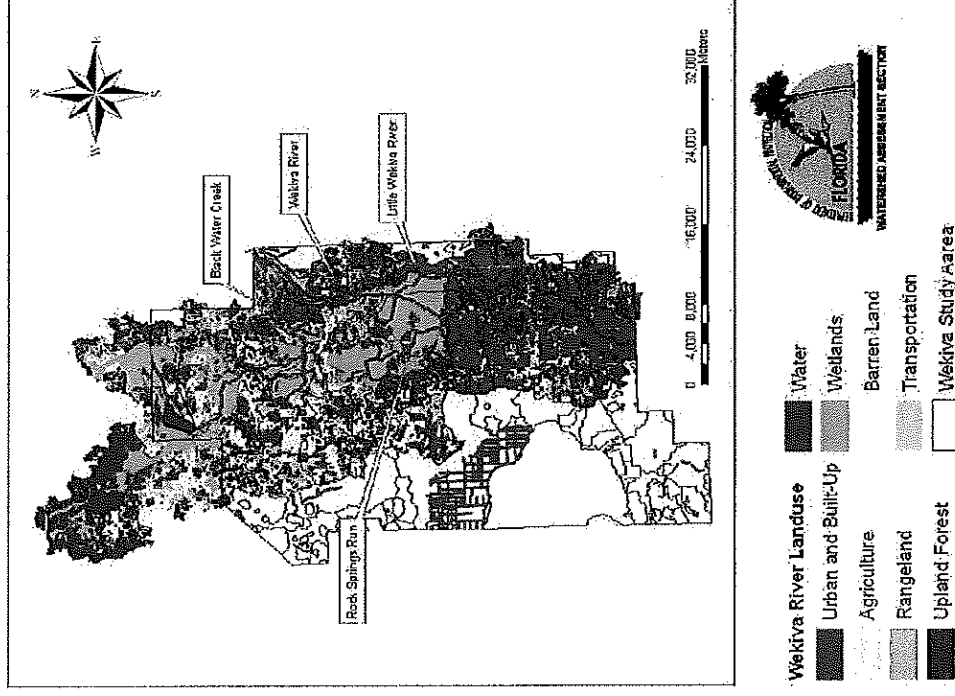
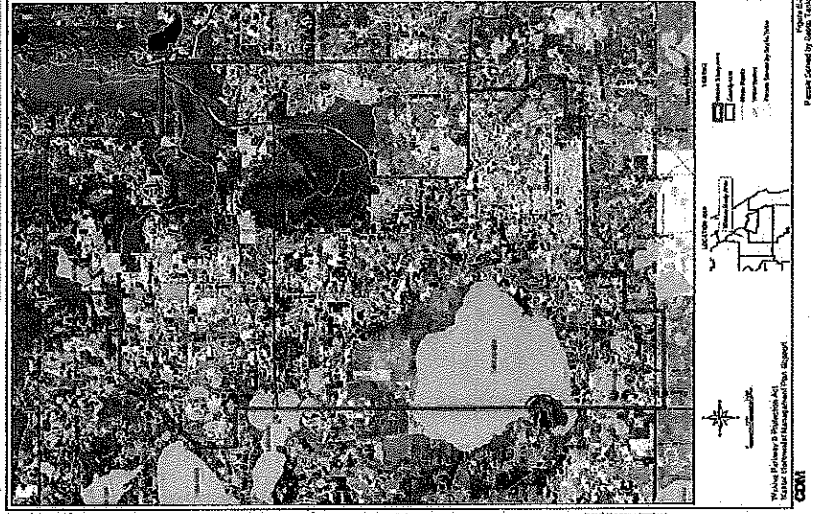


Figure 9. Relative vulnerability of the FAS WA VA model showing primary, secondary, and tertiary protection zones.

FAVA



Land Use

Septic Systems – In Yellow

Two Central Florida Springs

Wekiva
Rainbow

An Obvious Problem in need of Tools to Correct Comparative Between Various Florida Springs

* Aquifer Vulnerability (FAVA)

* Land Use

&

* Septic Systems Population

THE FLORIDA SENATE

TRB 1

APPEARANCE RECORD

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

3-20-14

Meeting Date

Topic

Reckard v. State

Bill Number

CS/SS 536

(if applicable)

Name

Doug Mann

Amendment Barcode

(if applicable)

Job Title

Address

310 W. College Ave.

Phone

222-9535

Street

Tallahassee

City

State

FL

Zip

32311

E-mail

Speaking:

☒ For☐ Against☐ Information

Representing

ATF

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/14
Meeting Date

Topic Reclaimed Water Study

Name Mary Jean Yon

Job Title Legislative Director

Address 3324 Charleston Rd

Street Talahassee FL 32309
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Audubon Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

Bill Number SB 536
(if applicable)

Amendment Barcode
(if applicable)

Phone 850/519-7859

E-mail maryjeanyon@senate.fl
nd

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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THE FLORIDA SENATE

APPEARANCE RECORD

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3-20-14

Meeting Date

Topic Recruitment water

Bill Number 536

Name Lynn Spitzer

Amendment Barcode 850142 (if applicable)

Job Title Exec Director

Address 719 E Park

Phone 561-0904

Street T City 32301 State Zip

E-mail LYNN.SPITZER@ksr.net

Speaking: ☒ For ☐ Against ☐ Information

Representing PLA STORM WATER ASSOC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/20/2014

Meeting Date

Topic

Bill Number 536

(if applicable)

Name BRIAN PITTS

Amendment Barcode

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/14
Meeting Date

Topic Reclaimed Water

Bill Number 536
(if applicable)

Name Leticia Adams

Amendment Barcode _____
(if applicable)

Job Title Senior Policy Director

Address 136 S. Broadway St.

Phone 858.5446866

Street Tall City LA State 32301 Zip

E-mail ladams@flsenate.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/20/14

Topic BECAINED WATER

Bill Number 536

(if applicable)

Name STEVEN JAMES

Amendment Barcode

(if applicable)

Job Title

Address 100 S. MONROE

Phone (850) 922-4300

Street

TALLAHASSEE FL 32305

City

State

Zip

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing FLA. HOUSE OF REPRESENTS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

March 20, 2014
Meeting Date

Topic FWC bill

Bill Number SB 1B26

(if applicable)

Name Jackie Faulstich

Amendment Barcode

(if applicable)

Job Title Leg. Affairs Director

Address 630 S. Meridian

Phone 487-3795

Street
City Tallahassee, FL 32399
State Zip

E-mail jackie.faulstich@myfwc.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FWC

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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THE FLORIDA SENATE
APPEARANCE RECORD

TAB 2

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

Meeting Date March 20, 2014

Topic fire bill

Name Jackie Fauls

Job Title leg. Affairs Director

Address 608 S. Meridian Street

Street Kalamazoo City FL State 32399 Zip

Bill Number SB 1126 (if applicable)

Amendment Barcode 463350 (if applicable)

Phone 481-3795

E-mail jackie.fauls@myfla.com

Speaking: ☒ For ☐ Against ☐ Information

Representing fire

Appearing at request of Chair: ☐ Yes ☐ No ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-20-14

Meeting Date

Topic FBCC

Bill Number 1126

(if applicable)

Name Lane Stephens

Amendment Barcode

(if applicable)

Job Title

Address 201 S. Monroe St. Ste 300

Phone 513-0004

Street

Tallahassee

FL

01

City

State

Zip

E-mail

Speaking:

☒ For

☐ Against

☐ Information

Representing Florida Architect Association, Allied Sportsman's Association

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/14
Meeting Date

Topic ~~Robertson~~ FWL

Bill Number SB 1126

(if applicable)

Name Preston Robertson

Amendment Barcode

(if applicable)

Job Title VP & General Counsel

Address PO Box 6870

Phone 656-7113

Street

Tall, FL 32301

City

State

Zip

E-mail preston@fwonline.org

Speaking:

☒ For

☐ Against

☒ Information

Representing Florida Wildlife Federation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/2014

Meeting Date

Topic _____ Bill Number 1126 (if applicable)

Name BRIAN PITTS Amendment Barcode _____ (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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

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THE FLORIDA SENATE

APPEARANCE RECORD

TAB 3

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

3/20/14
Meeting Date

Topic Divers Bill Number SB 1176 (if applicable)

Name Brittley Burch Amendment Barcode _____ (if applicable)

Job Title Legislative Assistant

Address 2618 Centennial Place Phone (850) 222-0720

Street Tallahassee, FL 32308

City State Zip

E-mail bburch@lawfla.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Divin9 Equipment & Marketing 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3-20-14

Topic SB 1176

Bill Number 1176 (if applicable)

Name Stephen Shiver

Amendment Barcode _____ (if applicable)

Job Title _____

Address 215 S Maner St 602

Phone 222 8900

Street Talleyhenny
City _____ State _____ Zip _____

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Two Counties

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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THE FLORIDA SENATE

APPEARANCE RECORD

TAB 4

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

3/20/14
Meeting Date

Topic Lionfish Bill Number SB 1336 (if applicable)

Name Brittney Burch Amendment Barcode _____ (if applicable)

Job Title Legislative Assistant

Address 2618 Centennial Place Phone (850) 222-0720

Street Tallahassee, FL State 32308 Zip

City

Speaking: ☒ For ☐ Against ☐ Information

Representing Diving Equipment & Marketing 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1 / 201

Meeting Date

Topic

Bill Number 1336 (if applicable)

Name BRIAN PITTS

Amendment Barcode (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/20/14
Meeting Date

Topic SPRINGS LEGISLATION

Bill Number 1576 (if applicable)

Name JAKE VARN

Amendment Barcode (if applicable)

Job Title

Address 101 N. MONROE ST.

Phone (850) 681-4275

Street City State Zip
MILWAUKEE FL 32301

E-mail JVARNO@BULLERWHITE.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing SELF

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

20 March 2014

Meeting Date

Topic

Springs

Bill Number

(if applicable)

Name

R. L. Groover

Amendment Barcode

(if applicable)

Job Title

Exec. Director

Address

5115 SRESS7

Phone

8135048340

Street

LAKE ACRE

FL

33850

City

State

Zip

E-mail

rgroover@flsenate.com

Speaking:

☐ For

☐ Against

☒ Information

Representing

Florida Business Women's Assoc.

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☐ Yes

☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

3-20-14

Topic

Springs

Bill Number

1576

(if applicable)

Name

Amey Datz

Amendment Barcode

(if applicable)

Job Title

Ex-Deem. Environmental Caucus of FL

Address

1130 Crestview Ave.

Phone

850 322-1599

Street

Palmdessee

State

FL

Zip

32303

E-mail

Amey.datz@fla.gov

Speaking:

☐ For

☐ Against

☒ Information

Representing

Environmental Caucus

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☐ Yes

☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/14
Meeting Date

Topic SPRINGS

Bill Number 6576
(if applicable)

Name DAVID CULLEN

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1678 UNIVERSITY BLVD

Phone 941-323-2402

City SARASOTA State FL Zip 34243

E-mail dcullen@senate.fl.gov

Speaking: ☒ For ☐ Against ☐ Information

Representing STATE OF FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/20/2014

Topic Spring Protection

Name Dan Peterson

Job Title Exec Director

Address 2878 S. Osceola Ave

City Orlando State FL Zip 32806

Speaking: ☐ For ☐ Against ☒ Information

Representing Coalition for Property Rights

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

Bill Number 1576

(if applicable)

Amendment Barcode

(if applicable)

Phone 407 481 2289

E-mail danpeterson@proprights.com

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 8/20/11

Topic Spargo Allocation

Bill Number 1576
(if applicable)

Name Douglas Emerson Funderburker

Amendment Barcode _____
(if applicable)

Job Title Legist

Address 540 Sandy Creek

Phone _____

Street

City

State

Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing League of Women Voters

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date March 20, 2014

Topic Sprinkler Protection

Bill Number 1J76

(if applicable)

Name Jason Bowman (Bowman)

Amendment Barcode

(if applicable)

Job Title Director of Legislative Policy

Address 1625 N. Adams Street

Phone 257-4406

City Tell State IL Zip 32301

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing Nature Conservancy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-20-14
Meeting Date

Topic An Act Relating to Springs

Bill Number 1576
(if applicable)

Name Catherine Rae

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1421 Woodgate Way
Street TEL
City _____ State _____ Zip _____

Phone 850-383-8150
E-mail _____

Speaking: ☐ For ☒ Against ☐ Information

Representing The Tea Party Network

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/2014

Meeting Date

Topic _____ Bill Number 1576 (if applicable)

Name BRIAN PITTS Amendment Barcode _____ (if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

March 20 2014
Meeting Date

Topic Springs

Bill Number 1576

(if applicable)

Name David Childs

Amendment Barcode

(if applicable)

Job Title Counsel

Address 119 S. Monroe St Suite 300

Phone 850 222-7500

Street
Tallahassee FL 32301
City State Zip

E-mail DAVID@HSLAFLA.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing FWEA Utility Council / Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

7B 5

APPEARANCE RECORD

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

3/20/14
Meeting Date

Topic

Sports

Bill Number

SB 1576

(if applicable)

Name

Mary Jean Yon

Amendment Barcode

(if applicable)

Job Title

Legislative Director

Address

3324 Charleston Rd

Phone

850/519-7859

Street

Tallahassee

State

FL

Zip

32309

E-mail

maryjean.yon@flsenate.net

Speaking:

☒ For☐ Against☐ Information

Representing

Audubon Florida

Appearing at request of Chair:

☐ Yes☒ No

Lobbyist registered with Legislature:

☒ Yes☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

TAB 5

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

3-20-14

Meeting Date

Topic

Springs

Bill Number

573 1576

(if applicable)

Name

Doug Hawk

Amendment Barcode

(if applicable)

Job Title

Address

Street

310 W. College Ave.

Phone

222-7535

City

Tallahassee,

State

FL

Zip

32301

E-mail

Speaking:

☐ For☐ Against☒ Information

Representing

AIF

Appearing at request of Chair:

☐ Yes☐ No

Lobbyist registered with Legislature:

☒ Yes☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

3/20/14

Topic

Spriues

Bill Number

1576

(if applicable)

Name

Keith Hedrick

Amendment Barcode

(if applicable)

Job Title

Of Counsel, Ramba Law Group

Strike 20

Address

120 So. Monroe St.

Phone

251-1838

Street

City

State

Zip

Tallahassee FL 32301

E-mail

khedrick@rambalaw.com

Speaking:

☐ For

☐ Against

☒ Information

Representing

Florida Home Builders Assoc.

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/14

Meeting Date

Topic

Springs

Bill Number

SB 1576

(if applicable)

Name

Preston Robertson

Amendment Barcode

470114

(if applicable)

Job Title

VP of General Counsel

Address

POB 6870

Phone

656-7113

Street

Tall, FL 32301

City

State

Zip

E-mail

Preston@flsenline.org

Speaking:

☒ For☐ Against☐ Information

Representing

Florida Wildlife Federation

Appearing at request of Chair:

☐ Yes☐ No

Lobbyist registered with Legislature:

☒ Yes☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

5

APPEARANCE RECORD

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

3/20/14
Meeting Date

Topic SPRINGS

Bill Number 1576

(if applicable)

Name CHARLES PATTERSON

Amendment Barcode 470114
(if applicable)

Job Title PRESIDENT

Address 308 N. MARQUE

Phone 222-6277

Street LAWYER
City State Zip 32301

E-mail cpattison@1000fls.org

Speaking: ☒ For ☐ Against ☐ Information

Representing 1000 FLORIDA

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date _____

Topic _____ Bill Number SB 1582 (if applicable)

Name Jeff Littlejohn Amendment Barcode _____ (if applicable)

Job Title Deputy Secretary Regulatory Programs

Address 3100 Commonwealth Dr Phone 245-2148

City Tallahassee State FL Zip 32309 E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing DEP

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

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CourtSmart Tag Report

Room: EL 110

Case:

Caption: Senate Environmental Preservation and Conservation Committee

Type:

Judge:

Started: 3/20/2014 8:08:12 AM

Ends: 3/20/2014 9:43:10 AM

Length: 01:34:59

8:08:14 AM	Call to order
8:09:21 AM	Tab 3 SB 1176 Senator Abruzzo's legislative aide Kim Diaz to present
8:10:49 AM	Roll call SB 1176
8:11:00 AM	Bill passes
8:11:23 AM	Tab 4 SB 1336 Senator Ever's legislative aide Dave Murzin
8:12:30 AM	Roll call on SB 1336
8:12:47 AM	Bill passes
8:12:50 AM	Tab 1 SB 536 Senator Simpson
8:13:08 AM	Amendment 1 barcode 850142
8:15:10 AM	Roll call on SB 536
8:15:47 AM	Bill passes
8:15:58 AM	Tab 2 SB 1126 Senator Dean
8:16:26 AM	Amendment 1 barcode 463350
8:18:28 AM	Roll call on SB 1126
8:18:39 AM	Bill passes
8:18:53 AM	Tab 5 SB 1576 Senator Dean
8:19:06 AM	Amendment 1 barcode 470114
8:21:59 AM	Senator Simmons
8:26:39 AM	Senator Soto
8:26:50 AM	Senator Dean
8:26:58 AM	Senator Simmons
8:28:32 AM	Senator Gardner
8:30:39 AM	Senator Latvala
8:36:15 AM	Speaker Charles Pattison representing 1000 Friends of Florida
8:37:48 AM	Speaker Preston Robertson representing Florida Wildlife Federation
8:38:23 AM	Speaker Keith Hetrick representing Florida Home Builders Association
8:41:38 AM	Speaker Doug Mann representing AIF
8:44:07 AM	Speaker Mary Jean Yan representing Audubon Florida
8:46:55 AM	Speaker David Childs representing FWEA Utility Council
8:49:22 AM	Speaker Brian Pitts representing Justice 2 Jesus
8:54:42 AM	Speaker Catherine Ball representing The Tea Party Network
8:56:07 AM	Speaker Janet Bowman representing Nature Conservancy
8:59:05 AM	Speaker Debbie Rumberger representing League of Women Voters
9:02:35 AM	Speaker Dan Peterson representing Coalition for Property Rights
9:08:26 AM	Speaker David Cullen representing Sierra Club of Florida
9:11:49 AM	Speaker Amy Datz representing Democratic Environmental Caucus
9:13:02 AM	Speaker R.L. Groover representing Florida Onsite Wastewater Association
9:17:01 AM	Speaker Jake Varn representing himself
9:24:53 AM	Senator Soto
9:26:27 AM	Senator Simpson
9:27:25 AM	Senator Gardner
9:28:53 AM	Senator Simmons
9:30:10 AM	Senator Dean
9:32:59 AM	Roll call on SB 1576
9:33:08 AM	Bill passes
9:33:23 AM	Tab 6 SB 1582 Senator Dean
9:34:38 AM	Amendment 1 barcode 780720
9:36:13 AM	Amendment withdrawn
9:36:34 AM	Speaker Jeff Littlejohn representing DEP
9:39:16 AM	Senator Simpson
9:40:16 AM	Senator Dean
9:42:03 AM	Roll call on SB 1582

9:42:10 AM Bill passes